

Rebuffing False Advertising Claim Made by Anti-GMO Plaintiffs

Client:	Medora Holdings
Industry:	Retail
Area of Law:	Class Action and Deceptive Advertising
Venue:	U.S. District Court for the Northern District of California
Result:	A strong rejection of class certification followed by dismissal with prejudice



“Plaintiffs allege both they paid ... a price premium and that they were misled into buying PopCorners. But Plaintiffs make no such showing for either theory anywhere in their motion, reply or supplemental brief.”

—Judge Paul Grewal, U.S. District Court for the Northern District of California

When it comes to food labeling, few phrases have drawn more litigious attention over the past few years than “all natural.” Hundreds of such cases are now moving through the courts nationwide, and though some are ultimately withdrawn or thrown out, defending against them can be costly and time-consuming. As a result, many defendants have chosen settlement over protracted litigation.

It was against this backdrop that Pillsbury client Medora Holdings, which developed, manufactured and distributed a new popped corn chip named “PopCorners,” faced two class action lawsuits over past labeling of its product. Although its “Sea Salt” flavor chip contained only three ingredients—corn, sea salt and sunflower oil—plaintiffs claimed Medora was guilty of false advertising, since any product made from GMO-derived seed automatically failed to qualify as “natural.”

Not wishing to settle or be mired in years of litigation, Medora Holdings looked to Pillsbury for a better alternative.

Though it can be difficult to get class action status denied in false advertising cases—efforts in similar lawsuits have fallen short in recent years—Pillsbury’s depositions of the plaintiffs uncovered substantial flaws in their case.

First, plaintiffs admitted they had suffered no financial harm, nor could they show any likelihood of being “misled” by Medora’s advertising in the future. For its part, Medora had removed the “all natural” language from its packaging in 2013—months before the suit was filed. Finally, sales for PopCorners had increased significantly after the label change, providing strong evidence there was no basis for either damages or injunctive relief.

Taking these facts into account, the trial judge denied class certification on the ground that the individual plaintiffs lacked standing to sue and ordered them to show cause why their individual claims should not be dismissed for the same reason.

In response, the individual plaintiffs elected to dismiss their claims voluntarily and with prejudice, rather than test their luck with the Court of Appeals.