

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

COUNCIL FOR RESPONSIBLE NUTRITION

Plaintiff,

v.

LETITIA JAMES, in her official capacity as New
York Attorney General,

Defendant.

JURY DEMANDED

Case No. 1:24-cv-01881-ALC

PLAINTIFF’S MOTION FOR CLARIFICATION

By Opinion and Order dated April 19, 2024, the Court denied the Motion for Preliminary Injunction filed by Plaintiff, Council for Responsible Nutrition (“CRN”), in which CRN sought to preliminarily enjoin enforcement of NY Gen. Bus. Law 391-oo (the “Act”) on the grounds of several Constitutional infirmities. In its Opinion, the Court rejected CRN’s claim “that the Act does not impose restrictions based on anything inherent to a product itself, but restricts access based purely on what has been *said* about the product or its ingredients in the labeling, marketing, or advertising of the products.” (Opinion at 11.) The Court called this a “misreading of the legislation,” on the grounds that the Act “does in fact impose age-based restrictions for products that contain ‘an ingredient approved by the federal Food and Drug Administration for weight loss or muscle building; a steroid; or creatine, green tea extract, raspberry ketone, garcinia cambogia, and green tea coffee bean extract.’” (*Id.* at 11-12, quoting NY GBL 391-oo(6)(a)(i)-(iii).) Then as to the clearly speech-related consideration that the Act enumerates (i.e., “whether the labeling, marketing, grouping, or representation of products outside of the scope of the listed ingredients bears statements of images that express or imply that the product will help: ‘modify, maintain, or

reduce body weight, fat, appetite, overall metabolism, or the process by which nutrients are metabolized, maintain or increase muscle or strength”), the Opinion notes only that courts “*may consider*” this speech-related factor in assessing claims under the Act. (*Id.* at 12 (emphasis in original).)

Given the Court’s statement that “the plain language of the Statute is uncompromisingly clear” (*id.* at 20), CRN respectfully seeks clarification from the Court as to whether the proper reading of the Act is that its age-based restrictions are limited only to products that “contain ‘an ingredient approved by the federal Food and Drug Administration for weight loss or muscle building; a steroid; or creatine, green tea extract, raspberry ketone, garcinia cambogia, and green tea coffee bean extract.’” And, if not, what is the “clear” reading of the statute. This clarification is necessary to allow CRN’s members to ensure compliance with the Act. *See, e.g., N.A. Sales Co. v. Chapman Indus. Corp.*, 736 F.2d 854, 858 (2d Cir. 1984) (clarification of court orders is encouraged where uncertainty surrounds directive from the court).

Dated: April 22, 2024

Respectfully submitted,

COZEN O’CONNOR



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