SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ANIMAL LEGAL DEFENSE FUND,	)	
Plaintiff	)	
	)	**Case No. 2016 CA 004744 B**
v.	)	
	)	**Judge Neal E. Kravitz**
HORMEL FOODS CORPORATION,	)	
Defendant	)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The defendant, Hormel Foods Corporation ("Hormel"), has filed a motion to dismiss, contending that (1) the state law claims alleged in the complaint are federally preempted; (2) the court should defer to the primary jurisdiction of the United States Department of Agriculture ("USDA") over food labeling and advertising claims; (3) the complaint fails to state a claim under the District of Columbia Consumer Protection Procedures Act ("CPPA"); and (4) the plaintiff, Animal Legal Defense Fund ("ALDF"), lacks standing. ALDF has filed an opposition to the motion, and Hormel has filed a reply.

ALDF alleges in the complaint that advertisements for Hormel's "Natural Choice" products describing them as "natural" and containing "no nitrates or nitrites" are materially false and tend to mislead consumers. For the reasons that follow, the court concludes that ALDF may proceed on these claims and that Hormel's motion to dismiss should be denied.

Discussion

I. Federal preemption of state law

Under the Supremacy Clause, federal law preempts state law that "interferes with or is contrary to federal law." *Bostic v. D.C. Hous. Auth.*, 162 A.3d 170, 173 (D.C. 2017) (internal quotation marks omitted); *see also* U.S. Const. art. VI., cl. 2; *Murray v. Motorola, Inc.*, 982 A.2d 764, 771 (D.C. 2009). Federal law can preempt state law expressly or impliedly. *Bostic*, 162

A.3d at 173. Express preemption occurs "where statutory language reveals an explicit congressional intent to pre-empt state law." *Murray*, 982 A.2d at 771 (internal quotation marks and ellipses omitted). Implied preemption occurs in either of two ways: through conflict preemption, which occurs "where compliance with both federal and state regulations is a physical impossibility or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *id.* (internal quotation marks, ellipses, and brackets omitted); or through field preemption, which "occurs when federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it," *id.* at 771-72 (internal quotation marks omitted). Courts addressing questions of preemption, whether express or implied, begin "with the assumption that the historic police powers of the States [are] not to be superseded by [federal law] unless that was the clear and manifest purpose of Congress." *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)) (internal quotation marks omitted).

Hormel argues that ALDF's suit under the CPPA is both expressly and impliedly preempted by the Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.* ("FMIA"), and the Poultry Products Inspection Act, 21 U.S.C. § 451 *et seq*. ("PPIA") (collectively, the "Acts"), which regulate the production and labeling of meat and poultry products. Hormel contends that this court's determination of ALDF's CPPA claim would conflict with federal implementation of the Acts, either by making it impossible for Hormel to comply with both federal and state law or by creating an obstacle to Hormel's ability to comply with federal law.

Essential to Hormel's arguments is its characterization of ALDF's suit as an attack on the labeling of Hormel's "Natural Choice" line of products. The complaint, however, focuses not on

labels but on Hormel's *advertising* of its Natural Choice products, which ALDF alleges is materially false and misleading in violation of the CPPA. The Acts' preemption clauses preclude states from enacting "[m]arking, labeling, packaging, or ingredient requirements … in addition to, or different than, those made under [the Acts]." *See* 21 U.S.C. §§ 678, 467e. They do not expressly preclude state laws regulating false or misleading *advertising* of products covered under the Acts.

The court, moreover, is not persuaded that a ruling in favor of ALDF would make Hormel's compliance with the Acts' labeling requirements impossible, or even present an obstacle to Hormel's compliance. Hormel could include qualifying or clarifying language in its advertisements in a way that met federal labeling requirements without misleading consumers.

II. Primary jurisdiction

The doctrine of primary jurisdiction refers to the suspension of the judicial process pending the resolution of issues placed within the special competence of an administrative body. *See District of Columbia v. D.C. PSC*, 963 A.2d 1144, 1153 (D.C. 2009); *Lawlor v. District of Columbia*, 758 A.2d 964, 973 (D.C. 2000). The doctrine does not negate the court's jurisdiction; rather, it informs the court's determination whether to exercise its jurisdiction with respect to a specific matter. *D.C. PSC*, 963 A.2d at 1153.

Hormel argues that the USDA ought to have primary jurisdiction over ALDF's claims based on its expertise and its prior approval of Hormel's use of "natural" and "no preservatives" on its "Natural Choice" food product labels. Yet Hormel has not demonstrated that the USDA has special expertise – or even authority – to regulate the *advertisements* at issue here, and nothing in the record provides a basis to believe that the USDA is in a better position than the court to hear false advertising claims arising under District of Columbia law. Nor has Hormel

alleged that any action before the USDA is currently pending or anticipated. The court therefore declines to dismiss the action on the grounds of primary jurisdiction.

III. Failure to State a Claim

A complaint is subject to dismissal under Rule 12(b)(6) for failure to state a claim on which relief can be granted if it does not satisfy the requirement, set forth in Super. Ct. Civ. R. 8(a)(2), that it contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011). The notice pleading rules do "not require detailed factual allegations," *id*. (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), and all factual allegations in a complaint challenged under Rule 12(b)(6) must be presumed true and liberally construed in the plaintiff's favor, *Grayson v. AT&T Corp.*, 15 A.3d 219, 228-29 (D.C. 2011) (en banc). Nevertheless, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," *Potomac Dev. Corp.*, 28 A.3d at 544 (quoting *Iqbal*, 556 U.S. at 678), and the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *id.* "The requirement of facial plausibility 'asks for more than a sheer possibility that a defendant has acted unlawfully,' and a complaint falls short of showing a plausible entitlement to relief if it 'pleads facts that are merely consistent with a defendant's liability.'" *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 246 (D.C. 2016) (quoting *Potomac Dev. Corp.*, 28 A.3d at 544). "To satisfy Rule 8 (a), plaintiffs must 'nudge[] their claims across the line from conceivable to plausible.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Thus, although a plaintiff may survive a Rule 12(b)(6) motion even if "recovery is very remote and unlikely," *Grayson*, 15 A.3d at 229, the "factual allegations must be enough to raise a right to relief above the speculative level," *OneWest Bank,*

FSB v. Marshall, 18 A.3d 715, 721 (D.C. 2011) (quoting *Chamberlain v. American Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007)). And although "legal conclusions can provide the framework of a complaint," conclusory allegations "are not entitled to the assumption of truth," and "they must be supported by factual allegations." *Potomac Dev. Corp.*, 28 A.3d at 544 (citing *Iqbal*, 556 U.S. at 664).

Hormel argues that ALDF fails to state a claim that Hormel's advertisements were false or misleading because federal agencies entrusted with applying uniform food labeling standards have approved the use of the terms "natural" and "no preservatives"; those terms, Hormel argues, therefore cannot be false or misleading as a matter of law. ALDF, however, has alleged facts sufficient to advance a plausible claim that consumers would be misled by Hormel's use of those terms in advertising its food products. ALDF points to surveys indicating that a majority of consumers believe "natural" means more than the mere absence of artificial ingredients and that nearly two-thirds of consumers believe "no nitrates" means no nitrates whatsoever. The federal standards for food labeling on which Hormel relies may be relevant to the ultimate determination of ALDF's claims, but they do not compel dismissal of the complaint at the pleading stage.

Hormel argues further that ALDF has not sufficiently pled that its advertisements use misleading innuendo or omit the truth about Hormel's products. Yet ALDF has pled that a humorous video ad about "naturalists" who turn out to be nudists, as well as the use of terms like "clean," "wholesome," "safe," "honest," and "higher standards," mislead consumers into believing that the animals used in Hormel's "Natural Choice" products are raised without the use of hormones and drugs and are slaughtered in a humane and sanitary manner. ALDF also alleges that the omission of any qualifying statement in Hormel's ads about the presence of a natural

preservative (celery juice powder) is material and misleading. These factual allegations are sufficient to survive Hormel's Rule 12(b)(6) challenge.

IV. Standing

To have standing, a plaintiff must show (1) injury in fact – an actual or imminent, concrete, and particularized invasion of a legally protected interest – that is (2) fairly traceable to the defendant's challenged actions and (3) likely to be redressed by a favorable decision. *Equal Rights Ctr. v. Props. Int'l*, 110 A.3d 599, 603 (D.C. 2015) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). An organization, like an individual, must allege a personal stake in the outcome of a controversy to warrant court intervention. *D.C. Appleseed Ctr. for Law & Justice, Inc. v. D.C. Dep't of Ins.*, 54 A.2d 1188, 1206 (D.C. 2012). A mere interest in a problem or opposition to an unlawful practice is not sufficient to demonstrate injury in fact. *Equal Rights Ctr.*, 110 A.3d at 604. Instead, the challenged unlawful actions must have caused a "concrete and demonstrable injury to the organization's activities – with the consequent drain on the organization's resources." *Id.* (quoting *Havens Realty Corp v. Coleman*, 455 U.S. 363, 379 (1982)) (internal quotation marks omitted). Generally, when an organization is forced to divert resources to counteract the effects of another's unlawful acts, it has suffered a sufficiently concrete injury to bestow standing. *Id.* However, there must be a "direct conflict between the defendant's conduct and the organization's *mission*," and an organization may not manufacture the injury necessary to maintain a suit from its expenditure of resources on that very suit. *Id.* (quoting *D.C. Appleseed*, 54 A.2d at 1209) (internal quotation marks omitted).

In its complaint, ALDF alleges that because of Hormel's "Make the Natural Choice" ad campaign, it has had to "devote substantial additional organizational resources to counteract the misinformation, educating consumers about this and other 'natural' claims, advocating for

stronger standards for the 'natural' claim that fall in line with consumer expectations, and publicizing the truth about Hormel's farming practices." Complaint at ¶ 37. ALDF states that the need to divert its resources has injured its organizational mission by "harming its ability to combat cruelty and evasiveness in the animal agriculture industry." *Id.* at ¶ 38. ALDF asserts further that if Hormel were to cease making the challenged claims, ALDF would not have to continue diverting organizational resources to warning consumers and educating the public about Hormel's products and farming practices. *Id.* at ¶ 39.

Although it is apparent that ALDF's advocacy work goes beyond challenging the labeling and advertising of meat products, ALDF states that its mission is to "promot[e] transparency in animal agriculture and truth in meat labeling and advertising." *Id.* at ¶ 36. ALDF alleges that it has worked for many years to address "misleading meat and poultry labeling and advertising," including by advocating for "robust and meaningful standards for the 'natural' and organic labels for meat and poultry products," "stopping false advertising by meat producers," and "educating consumers about the truth behind meaningless and misleading labels and advertising by meat companies." *Id.* at ¶ 39. ALDF states it has expended financial resources in filing administrative petitions and lawsuits, preparing comments in response to federal rulemaking, conducting undercover investigations of factory farms, publishing email and print newsletters, producing online resources, and conducting social media campaigns.

When standing is challenged at the motion to dismiss stage, the court accepts allegations in the complaint as true and construes them in the plaintiff's favor. *See UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015); *Grayson*, 15 A.3d at 232. Having done so, the court finds that ALDF's allegations are sufficient to establish its standing to bring its CPPA claim based on Hormel's advertising of its meat and poultry products as "natural" and free of

preservatives. ALDF has alleged that Hormel's advertising activities conflict with ALDF's mission, which includes consumer education and advocacy, and that ALDF has expended and will continue to expend resources in response to Hormel's advertising beyond the costs of the present litigation.

Accordingly, it is this 20th day of September 2017

ORDERED that the defendant's motion is **denied**. It is further

ORDERED that the defendant has until October 4, 2017 to file an answer to the complaint. *See* Super. Ct. Civ. R. 12(a)(4)(A). It is further

ORDERED that this case remains set for an initial scheduling conference on September 22, 2017 at 9:00 a.m.

Neal E. Kravitz, Associate Judge
(Signed in Chambers)

Copies to:

Tracy D. Rezvani, Esq.
D. Desmond Hogan, Esq.
Miranda L. Berge, Esq
David S. Muraskin, Esq.
Kim E. Richman, Esq.
Leah Nicholls, Esq.
Via CaseFileXpress