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A Closer Look At Economic Issues In Food Labeling Cases

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What is the value of an “all natural” label to consumers and the company? Does the presence of the label affect consumer purchase decisions? If so, how should we measure the impact of the label? In food labeling litigation, class action plaintiffs often allege that inappropriate labeling affected consumer decision-making. Recent examples include lawsuits over claims of salad dressing ingredients,[1] descriptions of “almond” and “sprouted seed” crackers,[2] and “no sugar added” juices[3] claims. Plaintiffs have also alleged the lack of an appropriate label disclosing that a product contains “artificial” ingredients or preservatives.[4] In this article, we discuss some of the economic issues associated with food labeling allegations.

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What’s in a Label?

How do labels affect consumers? Companies spend considerable time and resources crafting marketing campaigns and package messaging to develop and convey the look and feel of their brands. Trade dress and brand value may be regarded as important assets. Does it follow that label claims are important drivers of market success? One challenge in evaluating a particular label claim is to separate the effect of the claim at issue from the product’s overall brand equity and any other nonlabel factors that may influence the consumer purchase decision. Often, plaintiff allegations revolve around a few disputed statements. As a result, the appropriate level of analysis should isolate the alleged impact on consumers and separate such impact from other factors influencing consumer purchases.

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Comparing product pricing and consumer purchases during the period around the introduction and removal of such labels can allow for “natural experiments” to determine if the label in question had any effect on consumers.[5] If price and/or quantity does not change during the period under consideration, this might suggest consumer behavior was not affected in aggregate and that the company did not benefit from the label change. Alternatively, contemporaneous increases in prices and/or quantities sold could allow for the inference that the labels in question had an effect on consumer behavior. Such an inference requires an understanding of the industry in question, including how pricing is determined and other factors that might drive demand and pricing behavior.

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Sales and pricing data for the labeled product can also be compared with data on contemporaneously sold identical products without the label,[6] or other comparable products (with the caveat that finding "comparable" products can be difficult due to differences in brand equity).[7] Again, it is critical to understand the industry to understand the drivers of pricing and demand. For example, consider a cereal company that markets a number of cereals to consumers. Labeling claims might only affect a subset of the company's products (for example, cereals targeted to health-conscious consumers with associated "all natural" labeling). Any impact evaluation of the "all-natural" label on consumers must account for industry dynamics. The cereal company might set a single price for all of its cereal products irrespective of the presence of the "all natural" labeling. Such "line-pricing" would limit what price premium may exist for the "all natural" cereals and any ability for the company to price products differently based on their label.[8]

Testing a Label

Consumer surveys and market research can provide additional insight into the impact that the label at issue has on purchasing by consumers. An appropriately designed study can measure the differential impact on consumers by varying the presence of the label claim while holding other parts of the product label the same. This can provide direct experimental evidence of the value (or lack thereof) that consumers place on such labels.[9] Such testing can also provide information about the segments of consumers that may be affected by the labels at issue and whether the claims asserted are common and typical to the alleged class. For example, "all-natural," "0 grams trans fat" and other similar labels might reasonably be expected to have a greater impact on purchases by health-conscious consumers than other groups of consumers, with implications for the appropriate class and the ability to identify class members.

Further complications arise due to varying product sizes and retailer types. Food and beverage products are often sold in a range of sizes, from single servings to bulk quantities, and across a range of different retailers (e.g., convenience stores, grocery stores, "big box" stores, etc.). Consumer sensitivity to price and the label in question might be reasonably expected to differ across individuals, some of whom may be buying a beverage for immediate consumption at the convenience store as compared to shoppers buying in bulk at the grocery store for their families. Regional variation in consumer tastes or distribution agreements might further affect efforts to assess price sensitivity and the drivers of consumer choice.

Even if consumers are shown to place value in the label at issue, the alleged harm would depend on whether the consumer's choice would have been different and/or if they would have paid a lower price in the absence of the label. As discussed above, answering these questions requires an understanding of the industry dynamics.

Conclusion

We have highlighted some key issues arising in food labeling litigation. Plaintiffs may argue that products with the alleged labeling are significantly less in value than what was paid, or even worthless. From an economic perspective, the presence or absence of a label is unlikely to be determinative of a product's value. An appropriate analysis would isolate the impact of the alleged label on price and quantity, controlling for other factors that affect price and quantity.

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[1] See e.g., Skinner, et al., v. Ken’s Foods Inc., No. 2:18-cv-00846, in the U.S. District Court for the Central District of California.

[2] See e.g., Sanabria v. Simple Mills Inc., No. 2:18-cv-0809, in the U.S. District Court Eastern District of New York.

[3] See e.g., Quiroz v. The Apple & Eve LLC, No. 2:18-cv-00401 in the U.S. District Court Eastern District of New York.

[4] See e.g., Jocelyn v. PVK Inc. No. 1:18-cv-00427 in the U.S. District Court Eastern District of New York.

[5] Such analyses can be more difficult for plaintiff claims concerning the lack of an active disclosure. In those cases, it may be that the product never had an active disclosure and as a result there is no “natural experiment” that can be analyzed.

[6] Special and limited edition products that often have special labeling may provide useful natural experiments to compare pricing across products.

[7] An appropriate comparable would be as similar as possible to the product in question. This often means looking at other products sold by the same company, rather than competitor products.

[8] Additionally, companies that sell their products to distributors and retailers may face limitations on their ability to affect the final pricing of their products.

[9] Online survey resources have made it possible to field large samples to achieve statistical precision quickly and at reasonable cost.