

Lanzi v Dollar Gen. Corp.

2025 NY Slip Op 31301(U)

April 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 518296/24

Judge: Heela D. Capell

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At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York.

PRESENT: HON. HEELA D. CAPELL, J.S.C.

-----X
DEBORAH LANZI, individually and on behalf of all others similarly situated,

Plaintiffs,
-against-

Index No. 518296/24
Mot. Seq. # 1, 3

DOLLAR GENERAL CORPORATION,

DECISION/ORDER

Defendant.

-----X
Recitation, as required by CPLR § 2219(a), of the electronically filed papers considered in the review of Defendant's motions for summary judgment, pursuant to CPLR § 3212(b), numbered as they appear on NYSCEF.

Papers	Numbered
Notice of Motion, Affirmations, and Exhibits Annexed	1, 2
Opposition, Affirmations and Exhibits Annexed	3
Notice of Cross-Motion, Affirmations and Exhibits. Annexed	
Reply Affirmations and Exhibits Annexed	4

Defendant DOLLAR GENERAL CORPORATION ("Defendant") brings this motion against Plaintiff DEBORAH LANZI, individually and on behalf of all others similarly situated ("Plaintiffs") to dismiss Plaintiffs' amended complaint. For the foregoing reasons, Defendant's motion is granted without prejudice. Defendant's previous motion to dismiss Plaintiffs' original complaint is denied as moot, as the complaint has been amended.

Plaintiffs' suit arises from alleged injuries suffered as a result of Defendant's labeling practice on their generic brand graham crackers ("Clover Valley Graham Crackers"). Specifically, Plaintiffs assert that Clover Valley Graham Crackers include the words "Graham Crackers" on the front of the package in large colored font, which they allege induced Plaintiffs into believing that Clover Valley Graham Crackers predominantly contain whole grain flour

("graham flour"). Clover Valley Graham Crackers consist of approximately two-thirds enriched flour and one-third graham flour. Plaintiffs further contend that because of this alleged inducement, Plaintiffs suffered damages by payment of a price premium for Clover Valley Graham Crackers, in the amount of the difference between what they paid and how much the crackers would have been sold for without misleading labeling, packaging, representations, statements, omissions, or marketing.

Defendant's motion to dismiss argues, in part, that Plaintiffs do not assert that they or reasonable consumers were deceived into believing that whole wheat flour would be the sole flour ingredient or that Clover Valley Graham Crackers would not contain any amount of enriched flour. Defendant also argues that the label is not deceptive to reasonable consumers because the common usage of the words "graham cracker" does not equate to a cracker whose primary ingredient is always whole wheat flour. Additionally, Defendant maintains that any potential confusion experienced by consumers from an ambiguous front label would be eliminated by the product's ingredient list on the packaging. This ingredient list remains unchallenged by Plaintiffs and shows that Clover Valley Graham Crackers contain whole wheat flour as its second most predominant ingredient, after enriched flour. Finally, Defendant contends that federal law preempts Plaintiffs' state claim, as the common, usual name of the Clover Valley Graham Crackers is "graham crackers." Defendant asserts that Clover Valley Graham Crackers must contain the words "graham crackers" on its packaging as required by federal statute and FDA regulations, citing 21 USC § 343(i)(1) and 21 CFR § 101.3(b)(2).

CPLR 3211(a)(7) provides that a party may move for judgment dismissing one or more causes of action asserted against it on the ground that the pleading fails to state a cause of action. If Plaintiffs "fail to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery," the

complaint should be dismissed. *Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 175 [2021] [internal quotation omitted].

Furthermore, on a motion to dismiss, the deciding court must “accept the factual allegations as true, according to plaintiff the benefit of every possible favorable inference, and determining only whether the facts as alleged fit within any cognizable legal theory” *Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 123 AD3d 431, 433 [1st Dept 2014] (quoting *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 270-271 [1st Dept 2004]).

Plaintiffs here have failed to plausibly allege that a reasonable consumer would be misled to conclude that Clover Valley Graham Crackers contain predominantly graham flour. Pursuant to General Business Law §§ 349-350, to prove their theory of harm, Plaintiffs must plausibly allege the following: (1) the defendant’s act or practice was consumer-oriented, (2) that it was misleading in a material way, and (3) the plaintiffs suffered injury as a result of the deceptive act. *See Stutman v. Chem. Bank*, 95 NY2d 24, 29 [2000] [internal citations omitted]. Plaintiffs fail here on the second element.

Plaintiffs lack support for their allegation that the label on Clover Valley Graham Crackers could be misleading. The only facts offered by Plaintiffs to support that reasonable consumers may be misled are that consumers generally prefer whole-grains and an academic article showing that consumers can be confused about which products are healthier when presented with multiple options. Neither of these mentions Dollar General or Clover Valley Graham Crackers, nor their consumers. While the Court must accept all facts presented by Plaintiffs as true, the Plaintiffs did not present facts to support the conclusion that the label on Clover Valley Graham Crackers was or could be materially misleading to Plaintiffs. Plaintiffs’ allegation is thus a bare legal conclusion that does not survive a motion to dismiss. *See Simkin v*

Blank, 19 NY3d 46, 52 [2012] [internal quotations omitted]; *see also Warren v Halsted Fin. Services, LLC*, 2025 NY Slip Op 25035 [App Term Jan. 16, 2025].

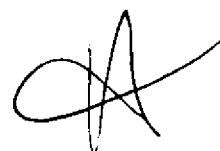
Accordingly, it is

ORDERED that Defendant's first motion to dismiss is denied as moot,

AND IT IS ORDERED that Defendant's second motion to dismiss is granted and the Plaintiffs' amended complaint is dismissed in its entirety.

This constitutes the decision/order of the Court.

Dated: Brooklyn, New York
April 9, 2025



HON. HEELA D. CAPELL, J.S.C.

HON. HEELA D. CAPELL, J.S.C.