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### Appellate Courts Issue Reasonable Consumer Defense Wins in Food Litigation Cases



The U.S. Courts of Appeal for the Second and Ninth Circuits recently issued rulings reinforcing the reasonable consumer standard.

In doing so, these cases refine prior precedent and strengthen a court's ability to properly dismiss cases over labeling claims where no reasonable consumer could plausibly be misled. As the Ninth Circuit put it, "a reasonable consumer does not check her common sense at the door of the store."

- In *Moore v. Trader Joe's Co.*, the Ninth Circuit emphasized the importance of context in evaluating what a reasonable consumer would understand. 4 F.4th 874 (9th Cir. 2021). The case involved a product labeled as "100% New Zealand Manuka Honey." The plaintiffs challenged the labeling, alleging that the pollen used to produce the honey did not come entirely from the manuka plant.
- In *McGinity v. The Procter & Gamble Company*, 69 F.4th 1093 (9th Cir. 2023), the Ninth Circuit clarified that a reasonable consumer could address ambiguous information on a product's packaging by looking at other parts of the labeling. *McGinity* involved a "Nature Fusion" shampoo product. The plaintiff challenged the representation, reading the product's name as a promise that the shampoo was "natural."
- In *Hardy v. Ole Mexican Foods, Inc.*, No. 22-1805, 2023 WL 3577867 (2d Cir. May 22, 2023), the Second Circuit revisited its prior caselaw. There, the labeling of four tortilla products was challenged when it conveyed, among other things, the phrase "A Taste of Mexico," graphics similar in appearance to the Mexican flag, and a set of Spanish words. The plaintiff alleged the labeling represented the product as made in Mexico, when it was actually produced in the United States.

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