Digest: In re Farm Raised Salmon Cases

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Opinion by Moreno, J., expressing the unanimous view of the Court.

Issue

Does section 337(a) of the Food, Drug and Cosmetic Act (FDCA)[1] preclude private claims based on state law requiring the labeling of food to disclose color additives in farm-raised salmon?

Facts

Plaintiffs filed a class and representative action alleging that grocery stores violated state law by selling farm-raised salmon without disclosing that it is artificially colored.[2] Plaintiffs alleged potential health risks from the consumption of these additives used to make farmed salmon look like wild salmon, that federal and state laws required labeling disclosing their use, and that failure to disclose caused consumers to believe farmed salmon is wild salmon.[3] Plaintiffs brought four causes of action: (1) violation of the unfair competition law (UCL) (Cal. Bus. & Prof. Code, section 17200 et seq.); (2) unfair or deceptive trade practices under the Consumers Legal Remedies Act (CLRA) (Cal. Civ. Code, section 1750 et seq.); (3) violation of the false advertising law (Cal. Bus. & Prof. Code, section 17500 et seq.; and (4) negligent misrepresentation.[4]

Defendants demurred on several grounds, including that section 337(a) of the Federal Food, Drug and Cosmetic Act ("FDCA") preempted plaintiffs' state law claims because these state laws frustrated the purpose of Congress behind the FDCA.[5] The trial court agreed and sustained the demurrer.[6] The Court of Appeal affirmed, reasoning that, because Section 337(a) explicitly bars private enforcement of the FDCA provisions under federal law, it must implicitly bar private state law claims imposing requirements identical to those in the FDCA.[7] The Supreme Court of

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1 21 U.S.C. § 301–399(a). All "Section" references in the text will hereafter refer to a section within the Federal Food, Drug and Cosmetic Act unless otherwise noted.

2 In re Farm Raised Salmon Cases, 175 P.3d 1170, 1173 (Cal. 2008).

3 *Id.*

4 *Id.* at 1173–74.

5 *Id.* at 1174, 1177 (citing 21 U.S.C. § 337(a)).

6 *Id.* at 1174.

7 *Id.* at 1174, 1177.

California granted review.[8]

Analysis

1. Section 343-1 Permits States to Adopt Identical Requirements

The Court began by noting that Section 343(k) of the FDCA, which prohibits the misbranding of food, requires labels disclosing the presence of artificial coloring added to food.[9] Regulations promulgated under the FDCA require labels disclosing the addition of color additives to salmon.[10]

The Court then noted that Section 343-1 of the FDCA expressly preempts state and local law for the labeling of food traveling in interstate commerce and regulated under section 343(k) "that is not identical to the requirement of such section . . . ."[11] Thus, the Court concluded, under this provision states may establish their own labeling requirements that are identical to those contained in Section 343(k).[12] The Court noted that California's Sherman Law contains requirements for the labeling of food to disclose artificial coloring that are identical to Section 343(k) of the FDCA.[13] The Sherman Law also incorporates the FDA regulations regarding the disclosure of color additives in farmed salmon.[14]

The Court began with the presumption that state laws adopted pursuant to their police powers are not preempted unless that is the "clear and manifest purpose of Congress."[15] But the Court noted that Congress had not expressly preempted the state law claims at issue, nor were these claims implicitly preempted as a result of Congress' intention to occupy the field or because compliance with both federal and state laws was impossible.[16] In determining whether these claims were preempted as an obstacle to the purposes of Congress, the Court reasoned that the words of Section 343-1 "clearly and unmistakably evince Congress's intent to authorize states to establish laws that are 'identical to' federal law."[17] Given that California's Sherman Law contained requirements that were identical to the FDCA and incorporated its regulations, the Court concluded that "the state requirements at issue here are explicitly permitted by section 343-1."[18]

The Court said that congressional silence on the remedies available for violations of the state laws permitted under the FDCA indicated that

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8 *Id.* at 1174, 1184.

9 *Id.* at 1174 (citing 21 U.S.C. § 343(k)).

10 *Id.* at 1174–75 (citing 21 C.F.R. §§ 73.35(c)(3), (d)(3), and (d)(4) (2007)).

11 *Id.* at 1175 (quoting 21 U.S.C. § 343-1(a)) (internal quotations omitted).

12 *Id.*

13 *Id.* (citing CAL. HEALTH & SAF. CODE § 110740).

14 *Id.* (citing CAL. HEALTH & SAF. CODE § 110100(a), 21 C.F.R. §§ 73.35, 73.75 (2007)).

15 *Id.* at 1176 (quoting Metronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996) (internal quotations omitted).

16 *Id.* at 1177.

17 *Id.* at 1178 (quoting 21 U.S.C. § 343-1).

18 *Id.*

Congress did not intend to preclude states from permitting private persons to enforce these laws.[19] The Court reasoned that, "[i]f Congress intended to permit states to enact identical laws on the one hand, but preclude states form providing private remedies for violations of those laws on the other hand," it would have said so in the text or in the legislative history.[20]

The Court also said that the legislative history shows that "the preemptive scope of Section 343-1 was to sweep no further than the plain language of the statute itself."[21] The Court pointed to an uncodified provision in the amendments to the FDCA that indicated that state law was not to be preempted unless expressly preempted under Section 343-1.[22] The Court interpreted this provision to depict Congress's "considered decision to continue to allow states to provide such private remedies."[23]

Finally, the Court relied on the United States Supreme Court decisions finding that private suits to enforce state laws identical to federal laws were not preempted by federal law.[24]

2. Section 337 Did Not Impliedly Preempt Plaintiff's Claims

The Court then rejected defendant's argument that plaintiff's claims were precluded because they sought to enforce the FDCA in violation of Section 337.[25] The Court argued that Section 337 was inapplicable because plaintiffs were not seeking to enforce the FDCA but state law.[26] The Court also reasoned that Section 337 does not limit the ability of the states to provide private remedies for violations of their laws.[27]

Holding

The Court held that the FDCA did not preclude private actions to enforce state food labeling requirements identical to the FDCA.[28] Thus, the Court reversed and remanded the judgment of the Court of Appeal.[29]

Legal Significance

As a result of this decision, California citizens are not precluded from bringing private actions to enforce state food labeling requirements under California's Sherman Act. This decision broadens the potential liability for companies who are regulated by the Act.

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19 *Id.*

20 *Id.*

21 *Id.* at 1179.

22 *Id.* (citing Pub.L. No. 101-535, § 6(c)(1), 104 Stat. 2364, Nov. 8, 1990).

23 *Id.*

24 *Id.* at 1180–81 (citing Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996); Bates v. Dow Agrosciences LLC, 544 U.S. 431 (2005)).

25 *Id.* at 1184.

26 *Id.* at 1181.

27 *Id.* at 1182.

28 *Id.* at 1184.

29 *Id.*