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Collagen In Court: L’Oreal Fails To Dismiss Suit Over ‘Collagen Moisture Filler’ Claims

by [Ryan Nelson](#)

How do reasonable consumers interpret the role of collagen in L’Oreal facial skin-care products in the context of labeled benefit claims? The question is central to class action litigation being waged in New York’s Southern District.

A New York federal court on 27 September denied L’Oreal USA, Inc.’s motion to dismiss a putative class action over advertising for two skin moisturizers made with collagen ingredients.

Plaintiffs Rocio Lopez and Rachel Lumbra filed suit in late August in New York’s Southern District, alleging that L’Oreal misleads consumers with labeling and packaging claims for L’Oreal Collagen Moisture Filler Day/Night Cream and L’Oréal Fragrance-Free Collagen Moisture Filler Daily Moisturizer.

Specifically, the products are designed to “restore skin’s cushion” and “smooth wrinkles,” based on prominent statements on the front of product packages.

The plaintiffs argue that they and other consumers instinctually link such claimed benefits to the presence of “collagen” (soluble collagen and atelocollagen) in the formulas.

However, “atelocollagen has an approximate molecular weight of 300 [kilodaltons], the same molecular weight as native collagen, which cannot penetrate the skin due to the size of the molecule. Similarly, soluble collagen has a high molecular weight of 231 kDa – exponentially higher than the molecular weight of collagen-related derivatives that can potentially penetrate the skin,” they say.

Thus, the collagen ingredients cannot possibly deliver the product’s claimed anti-aging effects, according to their complaint.

“It is wholly plausible that a reasonable consumer, shopping for cosmetics, saw a product named Collagen Moisture Filler, promising to “smooth wrinkles” and “restore skin’s cushion,” and associated this product with the cosmetic benefits of the collagen molecule.” – US district judge

L’Oreal reasoned in its bid to dismiss that reasonable consumers may well assume that the collagen contained by the products serves to support the products’ moisturizing aims.

The front panels at issue “[do] not state that the collagen will ‘penetrate the top layer of skin,’ that it will ‘replace the body’s natural loss of collagen,’ or that it will ‘stimulate and increase natural collagen production.’ The product name does not claim, as other products do, that it is a collagen ‘supplement.’ ... The label is not ‘false’ because it does not say the thing that plaintiffs allege to be false,” the defendant argued.

Nor is the labeling misleading, L’Oreal insisted. “Using the word ‘collagen’ in a daily moisturizer product name would not imply to a significant portion of consumers that, in order for the product to be effective or perform as claimed, the collagen will penetrate the skin when applied topically or act like a collagen protein supplement,” the company said.

L’Oreal held that an obvious reasonable interpretation that consumers may make, consistent with the product labels, is that the product works by moisturizing skin. “[Plaintiffs’] claim for false labeling fails because their only theory of falsity is not plausibly connected to the actual labeling of the product,” the firm contended.

The court disagreed.

“It is wholly plausible that a reasonable consumer, shopping for cosmetics, saw a product named Collagen Moisture Filler, promising to “smooth wrinkles” and “restore skin’s cushion,” and associated this product with the cosmetic benefits of the collagen molecule,” writes US district judge Andrew Carter, Jr. in his decision.

He notes, “The Products contain no qualifying language regarding the inability for the collagen or collagen-related ingredients to penetrate the skin. Instead, the language on the Products serve[s] to further link the products with the benefits of collagen. The Products promise to deliver benefits by ‘smoothing wrinkles’ and ‘restore skin’s cushion.’ These benefits purport to

reverse signs of aging, namely the dehydration and thinning of the skin, that are commonly associated with the decrease in production of natural collagen. The Products’ name – Collagen Moisture Filler – also serves to reinforce this connection.”

L’Oreal Collagen Moisture Filler Day/Night Cream and L’Oréal Fragrance-Free Collagen Moisture Filler Daily Moisturizer sell at lorealparisusa.com for \$11.49 apiece.