

Jones v Schwan's Consumer Brands, Inc.
2026 NY Slip Op 32110(U)
June 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 523357/2024
Judge: Steven Z. Mostofsky
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

NATASHA JONES, BALLARD TACKETT,
CAROL VANTHOF, ERIKA GOUDREAU,
and BRIAN KALET, individually and on
behalf of all others similarly situated,

Index No. 523357/2024

DECISION AND ORDER

Plaintiffs,

Motion Sequence No. 2

-against-

SCHWAN'S CONSUMER BRANDS, INC.,

Defendant.

Plaintiffs bring this putative class action alleging that the “Made with Real Butter” statement next to two pats of butter, along with a reference to its “Flaky Crust” on the packaging of Defendant Schwan’s Consumer Brands, Inc.’s (“Defendant”) Mrs. Smith’s® Original Flaky Crust Pumpkin Pie (“the Product”) misleads consumers into believing that butter would be the exclusive or predominant fat ingredient in the crust of the pumpkin pie in violation of General Business Law Sections 349 and 350. Plaintiffs allege that they were deceived because the predominant fat ingredient in the crust is palm oil, not butter, and that butter is listed only as a component of “Shortening Butter Blend.” The Court finds that the statement “Made with Real Butter” is factually accurate, would not mislead reasonable consumers into expecting butter to predominate in a frozen pumpkin pie, and is expressly permitted under federal regulations as a valued ingredient claim.

Plaintiffs concede that the Product does contain real butter. Plaintiffs do not plead with specificity what would constitute a “predominant” or “significant” amount of butter, and the Court finds that Plaintiffs do not provide a plausible basis for alleging that reasonable consumers

would expect butter to predominate over other fat ingredients in a frozen pumpkin pie crust. A reasonable consumer purchasing a frozen pumpkin pie would understand that it contains various ingredients and “Made with Real Butter” highlights the presence of real butter as one ingredient that adds value to the product, precisely as contemplated by federal food labeling regulations. *See* 21 C.F.R. § 101.65(b)(3). Plaintiffs’ theory that the label implies a particular quantity of butter contradicts the FDA’s regulatory determination and imposes a state law requirement that is different from federal requirements, as the FDCA’s preemption provision prohibits. *See Ackerman v. Coca-Cola Co.*, 2010 U.S. Dist. LEXIS 73156, at *19-*20 (E.D.N.Y. July 21, 2010); *In re PepsiCo, Inc.*, 588 F. Supp. 2d 527, 534-37 (S.D.N.Y. 2008).

Mantikas v. Kellogg Co., 910 F.3d 633 (2d Cir. 2018), a federal appellate decision interpreting GBL §§ 349-350 as applied to a claim of crackers made with whole wheat, distinguished situations involving ingredients that are “obviously not the product’s primary ingredient.” This is such a case. *See, e.g., Davis v. Schwan’s Consumer Brands, Inc.*, 742 F. Supp. 3d 400, 408 (S.D.N.Y. 2024); *Kennedy v. Mondelez Glob. LLC*, No. 19-CV-302-ENV-SJB, 2020 U.S. Dist. LEXIS 124538, at *33-34 (E.D.N.Y. July 10, 2020); *Harris v. Mondelez Glob. LLC*, No. 19-cv-2249 (ERK) (RER), 2020 U.S. Dist. LEXIS 133715, at *6 (E.D.N.Y. July 28, 2020). Two recent New York State Supreme Court decisions have dismissed almost identical “made with [ingredient]” claims for failure to state a cause of action on this basis. The reasoning in those cases is applicable here. *See Raphael v. Schwan’s Consumer Brands, Inc.*, Index No. 501934/2025 (Sup. Ct. Kings County Dec. 30, 2025); *Gay v. Walmart, Inc.*, Index No. 74988/2024 (Sup. Ct. Westchester County Jan. 13, 2026).

Accepting all of Plaintiffs’ factual allegations as true and according them every possible favorable inference, the Court concludes that Plaintiffs have failed to state a cause of action

under GBL §§ 349 or 350.

ORDER

Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss the Amended Complaint pursuant to CPLR 3211(a)(7) is GRANTED in its entirety; and it is further

ORDERED that the Amended Complaint is dismissed with prejudice; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that Defendant shall serve a copy of this Decision and Order with Notice of Entry thereof within ten (10) days of entry.

This constitutes the decision and order of the Court.

Dated: 6/23, 2026
Kings County, New York



Hon. Steven Z. Mostofsky
Justice of the Supreme Court

**Hon. Steven Z. Mostofsky
Justice, Supreme Court**

Exhibit 1: Affidavit of
Defendant's Counsel