



Our weekly roundup aims to keep our readers up to date on recent notable rulings in the food & consumer packaged goods space.

- ***Christopher Leonard v. Mondel?z Global LLC***, No 1:21-cv-10102-PAC (S.D.N.Y. - March 8, 2023): The Southern District of New York dismissed a class action complaint that alleged the labeling of the defendant's ***chocolate sandwich cookies containing mint crème covered in a fudge coating*** mislead consumers because it purports to contain "fudge." Plaintiff claimed the product did not comport with the plaintiff's definition of "fudge," because the product's "fudge" is made with palm and palm kernel oil and not milkfat. The court held that "Fudge Covered," without more, would not mislead a reasonable consumer into believing the product necessarily contained milkfat or butter, regardless of whether "Fudge Covered" refers to the product's flavor or an ingredient, and that not a single source claims that milk and butter are

essential fudge ingredients or that milkfat is necessary to make fudge and dismissed the New York and state consumer fraud claims. [Opinion linked here.](#)

- ***Julian Foster v. Whole Foods Mkt. Grp. Inc.***, No. 22-cv-01240-ERK-RML (E.D.N.Y. - February 3, 2023): The Eastern District of New York court granted dismissal of a putative class action alleging that the front label of defendant's *fish oil capsules* is false and deceptive because a reasonable consumer would believe that the product contains 1000mg of two types of Omega-3 fatty acids per capsule, when in fact the product contains only 300mg of Omega-3's per capsule. The court held that the plaintiff's claim failed, reasoning that a consumer would not be misled by the challenged labeling statement on the front of the package because the back label clarifies any ambiguity. The court dismissed the plaintiff's GBL claims reasoning that, while the front label was ambiguous, it was not actually false. Leave to amend was denied. [Opinion linked here.](#)

Authors



[David T. Biderman](#)

Partner

DBiderman@perkinscoie.com [310.788.3220](tel:310.788.3220)

Explore more in

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

Blog series

Food & Consumer Packaged Goods Litigation

Food & Consumer Packaged Goods Litigation shares timely insights into litigation developments, emerging arguments and challenges facing food and consumer packaged goods manufacturers and related industries.

[Subscribe ?](#)

[View the blog](#)