SPC Guiding Case No. 60: The Dongtai Branch of Yancheng Aokang Food Co., Ltd. v. Yancheng Dongtai Administration for Industry and Commerce (Industrial and Commercial Administrative Penalty)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on May 20, 2016.

Keywords

Administrative / administrative penalty / food safety standard / food label / food instructions

Holding

1. Where a food operator specially emphasizes on the food label or food instructions that one or more valuable ingredients or constituents with distinctive characteristics have been added or are contained, the food operator shall indicate the amount added or the content of the emphasized ingredients or constituents. Failure to do so constitutes a violation of the Food Safety Law of the People's Republic of China, and where the administration for industry and commerce imposes an administrative penalty in accordance with the law, the people's court shall uphold it.

2. "Emphasis" means making a marked identification through such means as the name, color contrast, typeface, font size, graphics, order of arrangement, textual description, repeated appearance of the same content, or multiple items of content all pointing to the same matter. "Valuable ingredients or constituents with distinctive characteristics" means special ingredients or constituents that differ from ordinary ones, have a relatively high nutritional effect on the human body, and whose market price and nutritional content are generally higher than those of other ingredients or constituents.

Basic Facts

The plaintiff, the Dongtai Branch of Yancheng Aokang Food Co., Ltd. ("Aokang"), alleged as follows. On May 15, 2012, the defendant, the Yancheng Dongtai Administration for Industry and Commerce ("Dongtai AIC"), issued Administrative Penalty Decision Dong Gong Shang An Zi [2012] No. 00298, finding that the "Golden Arowana Olive Original-Aroma Blended Edible Oil" sold by the plaintiff failed to indicate the content of olive oil, thereby violating GB7718-2004, the General Rules for the Labeling of Prepackaged Foods, ordering it to make corrections and imposing a combined fine and confiscation of RMB 60,000. The plaintiff argued that the words "olive original aroma" on the label of the blended edible oil it marketed were an objective description of the physical properties of the product, rather than an emphasis on a particular ingredient, so there was no need to indicate the content or the amount added. Olive oil is an ordinary edible-oil ingredient like the other ingredients, rapeseed oil and soybean oil, and has no special efficacy or value, and is not a "valuable ingredient or constituent with distinctive characteristics." The case should apply the national food safety standards promulgated by the health administration department of the State Council as provided in the Food Safety Law of the People's Republic of China (the "Food Safety Law"), whereas GB7718-2004 applied by the defendant is not a national food safety standard, and the application of law was erroneous. It therefore requested the court to revoke the administrative penalty decision.

The defendant, Dongtai AIC, argued as follows. On the front of the label of the Golden Arowana-brand olive original-aroma blended edible oil marketed by Aokang, the characters "olive" were prominently featured and accompanied by an olive graphic, and the tag stated "added with 100% extra virgin olive oil from Italy," without indicating the amount added. This falls under the situation in which a food label specially emphasizes

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the addition of a valuable ingredient or constituent with distinctive characteristics without indicating the amount added. As a mandatory standard for food labeling, GB7718-2004 was deemed one of the food safety standards after the Food Safety Law took effect, until it was replaced by GB7718-2011. Accordingly, the administrative penalty decision it rendered was accurate in characterization, reasonable and appropriate, and lawful in procedure, and it requested the court to uphold it.

The court found upon trial as follows. From September 1, 2011 to February 29, 2012, Aokang purchased 290 bottles of Golden Arowana-brand olive original-aroma blended edible oil with a net content of 5 liters, and sold them at a markup to Qianjiahui Supermarket, obtaining sales revenue of RMB 34,800 and net profit of RMB 2,836.9. On February 21, 2012, law enforcement personnel of Dongtai AIC, during an inspection at Qianjiahui Supermarket, discovered that the above Golden Arowana-brand olive original-aroma blended edible oil did not indicate the amount of olive oil added. The product was named “Olive Original-Aroma Blended Edible Oil,” its label bore the characters “olive” accompanied by an olive graphic, the side of the label indicated “Ingredients: rapeseed oil, soybean oil, olive oil,” and the tag stated: “Golden Arowana olive original-aroma blended edible oil, added with 100% extra virgin olive oil from Italy, exuding a faint fragrance of olive fruit. In addition to being rich in various vitamins, monounsaturated fatty acids and other healthy substances, its olive original essence contains natural antioxidant components such as polyphenols, satisfying the pursuit of a natural, healthy, high-quality life.”

Dongtai AIC filed the case for investigation on February 27, 2012, and on May 9 served the notice of the administrative-penalty hearing on Aokang. The plaintiff neither submitted a statement or defense within the statutory period nor requested a hearing. On May 15, the defendant served Administrative Penalty Decision Dong Gong Shang An Zi [2012] No. 298 on the plaintiff, finding that the plaintiff marketed food whose label did not comply with the Food Safety Law, constituting the situation of specially emphasizing on the food label the addition of a valuable ingredient or constituent with distinctive characteristics without indicating the amount added. Pursuant to the Administrative Penalty Law of the People’s Republic of China and the Food Safety Law, it ordered correction, confiscation of illegal gains of RMB 2,836.9, and a fine of RMB 57,163.1, totaling a combined fine and confiscation of RMB 60,000. The plaintiff was dissatisfied and applied for administrative reconsideration, and the Yancheng Administration for Industry and Commerce upheld the penalty decision.

Judgment

On December 15, 2012, the People’s Court of Dongtai City, Jiangsu Province rendered Administrative Judgment (2012) Dong Xing Chu Zi No. 0068, upholding Administrative Penalty Decision Dong Gong Shang An Zi [2012] No. 00298 issued by Dongtai AIC on May 15, 2012. After the judgment was pronounced, Aokang appealed to the Intermediate People’s Court of Yancheng City, Jiangsu Province. On May 9, 2013, the Intermediate People’s Court of Yancheng City, Jiangsu Province rendered Administrative Judgment (2013) Yan Xing Zhong Zi No. 0032, affirming the first-instance judgment.

Reasoning

The effective judgment held as follows. Article 20(4) of the Food Safety Law provides that food safety standards shall include requirements concerning labels, markings, and instructions related to food safety and nutrition. Article 22 provides that, before the national food safety standards provided in this Law are published, food producers and operators shall produce and operate food in accordance with the current quality and safety standards for edible agricultural products, food hygiene standards, food quality standards, and relevant industry standards for food. GB7718-2004 was formulated by the General Administration of Quality Supervision, Inspection and Quarantine and the Standardization Administration of China, and came into effect on October 1, 2005. The Food Safety Law came into effect on June 1, 2009, and the new version, GB7718-2011, was formulated by the health administration department of the State Council, expressly designated as a national food safety standard, and came into effect on April 20, 2012. In this case, Aokang’s illegal acts occurred between September 2011 and February 2012, and GB7718-2004 was one of the

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then-current national food safety standards. Therefore, Dongtai AIC did not err in applying GB7718-2004 in imposing the administrative penalty on the plaintiff.

GB7718-2004 provides: “No content on the label of a prepackaged food may introduce the food by means of false, misleading or deceptive words, graphics or other means; nor may font size or color contrast be used to mislead consumers.” “If a food label or food instructions specially emphasize the addition of one or several valuable ingredients or constituents with distinctive characteristics, the amount added of the emphasized ingredients or constituents shall be indicated.” “Emphasis” here means special stress or highlighted mention. Generally, presenting something through the name, color contrast, typeface, font size, graphics, order of arrangement, textual description, repeated appearance of the same content, or multiple items of content all pointing to the same matter may all be understood as emphasis on that matter. “Valuable ingredients or constituents with distinctive characteristics” means special ingredients or constituents that have a relatively high nutritional effect on the human body and that themselves differ from ordinary ingredients or constituents. As commonly understood, the market price or nutritional content of such ingredients or constituents should be higher than that of other ingredients or constituents. In this case, Aokang argued that “olive original aroma” was an objective description of the product’s physical properties and not an emphasis on a particular ingredient. However, looking at the outer packaging of the Golden Arowana-brand olive original-aroma blended edible oil sold by the plaintiff, its label highlighted the characters “olive” by means of graphics, typeface and textual description, emphasizing that this blended edible oil had the ingredient olive oil added, and the tag (which forms part of the food label) contained the text “added with 100% extra virgin olive oil from Italy,” clearly emphasizing to consumers that the product had the ingredient olive oil added. This practice in itself actually emphasized the value and characteristics of “olive” in the product. Generally, the market price or nutritional effect of olive oil is higher than that of ordinary soybean oil and rapeseed oil; therefore, where olive oil is added to a blended edible oil, olive oil may be found to be a “valuable ingredient or constituent with distinctive characteristics.” Consequently, Aokang’s failure to indicate the amount of olive oil added constituted a violation of the food safety standards. The administrative penalty decision made by Dongtai AIC had a factual and legal basis and should be upheld.

(Judges of the effective judgment: Liu Hong, Wang Weihua, Zhou He)

Relevant Legal Provisions

Articles 20 and 42(1) of the Food Safety Law of the People’s Republic of China (the Law was revised on April 24, 2015; the corresponding provisions of the new Law are Articles 26 and 67(1)).

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