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COMMENTARY

*When the Dog Food Fights Back: A False Advertising Feud
Between Two Dog Food Companies*

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Background

In February 2024, KetoNatural Pet Foods, Inc., (“KetoNatural”) brought a federal class action¹ lawsuit against Hill’s Pet Nutrition, Inc. (“Hill’s”) in the District of Kansas.² KetoNatural argued that Hill’s was conducting false advertising in violation of the Lanham Act³ by falsely representing to the public and veterinarians that “boutique, exotic, and grain-free” (“BEG”) dog food diets cause a canine heart disease known as canine dilated cardiomyopathy (“DCM”). The district court granted Hill’s motion to dismiss.⁴ The district court dismissed KetoNatural’s Lanham Act claim because the challenged statements were not advertisements and not literally false.⁵ KetoNatural then appealed to the United States Court of Appeals for the Tenth Circuit, seeking reversal of the district court’s grant of the motion to dismiss.⁶ The Tenth Circuit heard oral argument on November 20, 2025,⁷ and to date has not authored an opinion yet.

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¹ KetoNatural voluntarily dismissed its claims against all defendants, which originally included veterinarians and non-profit foundations, except Hill’s Pet Nutrition. *See* KetoNatural Pet Foods, Inc., v. Hill’s Pet Nutrition, Inc., 756 F.Supp.3d 1128, 1135 (D. Kan. 2024).

² Complaint, KetoNatural Pet Foods, Inc., v. Hill’s Pet Nutrition, Inc., 756 F.Supp.3d 1125 (D. Kan. 2024) (No. 2:24-cv-02046-KHV-ADM); *see also* Amanda Pampuro, *10th Circuit Asked to Bite Into Natural Dog Food Feud*, COURTHOUSE NEWS SERV. (Nov. 20, 2025), <https://www.courthousenews.com/10th-circuit-asked-to-bite-into-natural-dog-food-feud/>.

³ “The [Lanham] Act provides for a national system of trademark registration and protects the owner of a federally registered mark [against certain violations].” *Lanham Act*, WEX, https://www.law.cornell.edu/wex/lanham_act (last visited Mar. 28, 2026); “The Lanham Act provides civil liability for trademark infringement, trademark dilution, cybersquatting, and *false advertising*.” Christopher T. Zirpoli, CONG. RSCH. SERV., IF12456, *An Introduction to Trademark Law in the United States* (2023) (emphasis added).

⁴ KetoNatural Pet Foods, Inc., 756 F.Supp.3d at 1135.

⁵ *Id.* at 1148, 1151, 1154.

⁶ Opening Brief for Plaintiff-Appellant, KetoNatural Pet Foods, Inc., v. Hill’s Pet Nutrition, Inc., No. 24-3185, (10th Cir. 2025).

⁷ Recording of Oral Argument, KetoNatural Pet Foods, Inc., No. 24-3185, <https://www.ca10.uscourts.gov/sites/ca10/files/oralarguments/24-3185.mp3>

What is This Fight About?

One of the issues, among many others, that the Tenth Circuit has to decide, is whether statements linking BEG diets to a canine heart disease known as DCM constitute false advertising. To prove false advertising under Section 43(a) Lanham Act, plaintiffs, KetoNatural “must show that they were injured by a false statement that [Hill’s] made about their own or others’ products or services in interstate commerce and that the statement could deceive a substantial portion of the target audience.”⁸ In relevant part, Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1), provides as follows:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which

(B) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities,

Shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.⁹

To determine whether the challenged statements are commercial speech, courts analyze three factors: 1) whether the statements are advertisements; 2) whether the statements reference a specific product; and 3) whether the statements are made with an economic motivation.¹⁰ Here, Hill’s conceded the third factor.

From 2011 to 2017, sales of grain-free dog food products increased, thereby increasing KetoNatural’s revenue. However, Hill’s, a company that did not sell many grain-free products, saw a decline in its revenue during the same time frame. But then, beginning in 2018, Hill’s began to disseminate articles linking “non-traditional” dog food diets, which contained grain-free dog food diets to canine DCM. KetoNatural sells “non-traditional” and grain-free dog food diets.

Then came a spike of canine DCM-related reports to the Food and Drug Administration (“FDA”). That spike prompted an FDA investigation, in July 2018, into a “potential link” between certain diets, which included those labeled as grain-free and canine DCM.¹¹ During the investigation, the phrase “BEG” diet was created. BEG diets describe all dog food products manufactured and sold by KetoNatural, but does not include the dog food products manufactured and sold by Hill’s and three other companies.

During the FDA investigation, veterinarians wrote articles about how nontraditional BEG diets can cause DCM. Hill’s hyperlinked some of those articles to its website. Hill’s had also posted a 90-minute presentation on its website for veterinarians working towards getting their continuing education credits that talked about BEG diets and DCM. Hill’s also posted a second

⁸ Zirpoli, *supra* note 3.

⁹ 15 U.S.C. § 1125(a)(1)(B).

¹⁰ *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-67 (1983).

¹¹ *FDA Investigation into Potential Link Between Certain Diets and Canine Dilated Cardiomyopathy*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-investigation-potential-link-between-certain-diets-and-canine-dilated-cardiomyopathy> (last visited Mar. 28, 2026).

presentation, covering a cardiologist’s perspective on BEG diets and DCM. During and after the FDA investigation, Hill’s revenues increased, while KetoNatural’s decreased.

KetoNatural’s Arguments

KetoNatural, in its opening brief to the Tenth Circuit, first argued that Hill’s statements were commercial advertisements because the disseminated articles and presentations were intended to influence buying decisions¹²—specifically to discourage buying the kind of dog food KetoNatural sold, through dissemination to veterinarians and, thereby, pet owners. KetoNatural argued that because Hill’s self-proclaims itself as the “#1 Vet-Recommended” brand of pet food, Hill’s disseminating both articles and presentations on its website to the public and veterinarians constitutes advertising. Because those statements criticized certain dog food diets, including KetoNatural’s products, veterinarians told their clients to not buy KetoNatural’s products and implicitly to buy Hill’s products.¹³

KetoNatural, next argued that Hill’s statements did reference a specific product because the BEG class of dog foods included all of KetoNatural’s products.¹⁴ Because Hill was not content with the FDA just investigating grain-free foods, it successfully added two more specific categories, “boutique” and “exotic,” “to try to create an expanded named class of its competitors.”¹⁵ Those adjectives are not vague since they were defined as “boutique by size” and exotic by a list of ingredients.¹⁶

KetoNatural lastly argued that Hill’s statements were literally false because there has been no proven study that says BEG dog food diets were correlated with or caused DCM.¹⁷ There has been no published study or statement by the FDA that says “that dogs eating BEG diets are more likely to develop [canine] DCM (or have worse symptoms from the disease) than dogs eating other kinds of food.”¹⁸ Yet, there were statements being disseminated that asserted the existence of a link or association between BEG diets and DCM.¹⁹

Hill’s Arguments

Hill’s, in its response brief to the Tenth Circuit, first argued that the challenged statements are not advertisements because the disseminated statements about potential causes of canine DCM educate veterinarians and the public about a disputed scientific issue.²⁰ Hill’s next argued that the challenged statements do not reference a specific product because there is no specific reference to

¹² Opening Brief for Plaintiff-Appellant at 6, KetoNatural Pet Foods, Inc., v. Hill’s Pet Nutrition, Inc., No. 24-3185, (10th Cir. 2025), <https://www.courthousenews.com/wp-content/uploads/2025/11/keto-natural-hills-scientific-appeal-1.pdf>.

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 18-19.

¹⁵ *Id.* at 19.

¹⁶ *Id.*

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 7-8.

¹⁹ *See id.* at 30.

²⁰ Response Brief of Defendant-Appellee at 23-25, KetoNatural Pet Foods, Inc., v. Hill’s Pet Nutrition, Inc., No. 24-3185, (10th Cir. 2025), <https://www.courthousenews.com/wp-content/uploads/2025/11/keto-natural-hills-scientific-answer-1.pdf>.

any of the parties' products.²¹ Hill's stated there is no allegation that it controls the dog food market enough for veterinarians and dog food customers to connect BEG diets solely with KetoNatural's products.²²

Lastly, Hill's argued that the challenged statements could not be held false by the court for two reasons. First, the challenged statements were a part of an ongoing scientific debate with no assertions that any tests or studies have proven the superiority or qualities of Hill's products or any of its competitors' dog food products.²³ Second, because whether BEG diets cause DCM is an ongoing scientific debate, the court here is ill-equipped to decide definitively whether BEG does or doesn't cause DCM, which is what KetoNatural's lawsuit seeks.²⁴

One Possible Effect on Corporations, Businesses, and Organizations if KetoNatural wins

If KetoNatural wins, corporations, businesses, and organizations would be negatively affected. They would have to be more careful about what information they disseminate because it would be more easily classified as advertisements, even if it was intended as education. This creates a risk for those disseminating the information by increasing their exposure to being sued for "false advertising." The attorney for Hill's, Stanley Panikowski, urged during oral argument to the Tenth Circuit panelists that "providing links to commercial speech couldn't automatically constitute commercial speech itself."²⁵ Panikowski stated, "[i]f the commercial speech doctrine were to be construed so the mere fact that later on the page you have hyperlinks to products, then you would simply be converting anyway a for-public entity communicates with the public into commercial speech."²⁶

One Possible Effect on Corporations, Businesses, and Organizations if Hill's wins

If the Tenth Circuit decides to side with Hill's and finds no false advertising, it allows more freedom for corporations, businesses, and organizations to spread the word about scientific research on issues that could, in this case, possibly save canines' lives, but in other cases, human lives. Since the FDA is investigating whether a specific food diet causes canine DCM, it would be better for the FDA and the dog-food industry to hash out possible answers and solutions through scientific debate. Even if some of the veterinary articles or statements Hill's disseminates are found incorrect after the FDA finishes its investigation, it is for the scientific community to correct those mistakes, not the court. Scientific understanding changes over time, and companies engaged in participation in that process should not be penalized simply because early hypotheses later turn out to be incomplete or inaccurate. By deferring to regulatory agencies like the FDA and to scientific articles, the legal system respects the expertise of those best equipped to evaluate complex medical and scientific questions. In the long run, this approach encourages transparency

²¹ *Id.* at 31.

²² *Id.* at 32-33.

²³ *See id.* at 42-43.

²⁴ *Id.* at 43.

²⁵ Pampuro, *supra*, note at 2.

²⁶ *Id.*

and collaboration between regulators, industry, and researchers, ultimately producing better information for consumers and better health outcomes for both animals and humans.

Why is This Case Important for Corporations, Businesses, and Organizations?

This case is important for corporations, businesses, and organizations because the Tenth Circuit will be deciding an issue that is incredibly important to corporations—the dissemination of information. The Tenth Circuit could draw a line on what sort of science-related statements constitute advertisements. Because KetoNatural and Hill's are established corporations in the canine food industry, their statements are heavily scrutinized. Corporations in other industries should be monitoring this case to see what kind of statements they can disseminate without crossing the line into false advertising for their specific industries.