

Arizona Iced Tea Skirts 'All Natural' Fraud Suit In Calif.

By **Juan Carlos Rodriguez**

Law360, New York (March 29, 2013, 1:33 PM ET) -- A California federal judge on Thursday decertified a class of consumers and tossed their suit alleging the makers of Arizona Iced Tea misrepresented their products as all natural, saying the class's evidence and their legal representation was insufficient.

U.S. District Judge Richard Seeborg granted summary judgment to Arizona Beverages USA LLC and its distributors and marketers, Hornell Brewing Co. Inc., Vultaggio & Sons Inc. and Beverage Marketing USA Inc., saying the plaintiffs provided no evidence to prove the high-fructose corn syrup at issue wasn't natural.

"Defendants have established that they are entitled to summary judgment by showing that plaintiffs have not introduced any evidence showing that HFCS or citric acid are artificial, nor have they produced any evidence from which damages may be assessed. Nor, at this late stage in the litigation, could plaintiffs obtain such evidence as discovery is closed," Judge Seeborg said.

The judge said that in addition to pointing out the deficiencies in the plaintiffs' evidence, the defendants produced an expert witness report to show that high-fructose corn syrup and citric acid are natural, declarations from their suppliers reflecting that the syrup they supply is in accord with the U.S. [Food and Drug Administration](#) natural policy and a certificate of the natural status of their citric acid from one of their citric acid suppliers.

"In their opposition to the motion for summary judgment, plaintiffs do not offer any evidence that HFCS is artificial rather than natural. They instead ask the court to 'take judicial notice of United States Patent law,' and rule that that HFCS is not natural because patents have been issued for the process of producing it," the judge said.

He said the plaintiffs' argument — that if high-fructose corn syrup were a naturally occurring substance such as "a new mineral discovered in the earth or a new plant found in the wild," it would not be patentable — isn't a valid argument under the

federal rules of evidence.

And the judge called out the plaintiffs' attorneys for their work in deciding to decertify the class.

"Since the class was certified, the court has found that plaintiffs' counsel has been dilatory and has failed to prosecute this action adequately," Judge Seeborg said, adding that the attorneys' efforts "did not begin to approach due diligence."

"Plaintiffs had more than six months after the entry of the scheduling order to identify an expert, and failed to do so. They then waited for nearly five more months after their deadline for doing so had passed to file a motion requesting that expert discovery be extended," he said.

He also said their briefings had omitted the proper legal standards and failed to address mandatory issues.

The plaintiffs had asserted violations of California's Unfair Competition Law, Business & Professions Code, False Advertising Law and the Consumer Legal Remedies Act.

The certified class applied to all resident citizens of the state of California who purchased an Arizona brand beverage from March 17, 2006, until the present time, which contained high-fructose corn syrup or citric acid and which were marketed, advertised or labeled as being "all natural," "natural" or "100 percent natural," according to the order.

Counsel for both parties did not immediately respond to requests for comment Friday.

The plaintiffs are represented by G. Richard Baker of Baker Law PC, by Joseph L. Tucker of Jackson & Tucker PC, Kevin P. Roddy, Philip A. Tortoreti and Daniel R. Lapinski of [Wilentz Goldman & Spitzer PA](#) and David M. Lilienstein of DL Law Group.

The defendants are represented by Robert P. Donovan and Lewis H. Goldfarb of

McElroy Deutsch Mulvaney & Carpenter LLP and by Kevin J. Dunne of Sedgwick LLP.

The case is Lauren Ries et al., v. Hornell Brewing Co. Inc. et al., case number 5:10-cv-01139, in the U.S. District Court for the Northern District of California.

--Additional reporting by Linda Chiem. Editing by Richard McVay.

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