

[Blogs](#)

April 01, 2019

Food & Consumer Packaged Goods Litigation

Notable Ruling: No Article III Standing to Challenge Krill Oil Label Claims

On March 25, 2019, Judge Gary L. Sharpe of the Northern District of New York dismissed a putative class action against CVS and Lang Pharma alleging that the labeling of defendants' CVS Omega-3 Krill Oil is deceptive and misleading. Plaintiff in the lawsuit, James Gaminde, alleged that CVS Omega-3 Krill Oil contained only sixty percent of the 300mg of Omega-3 Krill Oil represented by the label, and therefore violated New York's General Business Law sections 349 and 350, as well as claims for breach of express warranty, implied warranty, unjust enrichment and fraud. The court ruled that plaintiff lacked Article III standing stating that plaintiff's "failure to allege that he tested his bottle of CVS Krill Oil—indeed, his failure to make any allegation regarding how he knows that it was mislabeled—is fatal." The court held that plaintiff's conclusory and unsubstantiated allegations failed to demonstrate that he suffered an 'injury in fact' which is concrete and particularized, a requisite to establish Article III standing. Noting that any amendment would be futile, the court granted defendants' motion to dismiss with prejudice and entered judgment for defendants. Defendants were represented by the Perkins Coie food litigation team. *James Gaminde v. Lang Pharma Nutrition, et al* – Case No. 18-cv-00300-GLS (N.D.N.Y)

Authors



[David T. Biderman](#)

Partner

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



[Steven Hwang](#)

Senior Counsel

SKHwang@perkinscoie.com [310.788.3217](tel:310.788.3217)

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.

[View the blog](#)