

QUESADA V. HERB THYME FARMS, INC. THE CALIFORNIA SUPREME COURT OPENS UP A NEW FRONT IN THE FOOD WARS

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Consumer Litigation Alert

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INTRODUCTION:

In a shot across the bow, the Supreme Court of California has put sellers of organic food products on notice that they may be subject to class action lawsuits for deceptive "organic" food labeling. Specifically, on December 3, 2015, the Court rejected arguments that state law claims were preempted by the federal Organic Foods Act, 7 U.S.C. § 6501 et seq. ("Organic Foods Act"). See *Quesada v. Herb Thyme Farms, Inc.*, No. S216305, 2015 WL 7770635 (Cal. Dec. 3, 2015).

BACKGROUND:

Quesada is a class action lawsuit in which the plaintiff challenges, among other things, the defendant Herb Thyme Farms, Inc.'s alleged practice of blending conventionally and organically grown herbs in the same package and labeling the package as containing "organic" herbs. The plaintiff alleged that she purchased Herb Thyme herbs at a premium in the belief that they were 100-percent organic. After learning that the herbs were not completely organic, she sued Herb Thyme under California's false advertising and unfair competition statutes.

Among other defenses, Herb Thyme asserted that the plaintiff's claims were preempted by federal law, namely the Organic Foods Act. The Organic Foods Act "directs the establishment of national *baseline* standards for the production, labeling and sale of organic products," replacing a "confusing array of private and State labels," standards and certification procedures. These national standards were intended to both boost consumer confidence in "organic" products and also allow producers to streamline their distribution networks. The question presented in *Quesada* is whether the Organic Foods Act, explicitly forbids related California State claims (express preemption) or if those California State claims are an obstacle to the objectives envisioned by Congress when enacting the Organic Foods Act (obstacle preemption).

The trial court agreed with both Herb Thyme's express and obstacle preemption defenses and dismissed the case. The Court of Appeal agreed with the obstacle preemption argument only and upheld the dismissal. On further appeal, the California Supreme Court reversed, finding neither express nor obstacle preemption, and reinstated the lawsuit.

THE QUESADA DECISION:

The California Supreme Court began its opinion with a proclamation to organic food sellers that should leave no doubt as to where the Court stands on labeling issues:

To buyers and sellers alike, 'labels matter.' [citation omitted]. They serve as markers for a host of tangible and intangible qualities consumers may come to associate with a particular source or method of production. [citation omitted] Misrepresentations in labeling undermine this signifying function, preventing consumers from correctly identifying the goods and services that carry the attributes they desire while also hampering honest producers' attempts to differentiate their merchandise from the competition.

From there, the Court explained why the California state law was *not* expressly preempted by the Organic Foods Act. The Court reasoned that the Organic Foods Act expressly displaced state law in two respects: (1) what it means to produce something organically and (2) the certification process by which growers demonstrate that their production methods comply with the uniform federal standard — neither of which areas, in the Court's view, was implicated by the plaintiff's claims. The Court found no language of exclusivity included in the provisions of the Organic Foods Act governing sanctions for misuse of the organic label. Since these sanctions provisions were not "exclusive," California could legislatively enact additional sanctions beyond those identified in the Act,^[1] including a private right of action (including class claims) for damages. Indeed, the Court noted that the sanctions in the Organic Foods Act were only a "floor" and not a "ceiling."

The California Supreme Court also analyzed whether the plaintiff's claims were subject to "obstacle" preemption, that is, whether the claims served as an obstacle to the enforcement of the federal objectives underlying the Organic Foods Act, even if not expressly forbidden. In concluding that no obstacle preemption applied, the California Supreme Court looked to the Senate Reports which explained that the purpose of the Organic Foods Act was to "enhance consumer confidence in meaningful labels and reduce the distribution network's reluctance to carry organic products ... thereby promot[ing] organic interstate commerce." *Id.* Based upon these findings, the California Supreme Court held that state consumer fraud actions would advance, not impair, these goals, since anything that deters the few bad apples that sell mislabeled products enhances the overall health of the interstate market and benefits those producers that play by the rules.

Significantly, the California Supreme Court noted that its opinion was relevant to the allegations before the Court, namely, that the defendant's purported packaging of conventionally grown herbs with an "organic" label was precisely the type of fraud that the Organic Foods Act was aimed at stamping out in the first place.

In its opinion, the Court recognized that other state law claims against organic food producers could be preempted by federal law, such as claims that a defendant's anti-commingling protocols were inadequate notwithstanding approval by a federal certifying agent. However, those were not the type of claims before the Court. ^[2]

As such, when defending organic mislabeling litigation, a practitioner must distinguish between claims impugning the standards or procedures used to determine whether products are "organic" from the fraud type claims asserted in *Quesada* alleging that products were intentionally mislabeled. The former may be preempted, but the latter are not, at least in the State of California after *Quesada*.

Quesada makes clear that labeling litigation is far from over in California. If anything, the decision suggests that California Supreme Court believes that obstacles to consumer class actions in this area should be removed when possible. The food wars will thus continue on yet another front.

Notes:

[1] The Act provides for, inter alia, potential civil fines of up to \$10,000 and ineligibility for certification for a period of five years.

[2] Superficially, *Quesada* may appear to conflict with *In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation*, 621 F.3d 781, 799 (8th Cir.2010) ("Many of the claims against Aurora seek to hold it accountable for representing its products as organic when in fact the products were not. ... all of these claims are preempted"). However, *Aurora* involved products (milk) which had been certified organic and a challenge to that certification, as Aurora Dairy's facilities were apparently certified at all material times. See *id.* at 788. As such, the claims in *Quesada* are distinguishable as they involved products (herbs), which had never been certified organic but which were blended with or falsely marketed as organic herbs.

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