

RETURN DATE: June <sup>23</sup> ~~16~~, 2009

KANGADIS FOOD, INC. D/B/A THE GOURMET FACTORY

v.

JERRY FARRELL, JR., IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF CONSUMER PROTECTION

:  
:  
: SUPERIOR COURT  
:  
: JUDICIAL DISTRICT OF HARTFORD  
:  
:  
:  
: June 1, 2009

**COMPLAINT**

**FIRST COUNT**

*(Declaratory Relief - Conn. Gen. Stat. § 4-175 and/or § 52-29)*

1. The plaintiff Kangadis Food, Inc. d/b/a The Gourmet Factory ("The Gourmet Factory") is a corporation organized and existing under the laws of the State of New York with its principal place of business located in Queens, New York.

2. The Gourmet Factory imports and sells olive oil in the United States, including Connecticut.

3. The defendant Jerry Farrell, Jr. ("the Commissioner") is, and at all times relevant to the allegations herein stated has been, the Commissioner of the Connecticut Department of Consumer Protection ("DCP").

4. DCP is an agency of the executive branch of Connecticut state government authorized pursuant to Connecticut General Statutes § 21a-1 et seq.

5. The Gourmet Factory petitioned DCP for a declaratory ruling concerning the validity of the State Olive Oil Standards on April 2, 2009.

6. Article Second of the Connecticut Constitution provides for a division of governmental power among the executive, legislative and judicial departments.

7. Article Second, as amended by Article XVIII of Amendments to the Constitution of the State of Connecticut, further provides that the legislative department of government may delegate regulatory authority to the executive department through express legislative enactments.

8. The General Assembly granted DCP limited regulatory authority to implement standards of identity for food products in General Statutes § 21a-100. Section 21a-100 reads in relevant part:

...Whenever the commissioner and director agree that such action will promote honesty and fair dealing in the interest of consumers, they, acting jointly may promulgate regulations establishing definitions and standards of identity, quality and fill of container for foods where no federal regulations exist. ...

(emphasis added)

9. On or about July 3, 2007, DCP published notice of its intent to issue standards of identity for olive oil, which it proposed to set forth in Conn. Agencies Regs. §§ 21a-100-7 through 21a-100-10 (the "State Olive Oil Standards"). A copy of this notice is attached hereto as Exhibit A.

10. On or about January 22, 2008, the proposed State Olive Oil Standards were scheduled for a hearing before the Connecticut General Assembly's Legislative Regulation Review Committee.

11. In advance of this hearing, the proposed State Olive Oil Standards were reviewed by the non-partisan Legislative Commissioner's Office.

12. On or about January 9, 2008, the Legislative Commissioner's Office issued a memorandum to the Legislative Regulation Review Committee recommending that the proposed State Olive Oil Standards be rejected. A copy of this memorandum is attached hereto as Exhibit B.

13. On or about May 7, 2008, six state senators proposed an amendment to Raised Senate Bill No. 420, entitled An Act Concerning Revisions to the Statutes of the Office of Health Care Access, which amendment would have directed the Commissioner to adopt the IOC standards of identity as the state's standards of identity for olive oil. A copy of this amendment is attached hereto as Exhibit C.

14. This amendment was not called, and the bill was passed unanimously in the senate without the amendment and the State Olive Oil Standards were adopted as proposed.

15. On or about October 28, 2008, the Legislative Review Committee approved the DCP's proposed State Olive Oil Standards.

16. The regulations implementing the State Olive Oil Standards are invalid because the Commissioner exceeded his statutory authority set forth in Conn. Gen. Stat. § 21a-100 because federal standards of identity for olive oil exist and have existed since about 1948.

17. Pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq., the United States Congress directed the Secretary of Agriculture to develop and improve standards of quality, condition, quantity, grade and packaging, and recommend and demonstrate such standards.

18. The purpose of this prescription was to encourage uniformity and consistency in commercial practices across the United States.

19. In or about 1948, the Secretary of Agriculture issued the United States Standards for Grades of Olive Oil ("Federal Olive Oil Standards") under the authority of the Agricultural Marketing Act of 1946. A copy of these standards is attached hereto as **Exhibit D.**

20. The Federal Olive Oil Standards prescribed four different grades of olive oil based upon such factors as fatty acid content, color, flavor, odor, cloudiness and sediment content. They further identified the procedures for ascertaining the grade of a lot of olive oil.

21. On or about November 8, 2004, the Agriculture Marketing Service of the United States Department of Agriculture ("AMS") published notice that it had received a petition from the California Olive Oil Council to revise the Federal Olive Oil Standards to employ and define the terms used commercially in the marketplace. A copy of this notice is attached hereto as **Exhibit E**.

22. On or about June 2, 2008, AMS published notice of proposed revisions to the Federal Olive Oil Standards, which included new product descriptions, definitions, and requirements for the following grade designations: "U.S. Extra Virgin Olive Oil," "U.S. Virgin Olive Oil," "U.S. Lampante Virgin Olive Oil – Not Fit For Human Consumption," "U.S. Refined Olive Oil," "U.S. Olive Oil," "U.S. Olive-Pomace Oil," and "U.S. Crude Olive-Pomace Oil."

a. A copy of this notice is attached hereto as **Exhibit F**.

b. A copy of the proposed revised Federal Olive Oil Standards is attached hereto as **Exhibit G**.

23. AMS stated that the proposed revisions to the Federal Olive Oil Standards were intended to provide a uniform language for commerce and facilitate the marketing of olive oil and olive-pomace oil.

24. The Federal Olive Oil Standards existed at the time that DCP enacted the State Olive Oil Standards. Therefore, the Commissioner exceeded his authority under

Conn. Gen. Stat. § 21a-100, which only allows the Commissioner to implement standards of identity in areas where the federal government has not published its own such standards.

**SECOND COUNT**

*(Declaratory Relief - Conn. Gen. Stat. § 4-175 and/or § 52-29)*

1-23. The Gourmet Factory re-alleges paragraphs 1-23 of the First Count as paragraphs 1-23 of this Second Count.

24. The State Olive Oil Standards are invalid because they violate Article VI cl. 2 of the United States Constitution, the Supremacy Clause. The Federal Olive Oil Standards preempt the State Olive Oil Standards.

**THIRD COUNT**

*(Declaratory Relief - Conn. Gen. Stat. § 4-175 and/or § 52-29)*

1-23. The Gourmet Factory re-alleges paragraphs 1-23 of the First Count as paragraphs 1-23 of this Third Count.

24. The State Olive Oil Standards read in relevant part:

The Commissioner of Consumer Protection and the Director of The Connecticut Agricultural Experiment Station shall require that olive oil presented and sold for human consumption in intrastate commerce in the state of Connecticut shall meet the International Olive Council standards, COI/T.15/NC no.3/Rev. 2, entitled "Trade Standard Applying to Olive Oils and Olive-Pomace Oils," as amended from time to time, or the standard of identity for olive oil as adopted by the United States Food and Drug Administration when such standards have been adopted.

(Conn. Agencies Regs. §21a-100-10(a)) (emphasis added).

25. Upon information and belief, the IOC is an intergovernmental organization comprised of forty one member nations that produce olives and/or olive oil.

26. The United States is not, and never has been, a member of the IOC.

27. Any amendment of the IOC olive oil standards necessarily amends the State Olive Oil Standards.

28. Conn. Gen. Stat. § 4-166 *et seq.*, the Uniform Administrative Procedure Act (“UAPA”), requires state agencies to provide a public notice and comment period before amending any regulations.

29. The State Olive Oil Standards violate the UAPA because the IOC standards may change the State Olive Oil Standards from time to time without notice and public comment.

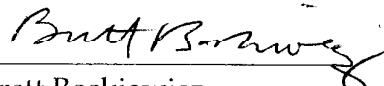
30. The State Olive Oil Standards are also invalid because the Commissioner impermissibly delegated his limited rule-making authority to the IOC by allowing the State Olive Oil Standards to change based on the IOC’s amendments to the IOC standards of identity for olive oil.

**PRAYER FOR RELIEF**

**WHEREFORE**, The Gourmet Factory prays for judgment as follows:

1. Preliminary injunctive relief as provided for in Connecticut General Statutes § 2-473 and elsewhere in the law;
2. Permanent injunctive relief as provided for in Connecticut General Statutes § 52-473 and elsewhere in the law;
3. A judgment, pursuant to Connecticut General Statutes § 4-175 and/or § 52-29, declaring that Connecticut Agencies Regulations §§ 21a-100-7 through §§ 21a-100-10 are unlawful, void and unenforceable.
4. Such other relief as the Court may deem just and proper.

**PLAINTIFF  
KANGADIS FOOD, INC. D/B/A  
THE GOURMET FACTORY**

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