

Exam ID: _____

Civil Procedure

Professor Fink
Elon Law School
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Final Exam

Instructions

This is a **closed-book** examination. You may not use any books, notes, or other materials during the exam, except for the Federal Rules & Statutes handout provided to you by the proctor.

You have **three hours** to complete the exam.

The exam is organized into two parts. You must answer each question in each part. There is no minimum or maximum length to your answers. As a rough guide, an approximate character-count range is indicated for each question (3000 characters is about 1 single-spaced page).

In the space below, you must write out the Elon Law School Honor Pledge and **sign with your Exam ID number**.

Also write your Exam ID number in the space above. **Do not write your name anywhere on the exam.**

Honor Pledge

"On my honor, I will uphold the values of Elon University School of Law: honesty, integrity, responsibility, and respect."

Exam ID:

Part I

Healthway, Inc. (“Healthway”) produces non-dairy alternatives to milk, yogurt, and other dairy products, which it advertises and distributes throughout the US.

The Piedmont Healthy Foods Coalition (“PHFC”) is a consumer advocacy organization, with members in Virginia, North Carolina, South Carolina, and Georgia.

PHFC sues Healthway in the U.S. District Court for the Middle District of North Carolina.¹ The complaint asserts a claim under the North Carolina Truth in Food Labeling Act (“TIFLA”),² which prohibits false or deceptive labeling of packaged foods sold within the state. The statute specifically provides that any food label (including brand names and nutritional information) that does not comply with federal Food & Drug Administration (FDA) regulations or guidelines is deemed to be “false or misleading” under TIFLA. Any person who incurred damages as a result of false or deceptive labeling on packaged foods sold within the state may bring a civil suit to recover their own actual damages, plus statutory damages of up to \$100,000 (based on the volume of sales for the deceptively-labeled product within the state), attorney’s fees, and costs of suit. Consumer advocacy organizations, such as PHFC, may bring such suits on behalf of their members.

The elements of a claim under the TIFLA statute are as follows: (1) the defendant made false or misleading representations about its products, (2) a reasonable consumer is likely to be deceived by the defendant’s claims, and (3) the plaintiff purchased the defendant’s products, or otherwise incurred damages, based on the defendant’s false or misleading representations.

PHFC’s complaint includes these allegations in support of the TIFLA claim:

- Defendant Healthway produces and markets non-dairy products, including “Pure All Natural Almond Milk”, “Pure All Natural Soy Milk” and “Pure All Natural Soy Milk Yogurt”.
- Federal Food & Drug Administration (“FDA”) regulations define “milk” as “the lacteal secretion ... obtained by the complete milking of one or more healthy cows”. 21 C.F.R. § 131.110(a).
- Despite the names, Healthway’s “Pure All Natural Almond Milk”, “Pure All Natural Soy Milk” and “Pure All Natural Soy Milk Yogurt” contain no milk as defined by FDA regulations. Healthway’s branding of these products as “milk” is false or misleading, because consumers may mistakenly believe that they contain cow’s milk.
- FDA-mandated nutritional labels for Healthway’s “Pure All Natural Almond Milk”, “Pure All Natural Soy Milk” and “Pure All Natural Soy Milk Yogurt” list “All natural evaporated cane juice” as an ingredient. “Sugar” is not listed as an ingredient in the nutritional labels nor anywhere else in the packaging of these products.
- FDA regulations require that nutritional labels identify ingredients “by common or usual name”. 21 C.F.R. § 101.4(a)(1).
- FDA regulations provide that, “For purposes of ingredient labeling, the term sugar shall refer to sucrose, which is obtained from sugar cane or sugar beets.” 21 C.F.R. § 101.4(b)(20). FDA guidance on the ingredient labeling regulations explains that “the term ‘evaporated cane juice’ is false or misleading because it suggests that the sweetener is ‘juice’ or is made from ‘juice’ and does not reveal that its basic nature and characterizing properties are those of a sugar.” See Food & Drug Administration, *Ingredients Declared as Evaporated Cane Juice: Guidance for Industry* (May 2016).
- FDA regulations define “juice” as “liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.” 21 CFR 120.1(a). Healthway’s products contain no “juice” as defined by FDA regulations.
- Healthway’s use of the term “All natural evaporated cane juice” in the nutritional labels of its “Pure All Natural Almond Milk”, “Pure All Natural Soy Milk” and “Pure All Natural Soy Milk Yogurt”, is false or misleading, because consumers may mistakenly believe that these products contain juice and do not contain sugar.

¹Assume that the court has subject matter jurisdiction based on diversity and personal jurisdiction over Healthway.

²This is a fictional law invented for this exam.

- PHFC members have purchased Healthway's "Pure All Natural Almond Milk", "Pure All Natural Soy Milk" and "Pure All Natural Soy Milk Yogurt" based on the false and misleading branding and labeling of these products.

The complaint seeks damages on behalf of PHFC members who purchased Healthway's products, plus attorney's fees and costs, as provided under the NC TIFLA statute.

1. If Healthway moves to dismiss the complaint for failure to state a claim under the NC TIFLA statute, how should the court rule? (Approx. 3000-6000 words)
2. Regardless of your answer to the previous questions, assume that Healthway does not move to dismiss and instead answers the complaint, denying that the branding or labeling of its products is false or misleading, and asserting claim preclusion as an affirmative defense.

In a previous case, decided about a year before, an individual plaintiff, Virgil Vance (a Virginia resident), sued Healthway in Virginia federal court³ under Virginia's TIFLA statute, the terms of which are identical to North Carolina's TIFLA statute, and which likewise allows suits for actual and statutory damages based on sales of deceptively-labeled packaged foods in Virginia. Vance is a member of PHFC, and the lawyer who represented him in the Virginia lawsuit also represents PHFC in the North Carolina suit. Vance's suit was based on similar allegations of false or misleading representations in the branding and labeling of Healthway's soy milk, almond milk, and soy yogurt products. That case proceeded to trial, at the conclusion of which the court entered judgment in favor of Vance on the Virginia TIFLA claim. The court issued a written opinion that included these findings of fact and conclusions of law:

- The branding of Healthway's non-dairy products as "soy milk" and "almond milk" violated FDA regulations, because these products contain no milk as defined in those regulations.
- The branding of these products as "soy milk" and "almond milk" might mislead reasonable consumers into believing that they contain cow's milk.
- The use of the term "All natural evaporated cane juice" in the FDA-mandated nutritional labels on these products violated FDA regulations, because the common or usual name for this ingredient is "sugar".
- The identification of this ingredient as "All natural evaporated cane juice" might mislead reasonable consumers into believing that the products contain fruit juice and do not contain sugar.
- For these reasons, Healthway's branding of its products as "soy milk" and "almond milk", and its use of the term "All natural evaporated cane juice" instead of "sugar" in nutritional labels, constitute unfair or deceptive practices in violation of the Virginia TIFLA statute.

- a. Does the judgment in the prior Virginia suit precludes PHFC's claim? (Approx. 3000-4500 words)
- b. Assuming (regardless of your answer to the previous question) that PHFC's claim is not precluded, does the judgment in the prior suit preclude Healthway from contesting the issues of whether Healthway's branding and labeling of its products violate FDA regulations and constitute unfair or deceptive practices under the NC TIFLA statute? (Approx. 3000-4500 words)

³Assume that the court had subject matter jurisdiction based on diversity and personal jurisdiction over Healthway.

Part II

Gate City Restaurants (“GCR”), a business partnership, all of whose partners are residents and citizens of North Carolina, operates several restaurants in Greensboro. Gail Giraldi, a lifelong resident of NC, was employed by GCR as executive chef, at an annual salary of \$60,000. In that capacity, Giraldi had access to GCR’s confidential proprietary information, including recipes for the restaurants’ signature dishes and the company’s strategic business plans. As a condition of Giraldi’s employment with GCR, she signed a confidentiality and noncompetition agreement, which prohibited her from disclosing the company’s trade secrets (including the recipes and business plans) and from working for any restaurant within 100 miles of Greensboro for a period of one year following the termination of her employment with GCR.

In June 2019, Giraldi gave GCR a letter of resignation, explaining that she had accepted a job as executive chef for Commonwealth Dining, Inc. (“CDI”), a Virginia corporation that operates several restaurants in that state, including one in Danville (where CDI’s corporate offices are also located), about 50 miles from Greensboro, where Giraldi would be working. Giraldi told GCR that she would start her new job in four weeks. She plans to continue living in Greensboro, since her new job in Danville is within commuting distance.

A few days after receiving Giraldi’s resignation letter, GCR filed a suit against Giraldi and CDI in North Carolina federal court.⁴ GCR’s complaint asserted a claim against Giraldi under North Carolina law for breach of her confidentiality and noncompetition agreement, and a claim under the Defend Trade Secrets Act (“DTSA”), a federal statute that creates a federal cause of action and enhanced remedies for misappropriation of trade secrets. The complaint also asserts a claim against CDI for tortious interference with contract under North Carolina law, alleging that they induced Giraldi her to quit her job with GCR and work for CDI, with the aim of learning GCR’s proprietary recipes and confidential business plans. GCR seeks an injunction prohibiting Giraldi from working for CDI for one year, and monetary damages in the amount of \$10,000 against CDI (representing the expenses that GCR incurred in hiring a replacement for Giraldi).

1. Is joinder of Giraldi and CDI as co-defendants permitted under the Federal Rules of Civil Procedure (“FRCP”) and, if so, does the court have subject matter jurisdiction over the claims against them? (Approx. 3000-6000 words)
2. For each of the following, explain (i) whether joinder would be proper under the Federal Rules of Civil Procedure, *and* (ii) whether the federal court would have subject matter jurisdiction over the claim. (Approx. 600-1800 words each)
 - a. In its original complaint, GCR also asserts a claim against Giraldi for replevin⁵ under NC law, alleging that, when Giraldi quit her job, she kept a set of knives valued at \$1500.
 - b. Giraldi asserts a claim against CDI for promissory estoppel⁶ under NC law, seeking damages in the amount of \$75,000 (the annual salary she was offered by CDI) in the event that the court grants GCR’s request for an injunction.
 - c. Giraldi asserts a claim against GCR under the NC Wage Payment Act, alleging that, after she resigned, GCR refused to pay her final month’s salary, amounting to \$5,000.
 - d. In response to Giraldi’s Wage Payment Act claim, GCR joins its attorney Paul Poorman (a citizen of NC) as a third-party defendant, to assert a claim for malpractice, alleging that he negligently advised GCR that they could lawfully withhold Giraldi’s salary for her final month as a penalty for breaching her confidentiality and noncompetition agreement.

⁴Assume the North Carolina court has personal jurisdiction over CDI.

⁵A common law action to recover property that has been wrongfully taken from the plaintiff.

⁶A common law action to enforce a promise based on the plaintiff’s detrimental reliance.