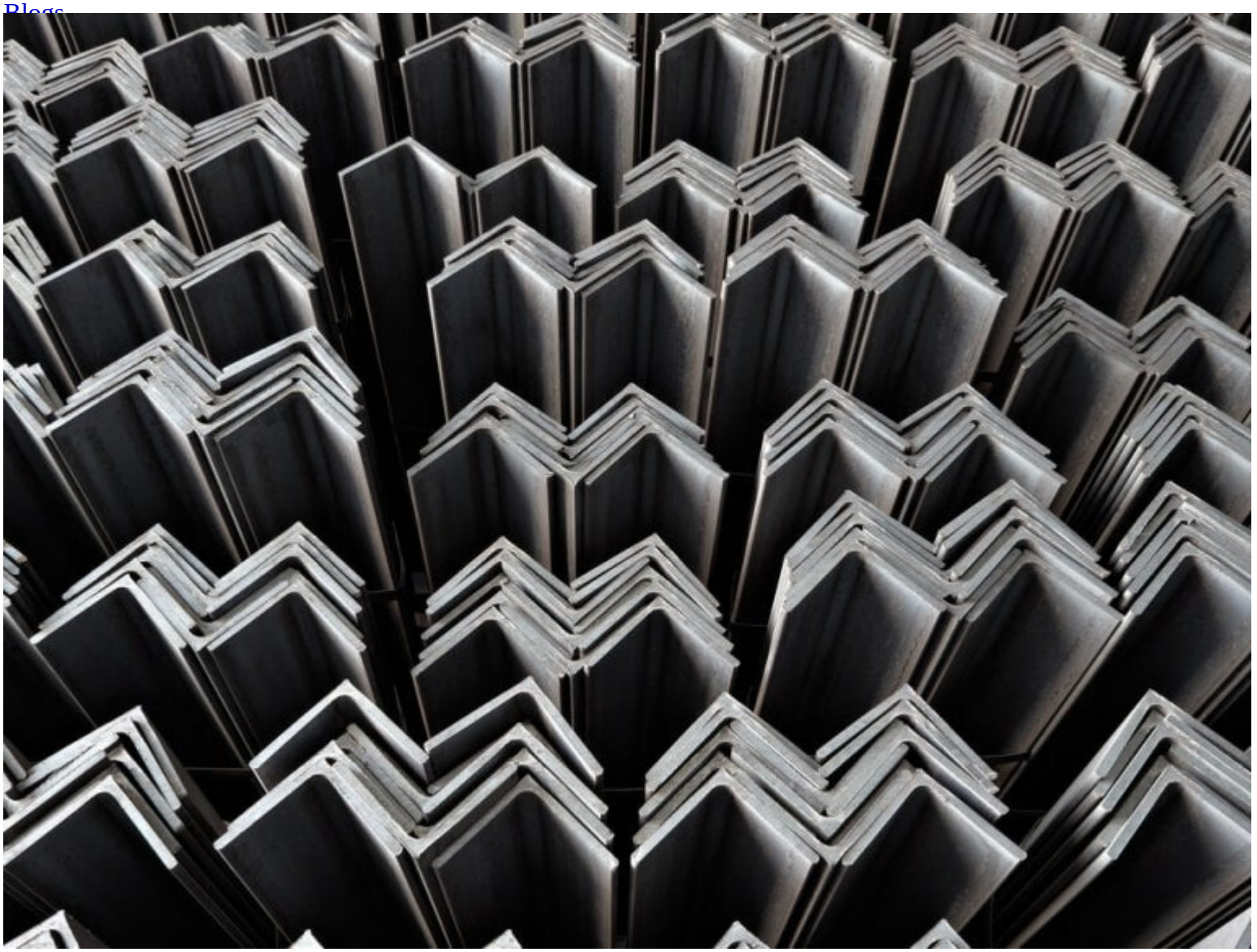

Our weekly roundup aims to keep our readers up to date on recent notable rulings in the food & consumer packaged goods space.

- ***Kari Warren v. The Coca-Cola Company***, No. 7:22-cv-06907-CS (S.D.N.Y. - April 21, 2023): The U.S. District Court for the Southern District of New York granted dismissal of a putative class action challenging the labeling and marketing of the defendant's ***hard seltzer beverages***. Specifically, the plaintiff claimed that the products were marketed to prompt consumers into believing they contain tequila and sparkling mineral water from Mexico. The court held that the plaintiff's claim failed, finding that a reasonable consumer would not be misled by the challenged labeling statements since the label does not merely say "margarita" but instead says "margarita hard seltzer." Thus, the judge ruled that labeling products with the word "hard" was not deceiving, saying the word does not predominantly refer to distilled

spirits (such as tequila) but rather denotes that a beverage contains alcohol. Further, any ambiguity could be resolved as a reasonable consumer could refer to the back label to discover the ingredients which make no reference to tequila. Finally, the court rejected the plaintiff's place-of-origin theory because the labeling made no representations regarding the product containing sparkling mineral water from Mexico but instead represented clearly that the product is produced and bottled in Milwaukee, Wisconsin. Opinion linked here.

- ***Antoinette Meza v. Coty, Inc.***, No. 5:22-cv-05291-NC (S.D.N.Y. - April 24, 2023): The U.S. District Court for the Northern District of California trimmed a putative class action challenging the marketing and labeling of three ***cosmetic products***. Specifically, the plaintiff alleged that the products were labeled as "24 HR" or "25 HR" in terms of sun protection, suggesting that the products would not need to be reapplied over the course of that time when they should actually be applied every two hours. The court granted motion to dismiss on reasonable consumer grounds as to one product because the label, read in context, could suggest that the durational representation could relate to the product's moisturizing properties, not sun protection. But the court held that reasonable consumers could plausibly be misled by the labeling of the second product because of the close proximity of the sun protection and the "24 HR" representations. The motion to dismiss was also granted as to the third product, as the court found the allegations in the complaint insufficient to determine whether that product was "substantially similar" to the product the plaintiff actually purchased. Leave to amend was granted. Opinion linked here.

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