

Food Litigation Newsletter

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About

Perkins Coie's Food Litigation Group defends packaged food companies in cases throughout the country.

Please visit our website at perkinscoie.com/foodlitnews/ for more information.



This newsletter aims to keep those in the food industry up to speed on developments in food labeling and nutritional content litigation.

Recent Significant Developments and Rulings

Court Dismisses False Claim Case Against Weight Watchers

Burke v. Weight Watchers International Inc., No. 12cv6742 (D.N.J.): Plaintiff claimed that low calorie ice cream bars sold by Weight Watchers understated the number of calories in the products. The court granted defendants' motion to dismiss, finding that the complaint had failed to adequately plead that defendants violated any of the five methods authorized by FDA regulations to calculate calorie content, nor did plaintiff plead around a safe harbor that allows a product to understate the caloric content of a product by 20%. The court gave plaintiff leave to amend. [Order](#).

Court Dismisses False Advertising Claims Related to Splenda Essentials Products

Bronson v. Johnson & Johnson, No. 12cv4184 (N.D. Cal.): The court granted in part and denied in part a second motion to dismiss allegations that various "Splenda Essentials" products are labeled and marketed in false and misleading ways. In addition to challenging the name "Essentials," plaintiffs challenged antioxidant, fiber, and metabolism claims made on product labels and the internet. The court had previously dismissed fiber claims as preempted by federal law because they were based on the allegation that defendants violated consumer protection statutes by failing to differentiate between natural and synthetic fiber. It also previously dismissed without prejudice claims that defendants lacked substantiation to make the product claims. The court reaffirmed the original dismissal and here dismissed those claims with prejudice, as well as claims related to B vitamins. It found that plaintiffs' claims were based on a lack of substantiation, which cannot be challenged by private plaintiffs. However, the court allowed claims based on defendants' antioxidant claims to proceed, finding that the complaint adequately alleged reliance on the

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company's website. [Order.](#)

NEW FILINGS

Stark v. Hain Celestial Group, No. 13cv7246 (S.D.N.Y.): Plaintiffs allege that juice blends labeled "unpasteurized," "raw and organic," and "100% raw" are not, because they are treated by a process known as "High Pressure Processing" (HPP). According to plaintiffs, the effects of HPP "inactivated enzymes, inactivated probiotics, altered physical properties of the products, and denatured proteins" Plaintiffs allege that they paid more for these products than they would have had they known that the products were treated by HPP. [Complaint.](#)

Franco v. Probar, LLC, No. 13cv2488 (S.D. Cal.): Plaintiff alleges that protein bars she purchased were marketed as "healthy" and "natural" but were not because the labels listed "evaporated cane juice" rather than "sugar." The complaint alleges violations of federal and California law and seeks certification of a California-only class. Plaintiff filed in state court but the case was removed to federal court. [Complaint.](#)

Figy v. Lifeway Foods, Inc., No. 13cv4828 (N.D. Cal.): Plaintiff alleges that various of defendant's kefir products are "legally misbranded" because product labels list evaporated cane juice as an ingredient. Plaintiff seeks certification of a national class. [Complaint.](#)

Russo v. Farmhouse Foods, Inc., No. CGC-13-534947 (Cal. Super., San Francisco Co.): Plaintiff alleges that fifteen of defendant's products are marketed as "all natural" but are actually "synthetic" because they contain GMO ingredients. Alleged synthetic ingredients include dextrose, corn starch, maltodextrin, citric acid, sugar, soy sauce and corn starch. [Complaint.](#)