US Court of Appeals for the Tenth Circuit Dismisses Beef Labeling Claim

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The United States Court of Appeals for the Tenth Circuit recently dismissed a lawsuit filed by a New Mexico consumer and a New Mexico cattle rancher against beef packers claiming that the packers' use of the "Product of the USA" label is misleading as not all products bearing such label originate from cattle born and raised in the United States.

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Background

This case involves two class action Complaints filed against packers Tyson Foods, Cargill Meat Solutions, JBS USA Food Company, and National Beef ("the Defendants"). The Plaintiffs claim that these packers import live cattle from other countries and then slaughter and process the animals here in the United States. The

packers then label the beef from these imported cattle as "Product of the USA." Plaintiffs claim that the packers also use the same label on imported beef as well. The Plaintiffs filed lawsuits against the packers claiming that these labels are misleading, fraudulent, and deceptive pursuant to New Mexico law. In particular, they brought claims for unjust enrichment, violation of the New Mexico Unfair Practices Act, breach-of-express-warranty, and a violation of the New Mexico Antitrust Act.

Plaintiff Robin Thornton is a New Mexico consumer who purchased defendants' beef at retail stores. She seeks to represent a class of similarly situated consumers who paid higher prices for beef on the mistaken belief the "Product of the USA" label indicated the beef originated from cattle born and raised in the United States. Plaintiff Michael Lucero is a New Mexico cattle rancher raising beef and seeking to represent a class of ranchers who are paid less for their domestic cattle due to the defendants' misleading labeling. The parties agreed to consolidate both lawsuits for pretrial purposes.

The lawsuits were initially filed in New Mexico State Court and then removed by the Defendants to federal court. At that point, the Defendants moved to dismiss. The trial court dismissed the cases finding the state law claims preempted by the Federal Meat Inspection Act ("FMIA"). The Plaintiffs appealed.

Tenth Circuit Opinion

The Tenth Circuit affirmed the dismissal.

Legal Framework

The FMIA "regulates a broad range of activities" related to meat processing, including making sure meat is properly marked, labeled, and packaged. The FMIA prohibits false and misleading labeling. The Food Safety and Inspection Service (FSIS) requires preapproval of labels before they may be placed on products.

The FSIS labeling policy allows the use of a "Product of the USA" label if the product is *processed* in the USA. The FSIS interprets this to mean that products need only be prepared in the US, rather than derived only from animals born, raised, slaughtered, and processed in the USA. The court also noted that the terms "U.S.A. Beef, "U.S.

Beef," and "Fresh American Beef" are terms do require cattle to be born, raised, slaughtered, and processed in the United States. Those terms are not at issue in this lawsuit.

The court noted that this has not always been the legal approach to "Product of the USA" labeling. From 2008-2015, Congress passed a Country of Origin Labeling law that provided four categories of labeling: US origin, multiple countries of origin, imported for immediate slaughter, and foreign country of origin. This statute resulted in years of international trade disputes and $1 billion in retaliatory tariffs imposed against the US. As a result, Congress repealed the law in 2015.

Application to this Case

The court stated that the case turns on FMIA Section 678, which prohibits states from imposing any labeling requirements for meat products that are "in addition to, or different than" the requirements of the FMIA. Section 678 clearly prohibits states from imposing labeling requirements in addition to or different than those in the FMIA. The US Supreme Court previously held that this provision "sweeps widely" and "prevents a state from imposing any additional or different—even if nonconflicting–requirements."

Thus, it preempts the Plaintiffs' labeling claims. It is undisputed that the defendants "Product of the U.S.A." labels were preapproved as required by FSIS. This approval includes a determination by FSIS the labels are not deceptive or misleading under the FMIA. Allowing the Plaintiffs to claim the labels are misleading under state law would impose a different requirement than the FMIA, which is exactly what Section 678 prohibits.

Additionally, Plaintiffs argued that the concurrent jurisdiction provision in Section 678 allows their misbranding claims to go forward. The concurrent jurisdiction provision provides that, "any state…may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary…for the purpose of preventing the distribution for human food purposes of any such articles which are…misbranded." However, the court noted, to allow concurrent state jurisdiction, the state's labeling requirements must be "consistent with" the FMIA. Here, because FSIS approved the very labels that Plaintiffs' claim are misleading or misbranded

under state law, the state law approach is not "consistent with" the FMIA and concurrent jurisdiction does not exist.

Next, Plaintiffs argued that because the "Product of the U.S.A." label is optional rather than mandatory, preemption does not apply. Again, because FSIS already approved the label as not being misleading under federal law, the state may not impose different labeling requirements. To allow Plaintiffs to succeed on their claim would require the approved federal label to be removed, which would be a different requirement than the FMIA, which allows the label.

Lastly, the court walked through various case law looking at preemption in other statutes that it found distinguishable to the current case as they did not involve the FMIA.

One additional interesting note is that the court expressly stated that it "offers no opinion on the FSIS's broad interpretation of the meaning of the 'Product of the U.S.A.' label." Instead, the court "simply holds that plaintiffs cannot use their state-law claims as a mechanism for bypassing federally approved labeling."

Thus, each of the Plaintiff's state law claims are preempted by the FMIA and the dismissal is affirmed.

Dissenting Opinion

Judge Lucero dissented.

He begins his dissent as follows, "This case poses a meaty question of statutory interpretation: did Congress intend to preclude states from regulating beef labels that blatantly deceive consumers? The text, history, and purpose of the FMIA reveal that Congress could not have intended such a result. Rather, the statute expressly creates concurrent state jurisdiction, utilizing our federalist system to protect consumers against false and misleading meat claims. In this case, plaintiffs' state law claims that beef labels mislead consumers as to cattle's country of origin are perfectly consistent with this federal goal."

Judge Lucero believes that when express preemption language is susceptible to equally plausible alternative readings, the court has a duty to accept that which

disfavors preemption. Thus, he would hold, any ambiguity in the FMIA's preemption clause should be resolved against preemption. While he believes the majority plausibly interprets the FMIA, he believes that his interpretation that would not find preemption is equally plausible and, therefore, preemption should not apply.

He discusses the origin of the FMIA and the multiple references to cooperation between states and the USDA to protect consumers. In looking at the text of the FMIA, he would focus more on the concurrent jurisdiction clause, which he states "suggests that states are free to regulate meat labels so long as such regulations are consistent with the FMIA and do not add to the requirements imposed by the Act." The issue, then, is whether the Plaintiffs claims deviate from or add to the FMIA requirements. The majority held they do; but Judge Lucero concluded they do not.

The dissent says that because the FMIA only allows the sale of meat products that are "not false or misleading and which are preapproved by the Secretary," this suggests that approval by the Secretary, does not satisfy the statute. This indicates to Judge Lucero there could be labels that are both misleading and approved by the Secretary, which is why the concurrent jurisdiction clause intended to allow states to protect against misleading labels.

In light of this, Judge Lucero states that it is "plausible that the label 'Product of the U.S.A' misleads consumers to believe that the beef they purchase derives from cattle born and raised in the United States." To the extent consumers are deceived, he reasons, this violates the FMIA's ban on misleading labels and New Mexico state law.

He would reverse the dismissal on preemption grounds and allow the cases to proceed.