



Texas Pete Hot Sauce the Latest Victim in Exploding Trend of Cynical False Labeling Lawsuits

Christian Britschgi

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Californian Phillip White has a problem. He's been hoodwinked by supposedly misleading labels into buying products he'd otherwise pass on. As a result, the litigious White has filed a class-action lawsuit against a manufacturer claiming damages for its deceptive branding.

Earlier this month, White made a splash in the headlines with a lawsuit targeting the makers of Texas Pete Hot Sauce for allegedly trying to pass off theirs as an authentic product of the Lone Star State, when, in fact, it's Louisiana-style hot sauce made in North Carolina.

Had White known it was from North Carolina, his September lawsuit claims, he would have left it on the shelf at a Los Angeles Ralphs grocery store instead of shelling out \$3 for it. Now having learned that "there is nothing 'Texas' about Texas Pete," White is demanding hot sauce maker T.W. Garner Food Company compensate him, and all other similarly deceived consumers, for their ill-gotten gains.

"The geographic origin of a product matters to consumers, and a company is therefore prohibited from misrepresenting it," reads White's complaint, which claims that T.W. Garner Food Company has "cheated its way to a market-leading position in the \$3 billion-dollar hot-sauce industry at the expense of law-abiding competitors and consumers nationwide."

White's lawsuit concedes that the hot sauce's North Carolina origins are stated on the label. But he argues that's not enough to avoid misleading consumers. As evidence, his complaint cites a TikTok video of a man reacting with shock at the fact that Texas Pete isn't from Texas.

The Texas Pete lawsuit seems not to be White's first rodeo. Federal court records show at least two other mislabeling lawsuits filed by a Phillip White of California within the last two years.

That includes a June 2020 class-action lawsuit in which White claims he was tricked into purchasing a \$12 container of Benefiber fiber supplement at a Santa Clara Target based on the supposedly misleading claim that the product was 100 percent natural. In fact, reads the complaint,

Benefiber maker GlaxoSmithKline Consumer Healthcare Holdings uses a multistep chemical process to create its "100 %" natural products.

An October 2021 class-action lawsuit from a Phillip White seeks damages for the supposedly misleading labeling that tricked him into purchasing a \$5 "reef safe" Kroger-branded sunscreen from a San Mateo County Kroger store. It claims the product contains chemicals that could still harm reefs.

In all three of these cases, the plaintiff is represented by Malibu-based Clarkson Law Firm, which has a steady, growing business filing lawsuits claiming that food and consumer goods manufacturers' branding is misleading or deceptive in some way.

Federal court records show the firm's founder, Ryan Clarkson, is listed as an attorney on nearly a dozen lawsuits targeting the makers of food, vitamins, and other consumer packaged products for deceptive branding in 2022 alone.

In addition to the Texas Pete complaint, Clarkson's law firm is suing pasta maker Barilla for allegedly tricking customers into thinking its products are made in Italy. He's taking on Whole Foods for packaging its macaroni in opaque half-empty boxes that make consumers think they're getting more noodles than they really are. (The weight of the noodles is still listed on the outside of the box.)

Snapple, and parent company Dr. Pepper, are also being targeted with a lawsuit for adding coloring to their "all natural" drinks.

Clarkson's firm is even going after the sanitary product maker Honest Company for not being so honest about the plant-based nature of its cleaning wipes. Aldi, Costco, and Albertsons have all also been sued by the firm for putting "dolphin-safe" labels on their tuna despite allegedly purchasing from fisheries that use methods that can still ensnare dolphins.

On his firm's website, Clarkson describes his practice as a public interest law firm that works "with clients whose cases can potentially contribute to our broader goal of building a fairer future for everyone."

He expresses particular pride in his lawsuits targeting opaque packaging.

"It's a sneaky way for [corporations] to pass their own cost increases on to the consumer by selling less food in larger containers," he says in a Q&A posted to his firm's website. "Cases like these have enabled us to help educate consumers so they're aware of it when making their purchase decisions."

Walter Olson, a legal expert at the Cato Institute, describes this as the "invisible fist" school of consumer protection. And he says it's less public-spirited than Clarkson claims.

In the U.S., the policing of misleading labels is mostly done though "a legal process driven by lawyers really in it for the money. [We] hope that it will somehow or another coincide with the

public interest," Olson tells *Reason*. The theory is "the harder they litigate, the more perfect the environment for the consumers. It doesn't work very well in general."

Clarkson's practice appears to be ramping up its activity in the young, growing industry of food and beverage class-action lawsuits. In 2008, only 19 of these class-action lawsuits were filed. By 2021, that number was up to 325, according to the law firm Perkins Coie, which has defended food companies in these suits.

Perkins Coie largely credits/blames the explosion of class-action labeling lawsuits on pioneering New York-based attorney Spencer Sheehan.

According to an October 2021 NPR profile, Sheehan has filed over 400 labeling lawsuits, including 120 targeting companies for allegedly misusing "vanilla" on their labels. (Roughly a quarter of labeling lawsuits in 2020 alleged misuse of the term *vanilla*.)

He was also behind (now dismissed) lawsuits claiming White Kit Kats and Reese's were misleading because they didn't contain real white chocolate.

Sheehan's lawsuits make hyper-technical claims about how this or that label is misleading, while also waxing poetic about the challenged ingredients to illustrate the high cost of corporate deception.

A favorite factoid appearing in many of Sheehan's lawsuits is that Thomas Jefferson (referred to as the author of the U.S. Constitution in one complaint) was a fan of real vanilla ice cream. Today's consumers are being bilked by getting only artificial vanillin-flavored products, the suit argues.

Sheehan, like Clarkson, claims that he's sticking up for the little guy. Deceptive labeling leads consumers to pay a premium for products they mistakenly think are imported, "all-natural," "aged," etc.

But there's obviously a lot of self-interest involved in these suits. While the damage to individual consumers is small, the attorneys filing these class-action lawsuits can lay claim to a large percentage of any settlement. Large corporations often find it cheaper to settle than to fight these lawsuits, even if they'll ultimately prevail.

"To whirl up the machinery of a litigation department is expensive and time-consuming for the company," said Perkins Coie attorney Tommy Tobin to NPR.

These class-action lawsuits also raise an institutional problem with the courts, says Olson, "when no one is actually asking what consumers think, but it's instead done by lawyers who are given this odd privilege of claiming to speak for millions of people without actually consulting them."

And while these lawsuits are billed as pro-consumer, the costs of the litigation are ultimately reflected in higher food prices, Olson adds.

There's some evidence that courts are getting tired of hearing these lawsuits, too. A Perkins Coie report on food and packaged goods litigation notes that 2021 saw a number of appellate court rulings favorable to manufacturers.

One 9th Circuit Court of Appeals opinion—in a lawsuit targeting Trader Joe's honey—found that both contextual clues about a product's quality and supplemental information presented on the label should be considered when determining if particular branding is false or misleading.

That decision could lead to more lawsuits like the one challenging Texas Pete hot sauce being more quickly dismissed. (In that lawsuit, Clarkson's firm is arguing that supplemental declarations that the product is made in North Carolina don't save the Texas Pete branding from being misleading.)

These lawsuits will persist given how hard it is to craft clear standards around what should be considered legal, if not literally true, marketing claims ("world-famous coffee") versus illegal deceptive claims, says Olson. But policing fraud nevertheless requires some lines to be drawn.

He suggests reforming the class-action system so that consumers have to affirmatively opt into these lawsuits, and the losers have to pay the other party's legal fees. That would potentially clamp down on some of the more frivolous suits. But there doesn't appear to be much political willingness for broader reform.

Taking things out of the courts entirely and instead relying on regulatory agencies to enforce labeling standards hasn't worked incredibly well either, where it's been tried. Consider the Food and Drug Administration's coming crackdown on nondairy almond and oat milks.

So for the foreseeable future, we can expect more lawsuits from aggrieved consumers angry that Coors doesn't actually contain any silver bullets.