

Better Know a Plaintiff: A Lesson from the Skinnygirl Margarita Class Action Lawsuit

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Regular viewers of Comedy Central's Colbert Report – the author's preferred source of punditry – should be familiar with the recurring segment, "Better Know a District." In that segment, Stephen Colbert comically provides facts about a United States Congressional district and interviews the district's representative. The viewer walks away from the segment knowing a little about the district and its representative and generally feels less impressed with Congress. As highlighted by a recent Southern District of New York decision denying class certification, counsel opposing certification of consumer class actions should follow Stephen Colbert's lead and better know the plaintiffs.

The case, *Rapczynski v Skinnygirl Cocktails, L.L.C.*, 1:11-cv-06546 (S.D.N.Y.), is related to another basic-cable staple, the Real Housewives of New York. For those who do not watch the Real Housewives of New York (or will not admit to watching it), in 2009, one of the Real Housewives (who was not actually a wife at the time, but that is a story for another day), Bethenny Frankel, along with her business partner, David Kanbar, formed Skinnygirl Cocktails, L.L.C. and developed Skinnygirl Margarita, a low calorie alternative to typical margarita mixes. Skinnygirl Margarita was advertised as being "All-natural" and containing "100% Blue Agave tequila."

In 2011, plaintiff Christopher Rapczynski, a Massachusetts resident, bought a bottle of Skinnygirl Margarita, as a surprise present for his wife, from a convenience store across the street from his Massachusetts home. On September 20, 2011, after discovering that Skinnygirl Margarita contained the preservative sodium benzoate (not natural) and a tequila byproduct (not 100% Blue Agave tequila), Rapczynski filed a class action suit alleging that Defendants caused "millions of purchasers of 'Skinnygirl Margarita' to purchase that product under the false pretense that it was 'All-natural' and contained only '100% Blue Agave tequila,' Agave nectar and caramel color." Rapczynski accused Defendants of false advertising under New York General Business Law § 349 and breach of express warranty, promissory estoppel, and New York Agriculture and Markets Law.

The first sign of trouble for Plaintiff should have been that his name was misspelled in his own Complaint, First Amended Complaint, and motion for class certification. More seriously, on January 9, 2013 the Court denied class certification, holding that Rapczynski's claims were not typical of the proposed class. Recall that Federal Rule of Civil Procedure 23(a) requires that "the claims or defenses of the representative parties are *typical* of the claims or defenses of the class." (emphasis added).

Accordingly, the Court held that Rapczynski “is an atypical representative of the New York class he purports to represent” because – unlike other members of the purported New York class – “Rapczynski admit[ted] that he purchased both bottles of Skinnygirl in Massachusetts, which means the laws he invokes do not protect his purchases.”

The Court also found that Rapczynski’s claims of breach of warranty and promissory estoppel were not typical of the putative class. Both claims require that, in purchasing the product, the purchaser relied on the product’s claims – in this case, that Rapczynski purchased the product because it was “All-natural” and contained only 100% Blue Agave tequila, Agave nectar, and caramel color. Rapczynski, however, testified that he bought the Skinnygirl Margarita for four of the following five reasons: (1) “to appease his wife”, (2) he “love[s his] wife”, (3) “she liked it”, (4) “she has my three children and works very hard”, and (5) every day is Cinco de Mayo in the Rapczynski home. (Rapczynski did not testify to number 5). Indeed, “Rapczynski stated that he would have purchased the Skinnygirl bottle whatever the price, given his home situation, and given his desire to please his wife.” In other words, the fact that the product was “All-natural” did not factor into his decision. Thus, the Court held Rapczynski’s “injury – namely whatever premium he may have paid or unnatural substance he may have imbibed – suffers from a causal break that will focus the litigation on the particularities and factual circumstances of Rapczynski’s own purchase. Such a result would be an unjust one for any putative class, whose success, in no small part, would depend on the typicality of their representative’s claims, which are to serve as the voice for all.”

The message from this case is simple – know the plaintiff. Plaintiffs’ counsel often do not properly vet prospective class representatives. Therefore, during discovery, defendants should focus attention on the specifics surrounding the proposed class representative’s claims because plaintiff’s personal experience with the product could be grounds for defeating the class. And, one last message – watch more basic cable.

About the Author

Mr. Spatz has extensive experience handling complex litigation and arbitration, particularly products liability, class action, and multi-district litigation. He has supervised discovery in multi-district federal litigation and state court cases, devised modes for valuing plaintiffs’ claims, and designed and managed large-scale complex settlement programs for multi-district products liability actions. He is a graduate of the University of Pennsylvania Law School, where he was Associate and Senior Editor of the Journal of Constitutional Law, earned a Master of Bioethics from the University of Pennsylvania School of Medicine, and graduated from Brown University with honors.

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