

1992

## Case Index

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CASE INDEX

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*Arcadia Unified School District v. State Department of Education*, 825 P.2d 438 (Cal. 1992); 4:4:132.

*Barghout v. Mayor*, 600 A.2d 841 (Md. 1992); 4:4:133.

*Beard, et al. v. Goodyear Tire & Rubber Company, et al.*, 587 A.2d 195 (D.C. 1991); 4:1:30.

*Cable Television Association of New York, Inc. v. William B. Finneran*, 954 F.2d 91 (2nd Cir. 1992); 4:4:129.

*Carnival Cruise Lines v. Shute*, 111 S.Ct. 1522 (1991); 4:1:29.  
*Clark v. Luepke*, 826 P.2d 147 (Wash. 1992); 4:4:135.

*Collins v. Reynard, et al*, No. 70325, 1991 Ill. LEXIS 104 (Ill. Oct. 31, 1991); 4:3:102.

*Deisch v. Jay*, 790 P.2d 1273 (Wyo. 1990); 4:1:31.

*Estate of Johnson v. United States*, 941 F.2d 1318 (5th Cir. 1991); 4:3:100.

*Fledman v. Lederle Laboratories*, 592 A.2d 1176 (N.J. 1990); 4:1:33.

*Gopher Oil Company, Inc. v. Union Oil Company of California*, 955 F.2d 519 (8th Cir. 1992); 4:4:130.

*Grissom v. Johnson*, 955 F.2d 1440 (11th Cir. 1992); 4:4:131.  
*Hosford v. State Termite and Pest Control, Inc.*, 589 So.2d 108 (Miss. 1991); 4:2:67.

*In Re Estate Of Platt*, 586 So.2d 328 (Fla. 1991); 4:3:103.

*Maguire v. Sandy Mac, Inc.*, 138 F.R.D. 444 (D.N.J. 1991); 4:2:64.

*Nissen Corp. v. Miller*, 594 A.2d 564 (Md. 1991); 4:1:35.

*North Jersey Newspapers Co. v. Passaic County Board of Chosen Freeholders*, 601 A.2d 693 (N.J. 1992); 4:3:101.

*Parker v. Yen and Revco Discount Drug Centers, Inc.*, 823 S.W.2d 359 (Tex. App. Dallas 1991); 4:3:105.

*Peek v. Reserve National Insurance Company*, 585 So.2d 1303 (Ala. 1991); 4:2:68.

*Rainwater v. National Home Insurance Co.*, 944 F.2d 190 (4th Cir. 1991); 4:2:63.

*Squaw Valley Ski Corporation v. Superior Court of Placer County*, 3 Cal. Rptr. 2d 897 (Cal. Ct. App. 1992); 4:3:104.

*State of Iowa v. Santa Rosa Sales and Marketing, Inc.*, 475 N.W.2d 210 (Iowa 1991); 4:2:66.

*Toibb v. Radloff*, 111 S.Ct. 2197 (1991); 4:1:28.

*Vaiarella v. Hanover Insurance Company*, 567 N.E.2d 916 (Mass. 1991); 4:1:34.

*Yee v. City of Escondido*, 112 S.Ct. 1522 (1992); 4:4:128.

**Feature**

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disposition, but one whose scope is in proportion to the interest served. . . ." *Id.*, (citing *Posadas*, 478 U.S. 328). Moreover, the Supreme Court made it clear that within these reasonable bounds, it would "leave it to governmental decision makers to judge what manner of regulation may be best employed." *Fox*, 492 U.S. at 479.

**Public Policy Deja Vu**

In reviewing the arguments being made against the FDA's proposals, one experiences an odd sense of *deja vu*. The arguments trotted out against the FDA by the food industry are based on the same policies followed by the FDA during the heyday of the Reagan administration. The failure of these policies led Congress to pass, and President Bush to sign, the NLEA into law. So why is the debate continuing?

The answer is that there are plenty of food companies who stand to lose under the FDA's new "honesty is the best policy" approach and want to keep their same old line of high fat, high sodium foods looking as nutritious as possible for as long as possible. The needs of these companies coincide with those of ex-Reagan administration officials. While now working in the private sector, these individuals also seek to vindicate the policies of the administration they served during the 1980s. The ex-Reaganites, who seem to place a premium on ideology, revel at any opportunity to serve as apologists for even the roughest edges of our free market economic system. Apparently oblivious to the marketplace chaos and wide-scale consumer fraud that resulted from the policies they followed — even *Business Week* magazine complained on the cover of its October, 1988 issue that health claims for foods were becoming ridiculous — these individuals are more than happy to drag out the policy debate over health claims for still another decade.

**Subverting Labeling Reforms Through The Back Door**

Despite this attack on FDA, not many food companies are counting on the agency to fold its cards. So the industry has a backup plan to subvert FDA's new limits on health and nutrition claims on food labeling by maintaining weaker policies for such claims in food advertising. The industry has figured out that while it may be stuck with tough new rules for labels, the new law doesn't apply to ads. And if ads aren't covered, then food companies can still bombard the public with health claims that FDA considers misleading. For example, if FDA nixes claims on labels that oat bran cereals can reduce the risk of heart disease — so what? Companies can still make the claim in ads.

Fortunately, Congress is considering legislation that would close this loophole. H.R. 1662, the Nutrition Advertising Coordination Act, sponsored by Representative Moakley (D-MA) would require the FTC, which is in charge of regulating food advertising, to hold food companies to the same standards applied by the FDA. Not surprisingly, former FTC official, Bill MacCleod, who directed the agency's Bureau of Consumer Protection during the Reagan Administration, is representing a coal-

ition of trade associations opposed to the bill.

**Lessons For The Food Industry**

The food industry is at a crossroads. The industry can choose to enter a new period in which it allows the government to create a level playing field upon which competition leads to true improvements in processed foods. Or, it can opt for a repeat of the 1980s in which the law of the jungle substitutes for sound public policy and companies end up engaging in a marketplace free-for-all of exaggerated and often misleading claims.

Which road the industry should follow ought to be clear. The policies of the 1980s ultimately benefited no one. The years in which the industry was relatively free of regulatory constraints may have brought short term profits, but ultimately, it led to a loss of credibility as oat bran beer and "No Cholesterol" potato chips became the butt of Johnny Carson jokes and Saturday Night Live skits. With this recent history in mind, food companies should be weary of advice to pressure the FDA and USDA into replacing their reform proposals with failed policies from the 1980s. In, short, the industry should be learning from its mistakes, not repeating them.

**Oral Authorization**

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ed to preserve the right to assert a lien.

When the mechanic is required to provide the customer with a written estimate, the statute also limits the mechanic from recovering more than 110 percent of the amount authorized by the customer unless the mechanic proves that his or her conduct was reasonable, necessary, and justified under the circumstances. The court interpreted this provision to allow the mechanic to collect payment in the absence of a written estimate only when the work done was authorized by the customer or reasonable, necessary, and justified under the circumstances.

**No Violation of the Consumer Protection Act**

Alternatively, Clark asserted that Luepke's violation of the ARA precluded collection since it resulted in a violation of the Consumer Protection Act, Wash. Rev. Code §19.86 (1991). While the Washington Supreme Court agreed that Luepke had violated the ARA, it stated that the Consumer Protection Act did not prevent a mechanic from being paid for authorized repair work. Moreover, the court noted that Clark did not prove actual damages. Thus, because of the lack of evidence of actual injury, the court held that Clark could not maintain a private action under the Consumer Protection Act.

Jonathan D. Schultz

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