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The Parent Trap: Ninth Circuit Affirms Dismissal of Complaint Against Advertiser's Subsidiary and Distributor

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The Ninth Circuit recently upheld a decision granting a motion to dismiss a putative class action challenging the accuracy of "natural" labeling on soap products made by Grisi Mexico, where the lawsuit was filed against the manufacturer's U.S. subsidiary and distributor, rather than against the manufacturer itself. *Prudencio v. Midway Importing, Inc.*, No. 19-55150, 2020 WL 6268246 (9th Cir. Oct. 26, 2020).

Plaintiffs alleged that purchasers of four varieties of Grisi Mexico soap products sold in boxes with the word "natural" were misled because the products contained synthetic ingredients. Based on these allegations, plaintiffs sued Grisi Mexico's U.S. subsidiary, Grisi USA, and its distributor, Midway, under New York and California consumer protection statutes. The district court burst plaintiffs' bubble and dismissed the complaint, finding plaintiffs failed to plead that these defendants were responsible for the allegedly misleading "natural" labeling on Grisi Mexico's products. *Rivera v. Midway Importing, Inc.*, No. CV1801469ABRAOX, 2018 WL 6438552 (C.D. Cal. Aug. 21, 2018).

The Ninth Circuit affirmed the district court's dismissal, holding appellants must sue Grisi Mexico, not its U.S. subsidiary or distributor, to pursue their claims. While plaintiffs alleged that Grisi USA and Midway "are together responsible for labeling . . . Grisi Products in the United States, including the soap Products at issue," the Court found plaintiffs' sole factual basis for these conclusory allegations were that: (i) Grisi Mexico has an ownership interest in Midway and Grisi USA; (ii) Midway and Grisi USA share "common employees, ownership, and business functions"; and (iii) an article and an employee's LinkedIn profile indicating Midway and Grisi USA are responsible for "marketing." These allegations were insufficient to plausibly state a claim against Midway and Grisi USA.

First, the Court noted a parent-subsidiary relationship by itself is insufficient to impute liability on Grisi USA or Midway. Though there can be an exception where there is an alter ego relationship, "the complaint [was] devoid of any alter ego allegations." Plaintiffs' allegation of Grisi Mexico's ownership interest in Midway and Grisi USA was therefore irrelevant. Similarly, the allegation that Midway and Grisi USA share employees, ownership and business functions was irrelevant, absent allegations plausibly tying these entities to the "natural" labeling at issue. The court also found "generic references to 'marketing' in a[n] article and on an employee's LinkedIn page do not give rise to a plausible inference that Midway or Grisi USA were involved with the 'Natural' labeling."

This decision serves as a reminder that a complaint filed against an advertiser's subsidiary that fails to plead an alter-ego relationship or the subsidiary's involvement in the challenged advertising is ripe for dismissal. While the result in this case certainly made sense as to a distributor like Midway who generally has no involvement with the advertising, an operating subsidiary like Grisi USA could very well have control over or involvement in the content of challenged advertising. But plaintiffs' complaint failed to allege facts concerning the operating subsidiary's involvement (if any), and instead lumped both defendants together in its conclusory allegations that failed to cross the threshold of plausibility required to defeat a motion to dismiss. As a result, the Court's analysis did not (and did not need to) focus on the distinction between the distributor and the operating subsidiary, and plaintiffs were left to watch their claims slip out of their hands.

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