



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

- ***Cade Seljak, et al. v. Pervine Foods LLC***, No 21-cv-09561-NRB (S.D.N.Y. - March 3, 2023): The Southern District of New York dismissed a putative class action alleging that the labeling of the defendant's ***high-protein snack bars*** is false or misleading. Specifically, plaintiffs allege the use of the word "FIT" prompts consumers into believing the products are "healthy" when the products' fat content exceeds the permissible level of fat in products labeled as "healthy" under the FDA regulations. The court noted that the term "healthy" did not appear on the product packaging, and the fat content is clearly disclosed on the ingredient panel. Additionally, the court noted that the products' descriptions are those of desserts, such as milk & cookies, chocolate chip cookie dough, apple pie, and chocolate peanut butter. The

court ruled that the defendant's use of "FIT" does not amount to an implied nutrient content claim under federal law since it does not appear in association with the products' fat content and therefore does not amount to misbranding. The court also dismissed the plaintiffs' state statutory claims because they failed to show that a reasonable consumer was likely to be misled into believing the products are healthy when looking at the packaging as a whole, which includes dessert-like descriptions and clear statements of the fat and calorie content. [Opinion linked here.](#)

- **Janie Hawkins v. The Coca-Cola Co.**, No. 21-cv-08788-KMK (S.D.N.Y. - February 7, 2023): The Southern District of New York granted dismissal of a putative class action alleging the defendant's "100% natural" *piña colada-flavored beverage* was false and misleading because it contained the artificial ingredient DL-malic acid. The court held that the plaintiff's claim failed, stating that a reasonable consumer would not be misled by the challenged labeling statements because said consumer could look on the back of the package for clarification as to ingredients and the fruits contained therein. Further, the judge found the plaintiff's claims of DL-malic acid's alleged presence in the product were not supported by product testing and therefore were "conclusory statements that the court is not required to accept." The court dismissed the plaintiff's state law claims for breach of express warranty and fraud on the same grounds and denied leave to amend. [Opinion linked here.](#)

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