



## Pelman ex rel. Pelman v. McDonaldâ€™s Corp

Pelman ex rel. Pelman v. McDonaldâ€™s Corp 396 F.3d 508 (2d Cir. 2005)

**Country:** United States

**Region:** Americas

**Year:** 2005

**Court:** United States Court of Appeals, Second Circuit

**Health Topics:** Chronic and noncommunicable diseases, Diet and nutrition, Health information

**Human Rights:** Right to health

### Facts

Plaintiffs, Ashley Pelman and Jazlen Bradley, brought suit against defendant, McDonaldâ€™s Corporation, for violating Section 349 and 350 of the New York General Business Law, known commonly as the New York Protection Act between 1987 and 2002 on three counts.

Count I claimed that the effect of McDonaldâ€™s promotions was to create the false impression that its food products were nutritionally beneficial and healthy if consumed daily. Count II claimed that McDonaldâ€™s failed to disclose that its food processing and use of additives rendered certain foods substantially less healthy than represented. Count III alleged that McDonaldâ€™s deceptively represented that it would provide nutritional information to its customers but did not do so. The complaint further alleged that as a result of the defendantâ€™s actions, the plaintiffs have developed obesity, diabetes, heart disease, high blood pressure, related cancers and other adverse health outcomes.

The District Court dismissed the plaintiffâ€™s Section 350 claims, which prohibits false advertising, on the grounds that the plaintiffs failed to allege specific reliance on any particular representation made by the defendant. The District Court dismissed the Section 349 claims on the grounds that the plaintiffs failed to demonstrate any causation between the defendantâ€™s actions and their injuries.

### Decision and Reasoning

The Court examined whether plaintiffs sufficiently stated a claim under the New York Protection Act. They began their inquiry with claims made under Section 350 which requires evidence of actual reliance. Here, they concluded that plaintiffs abandoned their Section 350 claims because â€œtheir brief on appeal contains no argument as to why the district courtâ€™s dismissal was incorrect.â€• Pelman ex rel. Pelman v. McDonald's Corp., 396 F.3d 508, 511 (2d Cir. 2005) Next, the Court considered whether plaintiffs sufficiently stated a claim under Section 349, which makes unlawful â€œdeceptive acts of practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.â€• Pelman ex rel. Pelman v. McDonald's Corp., 396 F.3d 508, 511 (2d Cir. 2005) Section 349 does not require proof of actual reliance. Here, the Court found that the plaintiffs did successfully state a claim. The Court notes that the District Court dismissed the complaint for not answering questions such as: â€œWhat else did the plaintiffs eat? How much did they exercise? Is there a family history of the diseases which are alleged to have been caused by McDonaldâ€™s products?â€• but finds that such information should be the subject of discovery. The Court found that the complaint met the limited pleading requirements of Rule 8(a), Fed.R.Civ.P. The Court vacated the District Courtâ€™s dismissal of alleged violations of Section 349 and remanded for further proceedings.

### Decision Excerpts

â€œThe amended complaint further alleges that as a result of these deceptive practices, plaintiffs, who ate at McDonald's three to five times a week throughout the years in question, were â€œled to believe[ ] that [McDonald's] foods were healthy and wholesome, not as detrimental to their health as medical and scientific studies have shown, ... [and] of a beneficial nutritional value,â€• and that they â€œwould not have purchased and/or

consumed the Defendant's aforementioned products, in their entire[t]y, or on such frequency but for the aforementioned alleged representations and campaigns.â€• Pelman ex rel. Pelman v. McDonald's Corp., 396 F.3d 508, 510 (2d Cir. 2005)â€• What is missing from the amended complaint, however, is any express allegation that any plaintiff specifically relied to his/her detriment on any particular representation made in any particular McDonald's advertisement or promotional material.â€• Pelman ex rel. Pelman v. McDonald's Corp., 396 F.3d 508, 510 (2d Cir. 2005)â€• What else did the plaintiffs eat? How much did they exercise? Is there a family history of the diseases which are alleged to have been caused by McDonald's products? Without this additional information, McDonald's does not have sufficient information to determine if its foods are the cause of plaintiffs' obesity, or if instead McDonald's foods are only a contributing factor.â€™ This, however, is the sort of information that is appropriately the subject of discoveryâ€• Pelman ex rel. Pelman v. McDonald's Corp., 396 F.3d 508, 511â€“12 (2d Cir. 2005)

Copyright © 2015 www.GlobalHealthRights.org