

[Blogs](#)

November 29, 2018

Notable Ruling: What's In Your Water?

In its recent ruling in [Weiss v. Trader Joe's Company](#), the Central District of California faced the question of whether certain statements on product labels promoting high-alkalinity water were false and misleading or simply puffery. Among these statements were claims that the water is "ionized to achieve the perfect balance." Plaintiff Dana Weiss argued that the claims found on the actual product, together with advertising statements made in the defendant's "Fearless Flyer" marketing brochure, amount to unfair competition and false advertising because no scientific evidence exists supporting the claimed health benefits of drinking water with high alkalinity. Despite the absence of specific health-related promises, Weiss argued, simply noting the water's alkalinity content on the label implies a health claim. Trader Joe's Company moved to dismiss, contending that such claims are no more than puffery, and such claims would not deceive or mislead a reasonable consumer into believing that the product offers unsubstantiated health benefits. Though the court hinted that Weiss's claims would fail as lack-of-substantiation claims (impermissible as private causes of action under California law), it nevertheless proceeded to analyze them under the reasonable consumer test. The court found that the statements and symbols on the label—a plus sign, the words "refresh" and "hydrate," and a simple definition of alkalinity—would not deceive a reasonable consumer. The court also rejected Weiss's argument that the statement "water and then some" gives rise to "a contextual inference that Alkaline Water of Trader Joe's provides more health benefits and better hydration than normal water." Even assuming the statement "water and then some" was more than mere puffery, the court concluded that a reasonable consumer would read the "and then some" language as referring to either the electrolytes added to the water or to the product's elevated pH level. The court thus dismissed each of Weiss's claims. The court did, however, grant Weiss leave to amend one of the claims in the complaint (a claim implicating a statement of the water's pH level), concluding that it may be possible for Weiss to plead the falseness of that statement with the requisite particularity.

Explore more in

[Food & Consumer Packaged Goods Litigation](#) [Food & Beverage](#)