



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

## Olive Oil Importer Can't Escape Mislabeled Claims

By Kira Lerner

Law360, New York (February 25, 2014, 6:36 PM ET) -- A New York federal judge refused Monday to toss a class action alleging Kangadis Food Inc. misleads customers by advertising adulterated olive oil as "100 percent pure," ruling that consumers can move forward with their claims because the product contains olive-residue oil that dilutes its purity.

U.S. District Judge Jed S. Rakoff denied Kangadis' motion for summary judgment, finding that the consumers meet the requirements to sue for breach of warranty and violations of consumer protection laws. The plaintiffs claim Kangadis, which does business as The Gourmet Factory, deceptively labels its Capatriti brand olive oil as 100 percent olive oil when it actually contains a substance known as pomace or olive-residue oil, which is processed from olive pits, skins and pulp, the order said.

"Capatriti has more trans-fats and fewer antioxidants than virgin olive oil, is tasteless, is made from the seed and skin rather than the flesh of the olive, and undergoes a chemical treatment with solvents, rather than a purely mechanical extraction process," the order said. "Numerous industry standards and the like distinguish pomace oil from olive oil."

In its motion for summary judgment, Kangadis argued that olive-pomace oil is, as a matter of law, olive oil and plaintiffs cannot bring breach of warranty claims because they didn't notify the company of a breach before bringing the suit. The olive oil maker also said that the plaintiffs didn't provide any proof of actual damages or injury.

However, the court found that there is sufficient evidence that Capatriti is not pure olive oil, according to the order.

Also, under New Jersey law, plaintiffs do not need to give warning to a manufacturer who was not the seller of a product before suing for breach of contract, Judge Rakoff said, adding that plaintiffs have also provided enough information regarding their damages.

In December, Judge Rakoff **granted class certification** and earlier in 2013, he slashed various state law claims from the suit but left standing those asserting breach of New Jersey express warranty and implied warranty of merchantability, New York general business law, and the New Jersey Consumer Fraud Act.

In the order for class certification, he noted that the U.N.-created International Olive Oil Council, which oversees 98 percent of the world's olive oil production, has laid out definitions similar to those established under New York law that prohibit labeling any oil containing pomace as "olive oil," according to the order.

The litigation is one of two class actions launched within weeks of each other in 2013. Kangadis sought to centralize both the instant action and a New Jersey case in New York, but in August 2013 the U.S. Judicial Panel on Multidistrict Litigation **rejected the bid** after finding that the New York suit had made significant progress already and that centralization would not necessarily be more efficient.

A representative for Kangadis declined to comment Tuesday.

The plaintiffs are represented by Joseph I. Marchese, Neal J. Deckant and Scott A. Bursor of Bursor & Fisher PA.

Kangadis is represented by George J. Krueger of Fox Rothschild LLP.

The case is Joseph Ebin et al. v. Kangadis Food Inc. d/b/a The Gourmet Factory, case number 1:13-cv-02311, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Gavin Broady. Editing by John Quinn.

---

All Content © 2003-2014, Portfolio Media, Inc.