

Bryan v. Del Monte Foods

RENE BEFURT, ANNE CAI & SAI SINDHURA GUNDAVARAPU*

WHY IT MADE THE LIST

“Natural” claims on food product packaging have been the focus of many lawsuits in recent years. While many cases about “natural” claims share the objective of understanding the perceptions of a “reasonable consumer,” more recent cases expand that foundation to a more complete representation of the context, including the claim’s exact wording around the term “natural,” the context of the product packaging as a whole, consumers’ preexisting knowledge about the product or the product category, and the products available in the market for the product type in question. For instance, in the matter discussed herein, *Bryan v. Del Monte*, the district court and the appellate court agreed that the exact wording of the alleged natural claim and the contents of the product’s back label are important factors in determining whether claims are deceptive to target consumers.¹ The district court also highlighted additional relevant factors in assessing consumer understanding, namely the background knowledge of consumers who prefer natural products and the types of fruit cups available in the market.² In its decision, the district court referred to *McGinity v. Procter & Gamble*,³ which provides a foundation for the notion that ambiguity on the front label can be resolved by reference to a back label that clearly discloses the inclusion of multiple synthetic ingredients.

We observe that both the district court and the appellate court in *Bryan v. Del Monte* found that the survey evidence provided by Plaintiff was irrelevant to understanding how a reasonable consumer could have interpreted the at-issue natural claims in the

* Rene Befurt is a Principal at Analysis Group and a leading member of the Surveys & Experimental Studies practice. Dr. Befurt is an expert in applying marketing research methods to strategic business problems and litigation matters. He has served as an expert witness in numerous survey and sampling matters, and he assists academic affiliates in the conceptualization, administration, and evaluation of surveys. His specialty in consumer surveys is the development and evaluation of survey experiments and choice modeling approaches. Anne Cai is a Vice President at Analysis Group and a leading member of the Surveys & Experimental Studies practice. Ms. Cai applies consumer behavior and marketing research methods to litigation issues and strategic business problems, including false advertising, product liability, trademark infringement, patent infringement, competition, and data privacy matters. She has extensive experience developing and evaluating quantitative and qualitative research to assess marketing, branding, and consumer perception and behavior. Sai Sindhura Gundavarapu is an Associate at Analysis Group and a core member of the Surveys & Experimental Studies practice. Dr. Gundavarapu’s experience includes a wide range of analytical applications, as well as the design and evaluation of empirical quantitative and qualitative research studies to assess consumer perception and behavior around topics related to marketing and branding.

¹ *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC, at 3 (N.D. Cal. Oct. 19, 2023) (Order Granting Motion to Dismiss First Amended Complaint); *Bryan v. Del Monte Foods, Inc.*, No. 23-3685, at 2 (9th Cir. Nov. 22, 2024) (Memorandum).

² *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC, at 3 (N.D. Cal. Oct. 19, 2023) (Order Granting Motion to Dismiss First Amended Complaint).

³ *Id.* at 3 (citing *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093 (9th Cir. June 9, 2023)).



case at hand, indicating the importance of well-designed, relevant surveys in lawsuits related to natural claims.⁴ Specifically, the appellate court noted that a survey conducted outside of the litigation yet part of Plaintiff’s survey evidence was “uninformative because it did not ask what respondents thought about the noun ‘naturals,’ rather, it asked about the adjective ‘natural’” and “asked people what they thought ‘natural’ should mean on the label of a product, not what they thought it actually did mean as used on these labels.”⁵

DISCUSSION

Procedural Background and Ruling of the District Court

In August 2023, Plaintiff Kerstine Bryan filed an amended complaint in a class action lawsuit against Del Monte Foods, Inc. relating to Del Monte’s fruit cups sold by brick-and-mortar retailers such as Walmart.⁶ Plaintiff alleged that Del Monte’s fruit cups presented claims that were false, deceptive, and misleading and misrepresent to reasonable consumers that the fruit cups “contain[] only natural ingredients.”⁷

Specifically, Plaintiff alleged that “[t]he front label of every Product states that the Product is ‘Fruit Naturals’” and “‘Naturals’ is a representation to a reasonable consumer that the Products contain only natural ingredients.”⁸ In support of her allegations, Plaintiff cited a consumer survey conducted outside of the case that purportedly demonstrated that “the reasonable consumer believes that the term ‘natural,’ when used to describe goods such as the Products, means that the goods are free of synthetic ingredients.”⁹ Plaintiff further alleged that Del Monte “reinforces these representations throughout other forms of marketing including its website,” which “emphasizes ‘naturally refreshing’ and ‘Chilling in your grocer’s produce section’ while showing images of fresh fruit.”¹⁰ In addition, Plaintiff pointed out synthetic ingredients such as citric acid, potassium sorbate, sodium benzoate, and methylcellulose gum “on the back of the Products’ packaging in the ingredients listed,” and alleged that “[c]onsumers would not know that the Products contain unnatural, synthetic ingredients, by reading the ingredients label.”¹¹ Expanding on this argument, Plaintiff also stated that “the reasonable consumer is not expected or required to scour the ingredients list on the back of the Products in order to confirm or debunk Defendant’s prominent front-of-the-product claims, representations, and warranties that the Products are ‘natural.’”¹²

⁴ *Id.* at 3; Bryan v. Del Monte Foods, Inc., No. 23-3685, at 2–3 (9th Cir. Nov. 22, 2024) (Memorandum).

⁵ *Id.* at 2–3.

⁶ Bryan v. Del Monte Foods, Inc., No. 4:23-cv-00865-MMCM, at ¶¶ 1, 6, 20 (N.D. Cal. Aug. 25, 2023) (Dkt 29, First Amended Class Action Complaint).

⁷ *Id.* ¶¶ 1, 6, 7, 50.

⁸ *Id.* ¶¶ 42, 45.

⁹ *Id.* ¶ 39.

¹⁰ *Id.* ¶¶ 47–48.

¹¹ *Id.* ¶¶ 50–52.

¹² *Id.* ¶ 53.

Del Monte filed a motion to dismiss Plaintiff's amended complaint in early September 2023.¹³ Plaintiff filed an opposition to Del Monte's motion to dismiss, and Del Monte filed a reply in support of the motion to dismiss, both in late September 2023.¹⁴ In October 2023, the district court sided with Del Monte and dismissed Plaintiff's amended complaint. The district court ruled that Plaintiff "has not plausibly alleged that the Products' front label, as clarified by the back label, would mislead a reasonable consumer into thinking that the Products contain no synthetic ingredients."¹⁵ Referencing the decision in *McGinity v. Procter & Gamble*, the court stated that "the front label's statement, 'fruit naturals,' like the label considered in *McGinity*, does not 'make any affirmative promise about what proportion of the ingredients are natural,'" and "as in *McGinity*, . . . such ambiguity can be resolved by reference to the back label, which clearly discloses the inclusion of multiple synthetic ingredients."¹⁶ The court noted that Plaintiff "points to no case wherein a court has held any consumer, let alone one concerned about synthetic ingredients, would not be able to distinguish a synthetic ingredient from a natural ingredient."¹⁷ Referencing *Robles v. GOJO Indus.*, the court stated that "[g]eneral knowledge and common sense" may serve to "inform the reasonable consumer considering a product" and Plaintiff "does not allege there are 'any comparable single serve fruit products available on the market that do not contain any artificial sweeteners or preservatives.'"¹⁸ Additionally, the court found that "the publicly available consumer surveys on which Bryan relies do not save her claims. Those surveys do not address a consumer's understanding of the noun 'naturals' used as part of a product's name, as is alleged here, but, rather, appear to address a consumer's understanding of the word 'natural' used as an adjective to describe a product."¹⁹

Plaintiff appealed the decision in January 2024.²⁰ Del Monte filed a reply to Plaintiff's brief in February 2024,²¹ and Plaintiff filed an answer in March 2024.²² The United States Court of Appeals for the Ninth Circuit issued its opinion in November 2024.²³

¹³ *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC, at 1 (N.D. Cal. Oct. 19, 2023) (Order Granting Motion to Dismiss First Amended Complaint).

¹⁴ *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC (N.D. Cal. Sept. 22, 2023) (Dkt 38, Plaintiff's Opposition to Defendant's Motion to Dismiss First Amended Complaint); *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC (N.D. Cal. Sept. 29, 2023) (Dkt 41, Defendant Del Monte Foods Inc.'s Reply in Support of Motion to Dismiss Amended Complaint).

¹⁵ *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC, at 3 (N.D. Cal. Oct. 19, 2023) (Order Granting Motion to Dismiss First Amended Complaint).

¹⁶ *Id.* at 3 (citing *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093 (9th Cir. June 9, 2023)).

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3 (citing *Robles v. GOJO Indus., Inc.*, 2023 U.S. App. LEXIS 20051, 2023 WL 4946601, at *2 (9th Cir. Aug. 3, 2023)).

¹⁹ *Id.* at 3.

²⁰ *Bryan v. Del Monte Foods, Inc.*, No. 23-3685 (9th Cir. Jan. 9, 2024) (Brief of Plaintiff-Appellant Kerstine Bryan).

²¹ *Bryan v. Del Monte Foods, Inc.*, No. 23-3685 (9th Cir. Feb. 20, 2024) (Appellee Del Monte Foods, Inc.'s Answering Brief to Appellant Kerstine Bryan's Opening Brief).

²² *Bryan v. Del Monte Foods, Inc.*, No. 23-3685 (9th Cir. Mar. 13, 2024) (Reply Brief of Plaintiff-Appellant Kerstine Bryan).

²³ *Bryan v. Del Monte Foods, Inc.*, No. 23-3685 (9th Cir. Nov. 22, 2024) (Memorandum).

Ruling and Reasoning of the Appellate Court

The appellate court affirmed the district court's ruling. Referencing both *Whiteside v. Kimberly Clark* and *McGinity v. Procter & Gamble*, the appellate court ruled that "Plaintiff has not plausibly alleged that the front label is 'unambiguously deceptive to an ordinary consumer,'" "a reasonable consumer would look at the back label," and "the front label 'does not promise that the product is wholly natural,' as would a label declaring that a product is '100% natural' or 'all natural.'" ²⁴ The court found that "[a]ccordingly, 'the ambiguity can be resolved by reference to the back label,'" which "accurately and clearly discloses several synthetic ingredients about which Plaintiff complains."²⁵ Specifically, the court noted that, "in the phrase 'fruit naturals®,' 'naturals' is a noun, not a descriptive adjective. The presence of the registered-trademark symbol after 'fruit naturals' also suggests that the phrase is just the name of the product."²⁶ Pointing to the labels of the fruit cups at issue, the court noted that they "display the picture and name of the fruit in the cups, followed by the phrase 'in extra light syrup.' Taken together with the rest of the front label . . . the 'syrup' phrase affirmatively conveys that, although the fruit itself is natural, the syrup may not be."²⁷ Additionally, the appellate court also found that the survey evidence cited by Plaintiff was "uninformative because it did not ask what respondents thought about the noun 'naturals,' rather, it asked about the adjective 'natural.' And, importantly, the survey asked people what they thought 'natural' should mean on the label of a product, not what they thought it actually did mean as used on these labels."²⁸

Plaintiff filed a petition for rehearing in December 2024, and the appellate court denied Plaintiff's petition in January 2025.²⁹

IMPACT

In both the district court's dismissal of Plaintiff's amended complaint and the appellate court's affirmation of the dismissal, the courts focused on how a reasonable consumer could interpret the at-issue natural claims. Both courts highlighted the details of the product packaging, including the natural claim itself and other elements of the product's front label, such as the "presence of the registered-trademark symbol after 'fruit naturals'" ³⁰ and "the picture and name of the fruit in the cups, followed by the phrase 'in extra light syrup.'" ³¹ In addition, the district court noted the importance of considering consumers' background knowledge and the market for fruit cups. The authors agree with that view, as many consumers develop (varying degrees of) knowledge during the consumer purchase journey. The latter framework describes

²⁴ *Id.* at 3 (citing *Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771, 780 (9th Cir. 2024); *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093, 1096 (9th Cir. 2023)).

²⁵ *Id.* at 3.

²⁶ *Id.* at 2.

²⁷ *Id.* at 2.

²⁸ *Id.* at 2–3.

²⁹ *Bryan v. Del Monte Foods, Inc.*, No. 23-3685 (9th Cir. Dec. 7, 2024) (Plaintiff-Appellant's Petition for Rehearing or Rehearing En Banc); *Bryan v. Del Monte Foods, Inc.*, No. 23-3685 (9th Cir. Jan. 7, 2025) (Order).

³⁰ *Bryan v. Del Monte Foods, Inc.*, No. 23-3685, at 2 (9th Cir. Nov. 22, 2024) (Memorandum).

³¹ *Id.* at 2.

how consumers go through some or all of the following phases, with varying amounts of time spent in each: (1) identification of a need, (2) information gathering on products that meet that need, (3) evaluation of identified products, (4) selection and purchase of a specific product, and (5) experience of the product in the post-purchase stage.³² In this case, as noted by the district court, both the background information held by a reasonable consumer who prefers natural products as well as the other products considered by a reasonable consumer of fruit cups could inform their interpretation of the at-issue natural claims. These rulings emphasize the importance of considering these factors of context and consumer knowledge, tailored to the particular claims at issue, when evaluating the understanding of a reasonable consumer.

In fact, Plaintiff's failure to consider these factors when presenting survey evidence led to the courts deeming the survey evidence irrelevant to the matter. Specifically, Plaintiff's survey evidence provided only general information on "a consumer's understanding of the word 'natural' used as an adjective to describe a product,"³³ without tying it to the actual at-issue claim, the context in which it was presented, and—keeping in mind the purchase journey—the preexisting knowledge of its target consumers.

What Precise Claims Are Consumers Exposed to, and In What Context?

In their decisions, the courts highlight the impropriety of lumping the at-issue natural claim with other natural claims as a "'natural' label" in general.³⁴ Both courts noted that the survey evidence cited by Plaintiff was based on labels utilizing the adjective "natural" to describe the product, and pointed out that the at-issue claim in this case used the noun "naturals" as part of the product's name. Pointing to the distinction between the noun and adjective forms, the courts ruled that a reasonable consumer cannot be assumed to interpret the adjective "natural" in the same manner as the noun "naturals."³⁵ In the same vein, the appellate court noted the presence of the registered trademark symbol following the phrase "fruit naturals" on the front label as an additional indicator to a reasonable consumer that "fruit naturals" was simply the product's name and not a description of the product's properties.³⁶ For a consumer survey to provide reliable evidence on how consumers interpret a claim at issue, the survey designer must test the precise term(s) at issue, within the context of how consumers would encounter the claim on a product label.

³² PHILIP T. KOTLER & KEVIN LANE KELLER, *MARKETING MANAGEMENT* 194–201 (15th ed. Pearson 2016).

³³ *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC, at 3 (N.D. Cal. Oct. 19, 2023) (Order Granting Motion to Dismiss First Amended Complaint).

³⁴ *Id.* at 2–3; *Bryan v. Del Monte Foods, Inc.*, No. 23-3685, at 3 (9th Cir. Nov. 22, 2024) (Memorandum).

³⁵ *Id.* at 2; *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC, at 3 (N.D. Cal. Oct. 19, 2023) (Order Granting Motion to Dismiss First Amended Complaint).

³⁶ *Bryan v. Del Monte Foods, Inc.*, No. 23-3685, at 2 (9th Cir. Nov. 22, 2024) (Memorandum).

How Do Consumers Interpret a Claim (Not: What Do Consumers Think a General Term Should Mean)?

Continuing its assessment of the survey evidence cited by Plaintiff, the appellate court highlighted that “importantly, the survey asked people what they thought ‘natural’ should mean on the label of a product, not what they thought it actually did mean as used on these labels” at issue in the case.³⁷ The appellate court therefore rejects that consumers would be the ones to ask about what a label should say, and instead reminds the Plaintiff that the crucial aspect about the reasonable consumer is their understanding of what the noun “fruit naturals” claim on a product’s front label *actually* means to them.

What Knowledge and Expectations Do Reasonable Consumers Hold About the At-Issue Product’s Market?

The district court also indicated the importance of considering the knowledge of consumers in general and that of those who are “concerned about synthetic ingredients” in particular. Specifically, the court noted that Plaintiff “points to no case wherein a court has held any consumer, let alone one concerned about synthetic ingredients, would not be able to distinguish a synthetic ingredient from a natural ingredient.”³⁸ A reasonable consumer who is concerned about synthetic ingredients and would prefer to purchase natural products certainly has the opportunity to become informed about natural products in their purchase journey and try to distinguish between synthetic and natural ingredients. However, as noted by the district court, Plaintiff also “does not allege there are ‘any comparable single serve fruit products available on the market that do not contain any artificial sweeteners or preservatives.’”³⁹ Hence, a reasonable consumer who gathered such information is unlikely to be deceived into believing that the noun “naturals” on the front label of the at-issue products promises a natural food without artificial sweeteners or preservatives. Rather, armed with the knowledge of the market, a reasonable consumer may consider the ingredient list on the back label and identify that the product contains synthetic ingredients. The district court’s decision emphasizes the importance of defining the correct target population and screening for a survey sample appropriately, such that the respondents to a consumer survey reflect the knowledge and expectations that a target consumer for the product type would hold.

Consumer surveys, if designed to be relevant and conducted to produce valid and reliable data, can be excellent methods of gathering empirical evidence on consumers’ perceptions of natural claims, tailored to a particular context. The courts’ discussion of these factors indicates that a well-designed consumer survey that places consumers in the context of shopping for fruit cups like the products at-issue, then presents them with the at-issue natural claims in the context of the at-issue label and asks about their interpretation of the label—instead of their beliefs regarding what the label *should* rightly mean—could provide relevant empirical evidence to assess how a reasonable consumer may interpret natural claims.

³⁷ *Id.* at 2–3.

³⁸ *Bryan v. Del Monte Foods, Inc.*, No. 4:23-cv-00865-MMC, at 3 (N.D. Cal. Oct. 19, 2023) (Order Granting Motion to Dismiss First Amended Complaint).

³⁹ *Id.* at 3.