

## [California Court Dismisses UCL Claim Over Fiji Water](#)

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Sometimes a green drop is just a green drop.

Last week, the [California Court of Appeal, First Appellate District](#), dismissed a purported class action against the owners of [Fiji Water](#), finding as a matter of law that the company's use of a green drop on its bottle, along with a slogan "Every Drop is green," would not mislead a reasonable consumer. The case, [Hill v. Roll International Corporation](#), is the most recent decision to disallow the use of California's Unfair Competition Law, [Business & Professions Code section 17200 et seq.](#) ("UCL"), to restrict the marketing of a product that fails to contain any misleading symbol, slogan or message.

At issue in the case was Fiji Water's labeling for its bottled water and specifically the use of a green drop on the front of the product, which the plaintiff contended "looks similar to environmental 'seals of approval' . . . by several independent, third-party organizations." The plaintiff asserted that the use of the green drop connotes approval by such third-party organizations and that the green drop is "deceptive because it conveys that the products is environmentally sound and superior to other bottled waters that do not contain the Green Drop."

In addition to the UCL claim, the plaintiff sued under the False Advertising Law, [Business & Professions Code section 17500 et seq.](#); the Consumer Legal Remedies Act, [Civil Code section 1750 et seq.](#); and common law claims for fraud and unjust enrichment. The trial court dismissed the complaint on demurrer, without further leave to amend.

On appeal, the court first observed that, in resolving an appeal based on the reasonable consumer standard following a judge trial, some courts have evaluated whether an advertisement is deceptive as a pure question of law, while other courts have generally – though not invariably – found it to raise a question of fact such that it cannot be decided on demurrer.

Here, however, the court found that accepting all the facts in the complaint as true, "no **reasonable consumer** would be misled to think that the green drop on Fiji water represents a third party organization's endorsement or that Fiji water is environmentally superior to that of the competition." (Emphasis by Court.)

The plaintiff specifically relied on the California Environmental Marketing Claims Act, [Business & Professions Code section 17580 et seq.](#), along with Guidelines for the Use of Environmental Marketing Claims, issued by the Federal Trade Commission ("FTC") to support her claims. Despite accepting for purposes of demurrer that all of plaintiff's claims as to being misled were true, her claims still did not satisfy the reasonable consumer standard as expressed in the FTC guidelines and California's consumer laws,

which require her to “show potential deception of consumers acting reasonably in the circumstances – not just any consumers.” This is not a “least sophisticated consumer,” an “unwary consumer,” or an “overly suspicious consumer” standard, but “a reasonable consumer in the circumstances.” And, the court emphasized that “the context of the symbol is important.”

Finally, the Court of Appeal took the occasion to distinguish this case from the recent Supreme Court decision in *Kwikset Corp. v. Superior Court*, 51 Cal. 4<sup>th</sup> 310 (2011), which involved misleading product labeling on the defendant’s locksets which were not wholly “Made in the U.S.A.” (Our blog on *Kwikset* is found [here](#).) Unlike the *Kwikset* case, which concerned the issue of standing under the UCL, this case did not raise any issue of standing. Moreover, agreeing “wholeheartedly” with the Supreme Court’s statement that “labels matter,” in this case the court only held, once again, that “no reasonable consumer would be misled to think that the green drop represents a third party organization’s endorsement of that Fiji water is environmentally superior to that of the competition.”