

Rulings, Orders, Settlements - August 4, 2017

Court Denies Motion to Dismiss for Non-Functional Slack-Fill Class Action [White v. Just Born, Inc.](#), No. 2:17-cv-4025 (W.D. Mo.): The Court issued an order denying Defendant's motion to dismiss this putative non-functional slack-fill class action for violation of Missouri's Merchandising Practices Act, and raising a claim for unjust enrichment. Plaintiff alleges that Defendant misleads consumers about the amount of Hot Tamales candy and Mike and Ike candy inside their opaque, cardboard packaging. Defendant moved to dismiss arguing that: (1) a reasonable consumer would not be deceived by the packaging; (2) slack-fill is not by itself impermissible under federal or state law, violation of food-labeling regulations does not support a finding of liability under the MMPA, and Plaintiff does not sufficiently allege that the slack-fill is non-functional or deceptive; (3) Plaintiff lacks standing to pursue injunctive relief; and (4) Plaintiff fails to state an ascertainable injury under the MMPA. In denying the motion, the Court held that the question of whether a consumer would determine from the labeling information that the boxes contain excess slack-filled space is a question of fact that Plaintiff had sufficiently plead its claims. It further held that Defendant plead a threat of ongoing or future harm, sufficient to establish standing. **Court Partially Grants Motion for Class Certification for False Advertising Class Action** [In re Simply Orange Orange Juice Marketing and Sales Practices Litigation](#), No. 4:12-md-02361 (W.D. Mo.): The Court issued an order partially granting and partially denying Plaintiffs' motion for class certification in this action alleging violations of several states' consumer protection laws, including California's UCL, CLRA, and FAL, Missouri's MMPA, Florida's Deceptive and Unfair Trade Practices Act, and New York's GBL on behalf of seven statewide classes of consumers, based on the claim that Defendant The Coca-Cola Company sells its Simply Orange, Minute Maid Pure Squeezed, and Minute Maid Pure Premium products, while failing to disclose its use of added flavors in those products. The Court certified an issues class pursuant to Rule 23(c)(4), and found that Plaintiffs had sufficiently demonstrated Article III standing, and that the proposed classes are ascertainable and typicality was met. It further easily concluded that numerosity was met, as the proposed classes are in the millions, and unopposed adequacy was too, as to class counsel and representatives. And it determined that commonality too, was met with respect certain of Plaintiffs' issues, which the Court determined were susceptible to common proof. The Court appointed Norman E. Siegel as Liaison Class Counsel and Stephen A. Weiss, James E. Cecchi, and Kim Richman as Class Counsel under Rule 23(g). Paul Wieczorek, Cheryl D'Aloia, John Albert Veal, Jr., Randall Davis, Kirk Yee, Jeremy M. Dasaro, and Carole Sovocool, are appointed class representatives. But finding those named plaintiffs lacked Article III standing to pursue injunctive relief, the Court denied Plaintiffs' motion to certify the class under Rule 23(b)(2). **Court Denies Motion to Dismiss for Non-Functional Slack-Fill Class Action** [Iglesias v. Ferrara Candy Co., et al.](#), No. 3:17-cv-0849 (N.D. Cal.): The Court issued an order denying Defendant's motion to dismiss this putative non-functional slack-fill class action for violation of California's CLRA, FAL, and UCL. Plaintiff alleges that Defendant misleads consumers about the amount of Jujufruits® brand candy inside their opaque, cardboard packaging, uniformly under-filling those boxes by 41 percent. In denying the motion, the Court ruled that application of the primary jurisdiction doctrine was not warranted because existing FDA regulations define "nonfunctional slack-fill," and therefore the case does not involve a question for which the Court lacked a clear indication of how FDA would view the issue or require resolution of an issue of first impression. It further held that Plaintiff adequately alleged that the Defendant's candy products contain nonfunctional slack-fill and that the packaging is likely to deceive a reasonable consumer.

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