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## Kroger Escapes Labeling Suit Over Trans Fat In Bread Crumbs

By **Emily Field**

Law360, New York (March 18, 2016, 10:19 PM ET) -- A California federal judge on Thursday tossed a consumer's proposed class action claiming that the label on Kroger's store-brand bread crumbs misleadingly states the product doesn't contain any trans fat, saying her claim that she was too busy to read the label for 15 years doesn't pass muster.

U.S. District Judge Jeffrey T. Miller dismissed with prejudice Shavonda Hawkins' suit claiming The Kroger Co.'s bread crumbs contain trace amounts of trans fat despite a label saying they have none. He said she couldn't have relied on the allegedly deceptive label in making her purchase since she'd bought the bread crumbs for 15 years before filing suit in October, after learning for the first time two months before that they contained trans fat.

Even though she didn't say when she first read the label in her complaint, Hawkins had maintained that the purported lack of trans fat was a substantial factor in her purchases, according to the opinion. And she argued that she, like most consumers, is a busy person and can't reasonably inspect each ingredient of each food that she buys, the judge said.

"In essence, plaintiff alleges that she used Kroger bread crumbs (i.e. generic bread crumbs) over 90 times since 2000," the judge said. "Plaintiff simply cannot establish that she relied upon the unread statements in 2000 to support the August 2015 purchase and/or discovery of the statement ("0g Trans Fat"), or that the statement caused her any injury."

Similarly, the judge found that Hawkins failed to allege a cognizable injury that would give her standing to pursue her California unfair competition, false advertising, Consumer Legal Remedies Act and other claims, saying her alleged risks of harm were hypothetical and generalized.

"While the complaint and briefing contain numerous references to articles concerning the negative effects of trans fat, the complaint alleges she was harmed because consuming trans fat in any quantity 'inflames and damages vital organs and increases the risk of heart disease, diabetes, cancer and death,'" the judge said. "She also alleges that she lost monies because 'similar products without the misleading labeling would have cost less.'"

The judge dismissed Hawkins' claims with prejudice, saying there are no circumstances under which she could establish statutory standing, according to the opinion.

Hawkins had claimed that the bread crumbs contain more than 0 grams of trans fat, but less than half a gram, according to the order.

She'd alleged that there are no safe levels of partially hydrogenated oil, which contains trans fat, and that consuming partially hydrogenated oil hurts the cardiovascular system, is linked to types of cancer and causes Type 2 diabetes, according to the order.

The judge also said that her mislabeling claims failed since the Ninth Circuit has held that

allegations about the statement "0g Trans Fat" are expressly preempted by the Federal Food, Drug and Cosmetic Act if a serving of a food product contains less than half a gram of trans fat.

Representatives for the parties didn't immediately respond to requests for comment Friday.

Hawkins is represented by Gregory S. Weston of The Weston Firm.

Kroger is represented by Jacob M. Harper, Jeffrey W. Kramer and Russell I. Glazer of TroyGould PC.

The case is Hawkins v. The Kroger Co., case number 3:15-cv-02320, in the U.S. District Court for the Southern District of California.

--Editing by Aaron Pelc.

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