| **O'Connor v Blue Diamond Growers** |
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| 2026 NY Slip Op 32112(U) |
| July 10, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 160511/2025 |
| Judge: Andrea Masley |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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| LEELA O'CONNOR, Plaintiff, | **INDEX NO.** 160511/2025 |
| - v - | **MOTION DATE** |
| BLUE DIAMOND GROWERS, Defendant. | **MOTION SEQ. NO.** 001 |

**DECISION + ORDER ON MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISMISSAL.

This action arises from defendant Blue Diamond Growers' (Blue Diamond's) alleged misbranding of its Smokehouse Almonds as "smoked," and the related failure to "disclose the addition of liquid smoke on its front label." (NYSCEF Doc. No. [NYSCEF] 2, Complaint ¶¶ 7, 19.)

In motion sequence 001, defendant Blue Diamond moves pursuant to CPLR 3211(a)(2) and (7) to dismiss the complaint. (NYSCEF 14, Notice of Motion.)

**Discussion**

Plaintiff Leela O'Connor pleads in the complaint a cause of action for unfair and deceptive trade practices pursuant to New York General Business Law (GBL) §§ 349 and 350. Blue Diamond moves to dismiss on the grounds that O'Connor fails to plead (i) materially misleading conduct, (i) injury, and (iii) causation.

GBL § 349 makes it unlawful to engage in "[u]nfair, deceptive, or abusive acts or practices in the conduct of any business, trade or commerce." (General Business Law

§ 349 [a].) "An act or practice is unfair when it causes or is likely to cause substantial injury which is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition." (*Id.* § 349 [a] [1].) GBL § 350 makes it unlawful to use "[f]alse advertising in the conduct of any business, trade or commerce." (General Business Law § 350.)

To assert a claim under either section, a plaintiff must allege "first, that the challenged act or practice was consumer-oriented; second, that it was misleading in a material way; and third, that the plaintiff suffered injury as a result of the deceptive act." (*Stutman v Chemical Bank*, 95 NY2d 24, 29 [2000] [citations omitted].) "Whether a representation or an omission, the deceptive practice must be likely to mislead a reasonable consumer acting reasonably under the circumstances. A deceptive practice, however, need not reach the level of common-law fraud to be actionable." (*Id.* [internal citation omtted].) Finally, "a plaintiff must prove 'actual' injury to recover under the statute, though not necessarily pecuniary harm." (*Id.* [citations omitted].)

Materially Misleading Conduct

O'Connor alleges that Blue Diamond's "false and deceptive representations and omissions, with respect to the [Smokehouse Almonds'] contents, origins, nutrient values, servings, ingredients, flavoring, taste, type, functionality, amount, quantity, and/or quality, were material in that they were likely to influence consumer purchasing decisions." (NYSCEF 2, Complaint ¶ 64.) Blue Diamond argues that O'Connor's allegations fail because the label is not misleading.

O'Connor argues that the front label on Blue Diamond's Smokehouse Almonds is materially misleading because the word "smokehouse" implies that the almonds "got their smoked taste from a smokehouse," whereas the ingredient list reveals that the smoked flavor derives from "Natural Hickory Smoke Flavor," a "fake smoke flavoring . . . that results from somehow turning smoke into liquid." (NYSCEF 2, Complaint ¶¶ 7, 8-9 [internal quotation marks and citation omitted].)

"Whether a representation or an omission, the test is whether the allegedly deceptive practice is likely to mislead a reasonable consumer acting reasonably under the circumstances." (*Wilner v Allstate Ins. Co.*, 71 AD3d 155, 165 [2d Dept 2010] [internal quotation marks and citation omitted].) Such a determination "may be determined as either a question of law or fact, depending upon the circumstances." (*Id.* at 166 [citation omitted].) In the context of labels, "one must consider the entire context of the label" to determine whether a reasonable consumer is likely to be misled. (*In re Frito-Lay North America, Inc. All Natural Litigation*, 2013 WL 4647512, *15 [ED NY Aug. 29, 2013, No. 12-MD-2413(RRM) (RLM) [citation omitted].)

The court finds that O'Connor fails to allege that the label on Blue Diamond's Smokehouse Almonds is misleading. The court finds *Galkowski-Coira v Price Chopper, Inc.* (2023 NY Slip Op 30925[U] [Sup Ct, NY County 2023]) instructive. Therein, the court was asked to determine whether defendant's label "concerning the source of vanilla flavoring" contained in its Greek yogurt was misleading. (*Id.* at *2.) The court concluded that the label was not misleading because

> "[a] review of the label on the packaging reveals that the label does not claim that the product is made exclusively or even mostly with vanilla. Rather, the label simply indicates that the product is vanilla flavored. The Court finds that the label on the product would not lead a reasonable consumer to conclude that the product is made from vanilla, especially since there is no allegation that the product claims to be made from vanilla. . . . Indeed, numerous courts have similarly concluded with respect to comparable claims about vanilla-flavored

> products that reasonable consumers associate the word vanilla with a flavor, not an ingredient." (*Id.* at *4 [internal quotation marks and citations omitted].)

The same is true here. Like vanilla, reasonable consumers associated the word "smoked" with a flavor. (*See Zapadinsky v Blue Diamond Growers*, 2023 WL 5116507, *9 [ED Wis Aug. 7, 2023, No. 23-CV-231-JPS] ["[n]o reasonable consumer would view 'Smokehouse®,' listed as one flavor among many, as describing the method of production, versus the flavor"].) Moreover, the label on Blue Diamond's almonds does not claim that the almonds are manufactured in a smokehouse or by burning hardwood. (*See also Dashnau v Unilever Mfg. (US), Inc.*, 529 F Supp 235, 242 [SD NY 2021] ["[p]laintiffs have not plausibly alleged that a reasonable consumer who reads the words 'vanilla bean ice cream' on the Product's front label would conclude that this labeling implies that the vanilla flavor is derived *exclusively* from 'real vanilla,' or from vanilla beans"].)

To the extent the word "smokehouse" on the front label may create an ambiguity as to the manufacturing process, "the back label provides sufficient clarification." (*Baines v Nature's Bounty (NY), Inc.*, 2023 WL 8538172, *3 [2d Cir 2023] [citation omitted]; *see also Cummings v Growers*, 2023 WL 3487005, *4 [ND Fla May 15, 2023, No. 1:22-CV-141-AW-HTC ["ingredient list confirm it is implausible that objectively reasonable consumers would think the almonds were actually smoked"].) Courts faced with similar lawsuits against Blue Diamond have also found that because "the use of the term 'Smokehouse' is qualified by a trademark symbol" plaintiff fails to allege that "a reasonable consumer would likely be deceived into believing that [the almonds] were smoked in a smokehouse." (*Muller v Blue Diamond Growers*, 683 F Supp 3d 933, 942-43 [ED Mo 2023].) Instead, the use of a trademark symbol signals a brand name.

(*Cummings*, 2023 WL 3487005, *4 [ND Fla May 15, 2023].) For these reasons, the court finds that O'Connor fails to plead that the label on Blue Diamond's Smokehouse Almonds is materially misleading.

Injury

O'Connor alleges that she was injured by Blue Diamonds' allegedly false and deceptive representations and omissions because she "paid more for the [Smokehouse Almonds], and would not have paid as much, if she knew the almonds were not made in a smokehouse, nor subjected to the application of true wood smoke, and/or their smoked taste was entirely from added liquid smoke." (NYSCEF 2, Complaint ¶ 68.) Blue Diamond argues that O'Connor's allegations fail because Blue Diamond charges the same price for all its snack almonds, including *unflavored* almonds. (NYSCEF 25, MOL at 18-19.)

In the complaint, O'Connor alleges that "the difference between what [consumers] paid based on [the] labeling . . . and how much it would have been sold for, without the misleading labeling" is "between five ($0.05) and seventy cents ($0.70 per unit." (NYSCEF 2, Complaint ¶¶ 72-73.) Courts have found that allegations of injury are insufficient where plaintiffs

> "claim that the Product is sold at a price higher than similar products represented in a non-misleading way. Yet, they do not provide any information regarding those products and/or the prices of those products. Rather, plaintiffs allege in conclusory fashion that they paid a price premium, or higher relative price, in the amount of five to sixty cents per unit, with no specific allegations concerning the identity or cost of the alleged similar product." (*Beras v Upfield US Inc.*, 2025 NY Slip Op 32919[U], *7-8 [Sup Ct, Bronx County 2025].)

Further, O'Connor fails to address Blue Diamond's argument that there is, in fact, no prime premium as Blue Diamond charges the same price for all its almonds. (*See* NYSCEF 26, MOL in Opp at 13-14.)

To the extent O'Connor argues that she paid more than she would have had she known the almonds were not made in a smokehouse (*id.* at 13), such argument also fails as an allegation that plaintiff and similarly situated consumers would not have purchased the product but for the alleged deception does not constitute a legally cognizable injury. (*Small v Lorillard Tobacco Co.*, 94 NY2d 43, 56 [1999].) For these reasons, the court finds that O'Connor fails to plead an actual injury.

<u>Causation</u>

O'Connor alleges that she "was caused to pay more than she would have paid for the [Smokehouse Almonds], based on [Blue Diamond's] misrepresentations and/or omissions." (NYSCEF 2, Complaint ¶ 74.) "[C]ausation refers to the link between an alleged deceptive practice and an actual injury sustained by a consumer as a result of a such a practice." (*Morrissey v Nextel Partners, Inc.*, 22 Misc 3d 1124[A], 2009 NY Slip Op 50260[U], *5 [Sup Ct, Albany County 2009]; *see also Stutman*, 95 NY2d at 29 [2000] ["plaintiff [] must show that the defendant's 'material deceptive act' caused the injury" (citation omitted)].) Because the court finds that O'Connor pleads neither a material deception nor injury, there can also be no finding of causation.

Accordingly, it is

ORDERED that motion sequence 001 is granted and the complaint is dismissed; and it is further

ORDERED that, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry, is directed to enter judgment dismissing the action, with prejudice, and with costs and disbursements to the defendant as taxed by the Clerk; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website).]

The foregoing constitutes the decision and order of the court.

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**7/10/2026**
**DATE**

**ANDREA MASLEY, J.S.C.**

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| **CHECK ONE:** | X | **CASE DISPOSED** | | | **NON-FINAL DISPOSITION** | |
| | X | **GRANTED** | ☐ **DENIED** | | **GRANTED IN PART** | ☐ **OTHER** |
| **APPLICATION:** | | **SETTLE ORDER** | | | **SUBMIT ORDER** | |
| **CHECK IF APPROPRIATE:** | | **INCLUDES TRANSFER/REASSIGN** | | | **FIDUCIARY APPOINTMENT** | ☐ **REFERENCE** |