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Dr. Dennis Gross Skincare Could Be Headed To Trial Over Alleged ‘Fake Collagen Cosmetic Products’

by [Ryan Nelson](#)

After California’s Central District denied Dr. Dennis Gross Skincare’s motion to dismiss in November 2020 and granted class certification to plaintiffs in April 2023, the New York-based defendant seems intent on continuing the fight. DDG has argued that “collagen amino acids” and “vegan” disclosures on its C + Collagen product labels sufficiently convey to consumers that animal byproducts are not present in the formulas.

“Defendant sells a line of fake collagen cosmetic products that do not contain any collagen whatsoever,” say plaintiffs Mocha Gunaratna and Renee Camenforte in their complaint against Dr. Dennis Gross Skincare, LLC (DDG) lodged in California’s Central District.

Initially filed by Gunaratna in March 2020, the suit alleges that consumers who purchased DDG C + Collagen products – including C + Collagen Deep Cream, Serum, Mist, and Eye Cream variants, as well as Biocellulose Brightening Treatment Mask – would not have done so, or would not have paid a premium for the products, had they known the company’s collagen claims were false, deceptive, and misleading.

They cite violations of California’s False Advertising Law, Unfair Competition Law, and other consumer protection laws, seeking injunctive relief, damages, and attorneys’ fees and costs.

The Ninth Circuit has warned that ‘reasonable consumers should

[not] be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box.” – US District Court for the Central District of California

According to the plaintiffs' [second amended complaint](#) filed in December 2021, “[c]ollagen is the single most abundant protein found in the cartilage, bone, and tissues of animals, fish, and humans,” including “in tendons and ligaments, as well as the cornea, cartilage, bones, gut, blood vessels and intervertebral discs.”

Collagen has been linked to youthful skin, hair, and nails, driving demand for cosmetic and other anti-aging products that contain collagen, the plaintiffs note. Collagen is not found in plants, they say.

DDG does not dispute that fact per se. The New York-based defendant specifies twice on packaging that the products at issue contain “collagen amino acids” – the building blocks of collagen – and identifies the products as “vegan.”

In its September 2020 [motion to dismiss](#), DDG contends that “Plaintiff’s entire FAC relies on a single implausible allegation – that one use of the word ‘collagen’ on Defendant’s packaging is misleading because consumers believe that Products with the word ‘collagen’ contain animal byproducts.” However, the firm argues, “[n]o reasonable consumer could believe that a ‘vegan’ product contains ‘cornea, cartilage, bones, gut, blood vessels and intervertebral disks.’”

The plaintiffs allege that “honest” amino acid cosmetic manufacturers take care not to deceptively label their products as containing collagen. Instead, they may label and advertise the presence of peptides or “boosters,” they suggest.

DDG counters, “This is in fact exactly how the Defendant labels the Products. Peptides are short chains of two and fifty amino acids.”

‘Products Have The Word Collagen In Their Name’

The US District Court for the Central District of California [rejected](#) DDG’s bid for dismissal on preemption grounds in November 2020, pointing to *Astiana v. Hain Celestial Group, Inc.*, a “natural” claims dispute that was settled after the Ninth Circuit concluded in April 2015 that the US Food, Drug, and Cosmetic Act does not expressly preempt California’s state law causes of

action that create consumer remedies for false or misleading cosmetics labels. (Also see "[Waiting For FDA: Federal Courts Debate Stays Of 'Natural' Class Actions](#)" - HBW Insight, 14 Aug, 2017.)

Further, the court found it plausible that a reasonable consumer may be misled by DDG's labeling. "The Products have the word collagen in their name, which is prominently displayed on the front of the Products' packaging. ... The Court fails to see how the modifier 'amino acids' would clear up a consumer's potential confusion if, in fact, the Products contained no collagen. If anything, the additional mention of collagen may have the effect of reassuring a consumer that the Products do contain collagen."

California's Central District also was not persuaded that DDG's "vegan" disclaimer was sufficient to dispel consumer confusion, noting that the vegan symbol and accompanying text are small and inconspicuous.

"Even accepting Defendant's argument that no reasonable consumer viewing the package as a whole would conclude that the Products contain collagen, the Ninth Circuit has warned that 'reasonable consumers should [not] be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box,'" the court said.

Two Collagen Skin-Care False Advertising Suits In Same US District, Two Different Outcomes

By [Ryan Nelson](#)

09 Jul 2023 L'Oreal USA settled a putative class action in April that challenged Collagen Moisture Filler claims on L'Oreal skin-care product labels after New York's Southern District denied its motion to dismiss. Algenist LLC on the other hand, prevailed in November 2022 in the same district in litigation concerning the truthfulness of "Advanced Anti-Aging" claims on Algenist Genius Collagen products. [Read the full article here](#)

The plaintiff was deemed to have standing to bring claims against DDG under California consumer protection laws, but not those of other states without amending its claims.

Plant-Based Collagen?

In April, the court certified plaintiffs' proposed class of Californians who purchased the challenged DDG products between 10 March 2016 and 4 April 2023. At the same time it denied DDG's motion for summary judgment "because there are triable issues of fact as to deception, reliance, materiality, and damages," according to the [order](#).

"Defendant's arguments largely rely on an unsubstantiated scientific theory that 'plant-based collagen' or 'plant-based collagen amino acids' exist. When that theory is properly disregarded, it becomes clear that, based on the evidence, a reasonable jury could find that the Plaintiffs

purchased Defendant's skincare products under the mistaken belief that they contained collagen due to the products false or misleading label and suffered damages in the form of a price premium associated with the 'collagen' claim," the court says.

After more than three years of motion practice and discovery, DDG seems intent on continuing to fight. The plaintiffs note in a 14 April [joint case management statement](#), "Defendant has indicated that it anticipates producing supplemental document production, which Defendant expects to consist of thousands of pages. Defendant also indicated that this production may include additional documents from Defendant's vendor, Active Concepts, LLC."

There's still a long and involved road ahead to reach the 4 November 2024 jury trial penciled into the parties' proposed timetable.