

# Moore v. Trader Joe's Co.

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## WHY IT MADE THE LIST

What information may be relevant when evaluating whether a reasonable consumer would be misled by a product's labeling? In *Moore v. Trader Joe's Co.*, the United States Court of Appeals for the Ninth Circuit reinforced the importance of contextual clues beyond the at-issue product label to determine whether a reasonable consumer would hold what the court described as an "unreasonable or fanciful" interpretation of Trader Joe's manuka honey product label.<sup>1</sup> The court of appeals affirmed the district court's ruling that based on other readily available information, a reasonable consumer would interpret Trader Joe's "100% New Zealand Manuka Honey" label to mean a product whose *chief* floral source is the manuka plant, rather than a product that is 100% derived from the manuka plant.

In light of the court of appeals' guidance to inspect information beyond the product label, the case demonstrates the importance of additional contextual information in determining whether a reasonable consumer would be misled by a product label. Specifically, the court of appeals highlighted the need to consider consumers' background knowledge, the product's price point, and the product type.

## DISCUSSIONS

### *Background: FDA's Guidance on the Labeling of Honey*

The Food and Drug Administration (FDA) provides nonbinding recommendations on the proper labeling of honey products.<sup>2</sup> FDA's Honey Guidelines notes that as a

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<sup>1</sup> *Moore v. Trader Joe's Co.*, 4 F.4th 874, 883 (9th Cir. 2021).

<sup>2</sup> U.S. FOOD & DRUG ADMIN., PROPER LABELING OF HONEY AND HONEY PRODUCTS: GUIDANCE FOR INDUSTRY (2018), <https://www.fda.gov/media/110846/download>.

single ingredient food, honey may be labeled with “the name of the plant or blossom if [there is] information to support the conclusion that the plant or blossom designated on the label is the chief floral source of the honey.” While FDA does not specifically define “chief floral source,” the Ninth Circuit interpreted the phrase to mean the principal source of the honey.<sup>3</sup>

### *Procedural Background and Ruling of the District Court*

In July 2018, plaintiffs Lynn Moore, Shanque King, and Jeffrey Akwei filed a class-action lawsuit against Trader Joe’s for allegedly misrepresenting its manuka honey product.<sup>4</sup> Specifically, plaintiffs alleged that Trader Joe’s deceived consumers by labeling its manuka honey products as “100% New Zealand Manuka Honey” and listing “manuka honey” as its sole ingredient, even though only around 60% of the pollen in the honey product is derived from the manuka plant. In the complaint, plaintiffs mainly relied on conclusions from GNS Science, a research laboratory, on the manuka content of Trader Joe’s manuka honey product. While the test showed that between 57.3% to 62.6% of Trader Joe’s manuka honey product was manuka content, it provided no insights on how a reasonable consumer would interpret Trader Joe’s product label. Plaintiffs offered no support from consumer behavior research to assert that the at-issue product label would be material to consumers’ purchase decisions.

Trader Joe’s filed a motion to dismiss plaintiffs’ complaint in January 2019. In June 2019, the District Court of the Northern District of California sided with Trader Joe’s and granted its motion to dismiss plaintiffs’ complaint. The district court ruled that plaintiffs cannot allege adulteration, since their theory of adulteration is premised on the bees visiting different floral sources, which does not constitute adulteration, rather than the manufacturer purposefully mixing manuka honey with non-manuka honey. In addition, the district court concluded that Trader Joe’s label is not misleading. In particular, given that honey is a single ingredient food, and the chief floral source of Trader Joe’s manuka honey product is manuka, Trader Joe’s product label is an accurate description of its product.

Plaintiffs appealed the district court’s ruling, and the Court of Appeals for the Ninth Circuit issued its opinion in July 2021.

### *Ruling and Reasoning of the Appellate Court*

The court of appeals affirmed the district court’s decision, noting that although there is some ambiguity in the meaning of “100%” in Trader Joe’s “100% New Zealand Manuka Honey” label, a reasonable consumer would quickly be dissuaded from the belief that Trader Joe’s manuka honey was derived from 100% manuka flower nectar when the label is considered in the context of other readily available information.<sup>5</sup>

The court of appeals cited three main reasons why a reasonable consumer would not be misled by Trader Joe’s product label. First, a reasonable honey consumer would know that it is impossible to make honey that is 100% derived from one floral source, given the foraging nature of bees. This knowledge is particularly accessible to a

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<sup>3</sup> 4 F.4th at 881.

<sup>4</sup> Moore v. Trader Joe’s Co., Case 4:18-cv-04418-KAW (N.D. Cal. June 24, 2019) (order granting defendant’s motion to dismiss).

<sup>5</sup> 4 F.4th 874.

consumer of a niche specialty product like manuka honey, because they would exhibit a higher standard of care when purchasing a manuka honey product.

Second, the inexpensive cost of Trader Joe's manuka honey product would signal to a reasonable consumer that the product has a relatively lower concentration of honey derived from manuka flower nectar. A jar of Trader Joe's manuka honey product costs approximately \$13.99 (\$1.59 per ounce), while a jar of honey that is 92% derived from manuka flower nectar costs around \$266 (\$21.55 per ounce). A reasonable consumer of manuka honey would be well aware of the varying concentration of manuka in different products, and would not expect a jar of honey that is 100% derived from manuka flower nectar to cost only \$13.99.

Third, the "10+" label on Trader Joe's manuka honey product represents a rating on the Unique Manuka Factor grading system, which signals the product's quality. Reasonable consumers of manuka honey would routinely encounter such ratings and would thus understand that Trader Joe's manuka honey is on the lower end of the "purity scale," which ranges from 5+ to 26+, as opposed to having a high concentration of manuka flower nectar.

The court of appeals concluded that other available information about Trader Joe's manuka honey product would quickly dissuade a reasonable consumer from plaintiffs' "unreasonable or fanciful" interpretation of "100% New Zealand Manuka Honey."

Furthermore, the court of appeals affirmed the district court's ruling that Trader Joe's representation of "manuka honey" as the product's sole ingredient was not misleading, since the product is made of honey whose chief floral source is the manuka plant. The court noted that reasonable consumers would understand that by listing manuka honey as its sole ingredient, Trader Joe's is noting that there are no additives or other honeys present in the product, not that it is exclusively derived from the manuka plant. In other words, since Trader Joe's manuka honey product "*entirely* consists of Manuka Honey," the ingredients statement does not "display any affirmative misrepresentations" that would mislead a reasonable consumer.<sup>6</sup>

## IMPACT

The court of appeals decision emphasized the importance of considering all accessible information when evaluating whether a reasonable consumer would be misled by a product label.<sup>7</sup> Plaintiffs unreasonably assumed that a reasonable consumer would be materially deceived by Trader Joe's product label by claiming that consumers "care a great deal about the purity of the manuka honey they purchase."<sup>8</sup>

Rather than viewing a product label in isolation as the plaintiffs suggested, consumers often go through a multistage buying process when purchasing a product. In this buying process, consumers recognize a problem, search for information, evaluate alternatives, make a purchase decision, and use and experience the product in the post-purchase stage.<sup>9</sup> During this process, consumers may gather information about the product category, brands, and specific feature sets—often relying on a

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<sup>6</sup> 4 F.4th at 886.

<sup>7</sup> For example, *Bell v. Publix Super Markets Inc.*, 982 F.3d 468 (7th Cir. 2020) left undisturbed "the general principle that deceptive advertising claims should take into account all the information available to consumers and the context in which that information is provided and used."

<sup>8</sup> Complaint at ¶ 36, *Moore v. Trader Joe's Co.*, Case 4:18-cv-04418-KAW (N.D. Cal. July 20, 2018).

<sup>9</sup> PHILIP KOTLER & KEVIN LANE KELLER, *MARKETING MANAGEMENT* 173 (Pearson, 15th ed. 2016).

variety of sources that shape the set of information upon which a consumer relies when ultimately selecting a specific honey from a variety of potential offerings.

During this purchase process, consumers may come into contact with a variety of information that they may rely on when viewing individual product labels, including:

- Price point. Companies frequently use different price points to indicate quality, and consumers use price as an indicator of quality. For example, brands and products like Starbucks and BMW are positioned and perceived as an affordable luxury that offers high quality for premium prices. When comparing products, consumers may have a lower price threshold, below which prices signal lower-than-preferred quality to them.<sup>10</sup> In this case, the court of appeals highlighted the difference between the price of Trader Joe’s manuka honey product and a jar of honey that is 92% derived from manuka plant to illustrate the difference in consumers’ inferred quality.
- External information. In addition to receiving information about a product through sources such as Trader Joe’s label, consumers may also learn about a product through public, personal, or experiential sources.<sup>11</sup> In fact, sources such as word of mouth can be the main information that drives a purchasing decision. In this matter, honey consumers may gather information from family, friends, and neighbors, and give the product label little attention and weight. Similarly, consumers’ purchasing decisions may be driven by handling, examining, and using the product. For example, numerous repeat purchases may be based on a main characteristic of consumable products such as honey: its taste. Lastly, consumers may also glean information from public sources like mass media or consumer-rating organizations. In this case, honey consumers may learn that it is impossible to produce honey made exclusively from a single floral source. Moreover, manuka honey consumers, especially those who “care a great deal about the purity of the manuka honey they purchase,” may have encountered the Unique Manuka Factor scale while researching on an informational website or talking with a family member.<sup>12</sup> When evaluating a product, consumers may also bring in external information rather than relying solely on a specific claim on the product label.
- Other considered products. Before purchasing a product, many consumers frequently browse and consider different competing brands and products. They may start with a “total set” of available brands, then narrow to a subset called “awareness set.” Only products that meet certain buying criteria, such as fitting a specific price point or providing certain benefits, would then be filtered to a “consideration set,” from which consumers make a final choice. For example, highly involved honey consumers may create a

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<sup>10</sup> *Id.* at 465–69.

<sup>11</sup> *Id.* at 174.

<sup>12</sup> Complaint at ¶ 36, *Moore v. Trader Joe’s Co.*, Case 4:18-cv-04418-KAW (N.D. Cal. July 20, 2018).

consideration set of manuka honey products with a high manuka concentration if they are interested in honey with strong wound healing properties and are willing to pay a higher price; whereas consumers for whom the purchase of honey is a low involvement decision would be inclined to pick a honey based on price, presentation, and placement on the shelf relative to competing products (eye-level vs. low level), or based on convenience and availability.

- Product type. Consumers may extract contextual information based on the product type. The court held in *Becerra* that because the at-issue product is soda, consumers would understand the word “diet” on a soda label to mean a claim about the product’s caloric content relative to regular soda, not that the soda promotes weight loss generally. Similarly, although “100%” in “100% New Zealand Manuka Honey” can be interpreted in different ways, the implausibility of a honey product derived 100% from a single source renders plaintiffs’ interpretation unreasonable.

Various methods have been used to study consumers’ multidimensional decision-making process, including survey research. Well-constructed survey experiments can provide empirical insights into how consumers interpret a product label, what factors are important in their purchase decisions, and whether a product label is material to consumers’ decisions. In this case, a survey experiment could have assisted the plaintiffs in assessing how honey consumers interpret Trader Joe’s product label and whether Trader Joe’s product label was material to their purchase decisions.