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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

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## Walgreens Dodges Suit From Private-Label Food Co.

By **Celeste Bott**

Law360, Chicago (April 4, 2019, 6:22 PM EDT) -- Walgreens Thursday dodged claims it forced a frozen food company to foot the bill for an expensive packaging redesign shortly before phasing out the product, as an Illinois state court said the company hadn't shown how it was damaged.

Philadelphia-based Leonetti's Frozen Foods Inc., which made cheesesteaks sold under the drug store chain's private-label "Nice!" brand, hasn't adequately shown how it was harmed when Walgreens phased out its private-label foods, Cook County District Judge Diane Shelley said at a hearing.

During the hearing, Walgreen Co. argued that although it did business with Leonetti's for eight years, nothing in their written agreement required it to keep buying Leonetti's cheesesteaks. Walgreens counsel Rachael Blackburn of A&G Law LLC said the contract had no such requirement and Leonetti's didn't show the written contract was invalid.

Leonetti's counsel, Suzanne M. Alton de Eraso of Benesch Friedlander Coplan & Aronoff LLP, accused Walgreens of using the contract as a "shield" to avoid paying for a packaging redesign.

After the hearing, David S. Almeida, another attorney for Leonetti's, said another amended complaint will likely be filed but declined further comment.

A spokesperson for Walgreens did not immediately respond to requests for comment on the ruling.

In its October complaint, Leonetti's claimed Walgreens knew in 2017 it would be discontinuing a "failed strategy" to compete with the likes of Trader Joe's and Costco through its own private-label food products. Yet Walgreen's still pushed Leonetti's to invest in a redesign for the cheesesteaks with reassurances they would be sold for years to come, it claimed.

"While Walgreens management elected to focus on branded food products, it evidently did not inform its private-label employees of that fact, since those employees communicated to Leonetti's a very different message," according to the complaint.

It said misrepresentation by Walgreens ended up killing about a third of its business and left it stranded with packaging materials for thousands of sandwiches that would never be sold. It claimed breach of contract, unjust enrichment, negligent misrepresentation and promissory estoppel.

But the contract doesn't allow for oral modifications, and any supposed reassurances from Walgreens employees aren't enough to support a fraudulent misrepresentation claim, the drug store chain said in a motion to strike the complaint.

"In two rounds of verified pleadings, Leonetti's has not alleged that Walgreens failed to pay for a single sandwich it ordered and received from Leonetti's," the motion said. "Instead, Leonetti's sues over product it says it was prepared to sell, but Walgreens never ordered."

Leonetti's is represented by David S. Almeida, Suzanne M. Alton de Eraso and Trevor J. Illes of Benesch Friedlander Coplan & Aronoff LLP.

Walgreens is represented by Robert M. Andalman, Rachael Blackburn and Candace Gaston Turner of A&G Law LLC.

The case is Leonetti's Frozen Foods Inc. v. Walgreen Co., case number 2018-L-010721, in Cook County Circuit Court.

--Editing by Jay Jackson Jr.