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Food & Consumer Packaged Goods Litigation

Court Dismisses MSG Claims in Part on Preemption Grounds

Peterson v. Conagra Foods Inc., No 13cv3158 (S.D. Cal.): In a putative class action alleging claims under California's UCL, FAL, and CLRA, as well as breach of express warranty, the plaintiff claimed that the defendants misrepresent their Chef Boyardee Mac & Cheese products as having "No MSG" and "No MSG Added" when in fact they contain MSG or contain ingredients that create MSG during processing. The court granted in part and denied in part the defendant's motion to dismiss on preemption grounds. First, the court found that the claims were not preempted as of November 2012, relying on an informal FDA statement from November 2012 clarifying its position on MSG labeling and bringing the plaintiff's claims within the sphere of labeling violations that would make the products misbranded under the FDCA. However, the court found that the plaintiff's claims were preempted to the extent they reached time periods prior to November 2012, ruling that the informal statement clarified a previously ambiguous regulation and could not be applied retroactively. [Order](#).

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