

Ninth Circuit Enjoys Itself While Narrowing When Literal Falsity Might Be a Defense

by Katie Bond and Samuel A. Butler

In *Panelli v. Target Corp.*, No. 24-6640 (9th Cir. Apr. 17, 2026), the Ninth Circuit reversed dismissal of a false advertising case on thread count claims for bed sheets. With a few textile puns sewn in, the case serves as a reminder that consumers not knowing what they don't know isn't necessarily a sound defense.

The plaintiff pointed to claims on the packaging of bedsheets stating, "800 Thread Count Sheet Set" and "100% cotton sateen." He further argued that "high thread counts have come to mean high quality sheets" that are "softer" and "more supple," but that "it is physically impossible for cotton threads to be fine enough to allow for 600 or more threads in a single square inch of cotton fabric." The Ninth Circuit summarized the situation succinctly as the plaintiff believing he was "getting high-thread count bedding" while "the reality was considerably rougher."

Although an enlightening read in terms of how the Ninth Circuit thinks about literal falsity, the case really turned on what the Ninth Circuit thinks consumers know about the foraging habits of bees versus textile manufacturing. In the bedsheets case, the lower court had dismissed, believing it was applying the Ninth Circuit's decision in *Moore v. Trader Joe's Co.*, 4 F. 4th. 874 (9th Cir. 2021), a case about a claim for honey. Specifically, the lower court in the bedsheets case held that, based on *Moore*, what is known about the limitations of cotton and thread count is "contextual information" that prevents a reasonable consumer "from reaching an implausible" conclusion that the "800 Thread Count" claim was indeed accurate.

The Ninth Circuit disagreed with that analysis, finding that the lower court "overlook[ed] analytical steps required under *Moore*." The Ninth Circuit then reviewed the steps it took in *Moore*. In that case, the plaintiff alleged that the claim "100% New Zealand Manuka honey" deceives consumers to believe that the honey being sold is entirely derived from Manuka flower nectar. The Ninth Circuit, first, determined that the claim was ambiguous where it could mean, for instance, "100% derived from the Manuka flower," or "that 100% of the honey was from New Zealand." The Ninth Circuit next reasoned that, given the claim's ambiguity, consumers "would necessarily require more information" before they could determine the meaning. According to the Ninth Circuit, in the case of honey, "such contextual clues" would include the "low price" of the honey and the "impossibility of" controlling entirely where, and on what types of flowers, bees forage. Those "contextual clues" would then dissuade consumers from believing "100% New Zealand Manuka honey" to mean honey entirely from Manuka flower nectar.

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In the bedsheets case, the Ninth Circuit found that the lower court “skipped a step [from *Moore*] by not analyzing whether the label was ambiguous.” Moreover, according to the Ninth Circuit, if the lower court had taken that step, it would have realized that the claim “800 Thread Count Sheet Set” is “*not* ambiguous,” meaning consumers would “not need other information to determine what the claim was representing.”

The defense had argued that “800 Thread Count Sheet Set” is indeed ambiguous given there are “multiple methods” to assess thread count. But, the Ninth Circuit found a “loose thread in [that] argument” where, as with the limitations of cotton and thread count, a “reasonable consumer” is unlikely to “know there are multiple thread-counting methodologies.” While the Ninth Circuit believed a “vast majority of consumers” would be “familiar with the biological nature of bees” and the inability “to exercise complete control over where bees forage,” it believed when “strolling the bedding aisle,” a consumer is likely to know only that “a higher thread count” indicates “a higher quality sheet”—meaning any thread count claim would be taken at face value.

In reversing dismissal of the bedsheets case, the Ninth Circuit agreed with the plaintiff and an amicus brief filed by the State of California that “the district court’s reading of *Moore* would create an aberrant framework” where “partially false advertising would be actionable but wholesale falsity would not.” Under such a framework, “manufacturers would face no liability for false advertising so long as the claims were wholly false—regardless of whether this falsity is generally knowable to consumers.”

The Ninth Circuit, finally, further justified its holding by “weaving [prior] caselaw together” to conclude that “[a]llegations of literal falsity are the most actionable variety of consumer protection claims on California’s spectrum of actionability.” As examples, the court pointed to a case on the term “flushable” and a case on how the name “One-A-Day” would clearly convey to take one gummy vitamin per day. The Ninth Circuit, to be sure, conceded that occasionally a “claim may be so clearly false that no reasonable consumer would be deceived by it,” but it deemed that type of “non-actionable claims of literal falsity” to be a “narrow category.” To illustrate that rare type of literal falsity, it pointed to a case on Cap’n Crunch Berries cereal where a court held that “no reasonable consumer would believe” that the cereal contains real berries.

Again, the discussion in *Panelli* of literal falsity is a helpful one. But, after reading the decision, one is left to wonder why the Ninth Circuit took it as gospel that broad consumer knowledge exists as to bee foraging, but not textile manufacturing. The best lesson there may be that in assessing whether an advertising claim might be defensible, there will always be risk in assuming broad consumer knowledge of obscure matters. Regardless of any foibles in *Panelli* around what consumers might know or not, the decision likely makes the “contextual information” aspect of *Moore* a more precarious defense.