

2nd Circ. Erases Injunction In Pet Supplement False Ad Fight

By Adam Lidgett

Law360 (October 3, 2025, 7:48 PM EDT) -- The Second Circuit on Friday undid a lower court order blocking Zesty Paws from billing itself in ads as the top U.S. pet supplement brand, saying it didn't apply the proper standard correctly.

A three-judge panel of the circuit court vacated the district court's order granting Nutramax's bid for a preliminary injunction in its declaratory judgment case against Zesty Paws.

About two years ago, Zesty Paws started to advertise that it was "the #1 selling pet supplement brand in the United States," and Nutramax said it was an indisputably untrue statement given that Nutramax's combined sales outdid the sales of Zesty Paws products, according to court documents.

The lower court said the claims about being No. 1 "were likely literally false," so it awarded the injunction. But the appellate panel said that standard relating to literal falsity was incorrectly applied, noting that Nutramax would have had to show those claims "are not also susceptible to" Zesty Paw's interpretation "that the #1 claims compared the Zesty Paws brand to only the individual brands of pet supplements Nutramax sells."

The panel said "Nutramax must demonstrate that the #1 claims are so unambiguous that a reasonable consumer could not share Zesty Paws's interpretation," and remanded the issue back to the lower court.

Zesty Paws and Nutramax both compete on the market for supplements meant for dogs and cats. Zesty Paws launched a declaratory judgment action in New York federal court in December 2023.

Zesty Paws' suit specifically seeks a declaration that its claims about being the top-selling supplement brand in the U.S. are not false and misleading. The suit said Nutramax has made "baseless accusations and threats of litigation" and said Zesty Paws was under threat of facing a false advertising suit from Nutramax.

But Nutramax shot back with counterclaims, as well as a bid for a preliminary injunction. The lower court granted the injunction request at issue, finding that Nutramax was likely to win on its false advertising allegations, which were brought under the Lanham Act, according to court records.

"The Second Circuit had not vacated an injunction on literal falsity in almost 40 years, and we're thrilled the panel took careful consideration of all the facts to find entirely for our client," Steven N. Feldman, an attorney for Zesty Paws, said in a statement to Law360 on Friday

Counsel for Nutramax did not immediately respond to requests for comment.

U.S. Circuit Judges Joseph F. Bianco, Steven Menashi and Eunice C. Lee sat on the panel.

Nutramax is represented by Jason D. Rosenberg, John E. Stephenson Jr., Alan F. Pryor, Uly S. Gunn, Mary G. Gallagher, Natalie C. Clayton and Kirk T. Bradley of Alston & Bird LLP.

Zesty Paws is represented by Michael E. Bern, Steven N. Feldman and Matthew W. Walch of Latham & Watkins LLP.

The Zesty Paws LLC v. Nutramax Laboratories Inc., case number 24-1810, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Abbie Sarfo.