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Food & Consumer Packaged Goods Litigation

Court Dismisses Sunflower Seed Class Action Without Leave to Amend

Weiss v. The Kroger Co., No. 2:14cv03780 (N.D. Cal.): In a putative class action alleging claims under California's CLRA, FAL, and UCL for false advertising of the sodium content of sunflower seeds by failing to count the sodium content in the shell coating, the court granted defendants' motion to dismiss without leave to amend. The court distinguished the case from *Lily v. Conagra* insofar as the case involves only one flavor of coating and the instant packaging did not include any instructions indicating that the consumer should place the whole shell in her mouth. Further, the labelling in the instant case specifically identified the amount of sodium in the "edible portion" of the product, unlike in *Lily*. This fact alone rendered the plaintiffs' claims implausible, according the court, because a reasonable consumer would understand that the shell was the non-edible portion of the product. Plaintiffs thus failed to plausibly allege that they had been misled. The court also held that the claim "There's a whole lot of goodness contained in each and every tiny sunflower seed. Grab a handful and enjoy," did not constitute a health claim but rather was non-actionable puffery. [Order](#).

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