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Food & Consumer Packaged Goods Litigation

Court Finds “Zero Impact” a Question for FDA

Watkins v. Vital Pharmaceuticals, Inc., No. 12cv9374 (C.D. Cal.): The court granted a motion to dismiss where plaintiffs allege that protein meal replacement bars sold under the "Zero Impact" label falsely suggest that the "zero" implies the products will have no impact, when in fact they "certainly have an impact on consumers' carbohydrate, sugar and overall caloric intake." The court dismissed under the primary jurisdiction doctrine, finding the question of whether the labels are misleading belonged to the FDA in the first instance. The court also noted that while the FDA has issued regulations regarding use of the term "zero," they were focused on factual claims like "zero calorie" and "zero sodium" and declined to apply the same regulatory framework to the term "zero impact" without a more definitive statement from the FDA. [Order](#).

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