

In the
United States Court of Appeals
For the Seventh Circuit

No. 20-2235

SCOTT WEAVER,

Plaintiff-Appellant,

v.

CHAMPION PETFOODS USA INC.
and CHAMPION PETFOODS LP,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Wisconsin.

No. 18-cv-1996 — **J. P. Stadtmueller**, *Judge*.

ARGUED APRIL 1, 2021 — DECIDED JUNE 30, 2021

Before MANION, ROVNER, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Defendants Champion Petfoods USA Inc. and Champion Petfoods LP (collectively, “Champion”) produce dog food that they market as biologically appropriate, containing fresh regional ingredients, and never outsourced. Plaintiff Scott Weaver, a Wisconsin resident who purchased Champion’s food, alleged this marketing was deceptive and filed a putative class action. The district court

granted summary judgment to Champion because it determined that Weaver had failed to produce sufficient evidence from which a reasonable jury could determine that any of the representations were false or misleading. We agree, and so we affirm.

I. Factual Background

Champion produces two different brands of dog food: Acana and Orijen. Before 2016, Champion manufactured its food at its NorthStar kitchen in Morinville, Canada. Starting in 2016, Champion moved most of its manufacturing to its newly opened DogStar kitchen in Auburn, Kentucky.

Weaver lives in Wisconsin and purchased Champion dog food from 2008 until August 2017. He purchased two different varieties of the Orijen brand—Six Fish and Regional Red—for his golden retrievers Jack, Jill, and Prince Harry. Given the timeframe, he purchased food manufactured at both the NorthStar and DogStar kitchens.

A. Champion's Packaging

Champion's packaging of its Orijen Six Fish and Regional Red food contains various representations about its quality. Champion packages the food produced at the DogStar kitchen differently than the food produced at the NorthStar kitchen. Additionally, the Six Fish variety has different packaging than the Regional Red variety. Across all variations at issue here, however, the packaging describes the food as biologically appropriate, made with fresh regional ingredients, and never outsourced.

Both the Six Fish and Regional Red packaging describe the food as "biologically appropriate." The DogStar packaging for both varieties states that the food is "Biologically

No. 20-2235

3

Appropriate—Protein Rich, Carbohydrate Limited.” It further states that the food “mirrors the richness, freshness and variety of [Whole Prey] meats that dogs are evolved to eat.” The NorthStar packaging states that “[a]ll dogs are evolved as carnivores, designed by Mother Nature to thrive on Whole Prey such as fowl or fish, and possessing a biological need for a diet rich and varied in fresh whole meats supplemented with smaller amounts of fruits, vegetables and grasses.”

The packaging also contains various statements about fresh regional ingredients. The DogStar packaging states: “Grown close to home—We focus on local ingredients that are ethically raised by people we know and trust, and delivered to our kitchens fresh or raw each day.” The DogStar Six Fish packaging specifies that “New England’s vast Atlantic waters” is its “source of inspiration and fresh regional fish” and that it contains “fresh, raw or dehydrated fish ingredients.” The DogStar Regional Red packaging similarly states that “America’s vast and fertile lands” are its “source of inspiration and fresh regional ingredients” and that it contains “fresh, raw or dehydrated animal ingredients.” Both also contain a “meat math” section which specifies that “[t]his 13LB package of Orijen is made with over 11 LB of fresh, raw or dehydrated” fish or animal ingredients. The packaging specifies the 11 pounds were “approximate inclusions” that include “2/3 fresh or raw. 1/3 dried or oils.”

The NorthStar packaging similarly includes several references to fresh regional ingredients but does not include the same detailed “meat math” section. The NorthStar Six Fish packaging represents that it “features unmatched inclusions of whole saltwater and freshwater fish—caught wild within our region and delivered to our doors FRESH EACH DAY.”

The NorthStar Regional Red packaging similarly states that it “features unmatched inclusions of ranch-raised Black Angus beef, wild boar, lamb, heritage pork and bison—all ranches within our region and delivered FRESH EACH DAY.” Both varieties also state that “[o]ur FRESH ingredients are raised in our region by people we know and trust.” Both also specify: “Canada’s vast and unspoiled lands—our source of inspiration and fresh regional ingredients.”

The DogStar packaging states that that the food is “never outsourced” and it is “prepared exclusively in our DogStar kitchens—We don’t make foods for other companies and we don’t allow our foods to be made by anyone else.” The NorthStar packaging provides that “[q]uality is never outsourced” and that “we prepare Orijen ourselves, in our award-winning kitchens.”

B. Champion’s Dog Food

Weaver contends that various aspects of the ingredients and source of Champion’s food render its packaging misleading. First, Champion’s food is not made solely from fresh ingredients. It contains frozen ingredients and ingredients that were previously frozen. The exact amount of frozen ingredients varies depending on the time of year and the supply available. Champion also uses “regrinds”—previously manufactured food that failed to conform to applicable specifications—as dry filler in some of its dog food. It also sometimes uses “refreshed” ingredients, which are ingredients that Champion cannot use on a given day that are then sent back to the supplier for delivery on a later date. Additionally, even though most of Champion’s suppliers only guarantee freshness for 3 to 5 days after delivery, Champion has used ingredients past that window.

No. 20-2235

5

Second, Champion does not source all its ingredients from areas close to Morinville, Canada and Auburn, Kentucky. It sources some ingredients internationally, including from Europe, New Zealand, Norway, and Latin America. In addition, it sources some ingredients from locations in North America that are distant from its NorthStar and DogStar kitchens.

Third, Weaver also contends that Champion's packaging is misleading because there is a risk that its food contains Bisphenol A ("BPA") and pentobarbital. BPA is a chemical used primarily to make plastics and resins. Given that plastics and resins are used in food storage containers, humans and animals are regularly exposed to BPA because it can leach from containers into food. They are also exposed to BPA in their environments, as studies have measured levels of BPA in the air, dust, and water. Champion does not add BPA to its food. Laboratory testing, however, revealed that BPA was present in many dog food brands, including some of Champion's brands. Champion submitted un rebutted expert testimony that the levels of BPA purportedly contained in its food according to Weaver's Third Amended Complaint would not cause an adverse effect in a dog.

Pentobarbital is a barbiturate used to euthanize animals. It is an adulterant that dog food should not include. Champion uses beef tallow in some of its food, which is fat rendered from animal carcasses. JBS USA Holdings, Inc. ("JBS") has supplied some of Champion's beef tallow since 2016. Champion's ingredient specification form for beef tallow stated that "[p]roduct shall be from animals deemed fit for human consumption" and "shall not contain animals dead or condemned upon reaching the slaughter facility." Champion did not audit JBS in 2016 or 2017. In March 2018, two lots of beef

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