

BUMBLE BEE FOODS CONSENTS TO RELABELING SMOKED SALMON PRODUCTS IN ORDER TO AVOID CLASS ACTION LAWSUIT



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On February 1, 2018, Bumble Bee Foods, LLC agreed to repackage its canned salmon filets to end a proposed class action in California federal court. In the case of *Miguel Rodriguez et al. v. Bumble Bee Foods LLC*, case number [3:17-cv-02447](#) (U.S. District Court for the Southern District of California), the plaintiff was a consumer accusing Bumble Bee of misrepresenting that its canned salmon was smoked and wild-caught, when in fact the fish was farm-raised and processed using added liquid smoke flavoring. The plaintiff sought class action status on behalf of all similarly-situated consumers of Bumble Bee’s canned **Premium Select Medium Red Smoked Salmon Filets in Oil**.

Consumers prize salmon because the fish has many health benefits: it is relatively a good source of protein, low in calories, and high in omega 3 fatty acids. Wild salmon feed on krill, which gives them their distinctive red or pink color, and generally are considered to be of higher quality than farm-raised salmon. Consequently, consumers typically are willing to pay a higher price for wild-caught salmon products.

The canned fish at issue in the Bumble Bee lawsuit was purchased at a Wal-Mart location in the Fall of 2017. The plaintiff alleged that he paid a premium for the product because he believed that the wording and images on the label were accurate, but that he would not have brought the product at all, and certainly not for a premium price, but for being misled by Bumble Bees false claims.

According to the plaintiff’s lawsuit, the medium red product he purchased looked identical to the Bumble Bee fish product labels that are in fact caught in the wild. The medium red label product uses an illustration of a fish leaping out of a body of water and uses the word “premium.” In

reality, according to the plaintiff's complaint, the fish were farm-raised in Chile, where they allegedly were penned in aqua cages off the coast and exposed to fecal matter, fungicides, and antibiotics.

Moreover, farm-raised salmon naturally have a dull, grey flesh. To make the fish appealing to consumers, colorants -- typically canthaxanthin or astaxanthin -- are added to farmed salmon's feed to mimic the desired color of wild-caught salmon. The Bumble Bee Salmon false advertising lawsuit alleged that the company's intention was to mislead consumers into believing they were purchasing wild salmon filets, when that was not the case.

The Bumble Bee class action lawsuit alleged violations of the **California False Advertising Law**, the **California Consumers Legal Remedies Act**, the **California Unfair Competition Law**, **breach of express warranty** and **breach of the implied warranty of merchantability**. Under the terms of the stipulated settlement, Bumble Bee agreed to: (i) change the product's packaging, (ii) pay reasonable attorneys' fees (between \$30,000 and \$85,000) as well as an incentive award to the named plaintiffs who initiated the litigation, and (iii) not require the proposed class to release any claims for damages or personal injury. Because the parties agreed that the misleadingly labeled products are not inherently dangerous, the settlement does not compel Bumble Bee to recall the products with the old packaging.

Bumble Bee explained that settlement made sense because of the product's modest sales, and because the expense of litigating the class' damages claims likely would substantially outweigh the class' potential recovery. However, the plaintiff's counsel estimated consumers purchased approximately 2.3 million units of the smoked salmon filets, with a market value of \$5.2 million, during the period of time covered by the proposed class action.

Under the terms of the settlement agreement, Bumble Bee will repackage the salmon filets with more accurate labeling beginning in the Second Quarter of 2018. The new packaging will specify that the product is "smoke-flavored" rather than "smoked," omit claims that the fish is "Premium" or "Medium Red" and more accurately depict a farm-raised Coho salmon, according to the settlement filing.



Consumer class action lawsuits are on the rise, especially with regards to processed foods. Consumer advocates, food professionals and industry observers attribute this trend to a growing concern among consumers, especially Millennials, over the provenance, quality and safety of their diets. Accuracy in product labeling has become a focal point for consumer advocates as well as plaintiffs' lawyers, as more and more consumers demand detailed and accurate information regarding the contents of their food.

For more information regarding food labeling regulations and responsibilities, as well as the increasing rise of consumer mislabeling claim, please contact GrayRobinson's [Food Law Group](#) at (866) 382-5132 or foodlaw@gray-robinson.com