



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

- *Felix Bermudez et al. v. Colgate-Palmolive Company*, No. 1:21-cv-10988-JLR (S.D.N.Y. - March 31, 2023): The U.S. District Court for the Southern District of New York dismissed allegations that the marketing and labeling of defendant's *charcoal toothpaste* were false or misleading. Specifically, plaintiffs challenged representations such as the product was "enamel safe" or promoted "whole mouth health" when the inclusion of charcoal in the products rendered the toothpaste allegedly incapable of providing these advertised benefits. The court held that plaintiffs' allegations failed under the reasonable consumer test because they did not plausibly allege that the toothpaste contained sufficient charcoal to render the advertising false or misleading. The court determined there were insufficient facts to plausibly

infer that the products were actually incapable of providing the promised benefits. The court dismissed plaintiffs' state law claims for fraud, breach of warranty, and unjust enrichment on similar grounds and denied leave to amend. [Order linked here.](#)

- ***Heather Rudy v. D.F. Stauffer Biscuit Co., Inc.***, No. 1:21-cv-03938 (N.D. Ill. - March 30, 2023): The U.S. District Court for the Northern District of Illinois dismissed a putative class action alleging that defendant's packaging caused consumers to expect "a non-de-minimis amount of lemon ingredients" in its ***Lemon Snaps cookies***. Specifically, the plaintiff alleged that the product's name and certain representations, such as images of cookies and lemons, would prompt consumers to expect certain amounts of lemons in the products. The court held that a reasonable consumer would not be misled by the challenged labeling statements because nothing on the packaging suggests the amount of lemon ingredients in the cookies. The court noted that a reasonable consumer would buy the cookies expecting a lemon-flavored treat, and that is what the consumer received. [Order linked here.](#)
- ***Kym Pardini, et al. v. Unilever U.S., Inc.***, No. 21-16806 (9th Cir. - April 18, 2023): The U.S. Circuit Court for the Ninth Circuit affirmed the district court's dismissal of a putative class action alleging that labeling on a ***sprayable butter product*** inaccurately described the amounts of fat and calories per serving. Specifically, plaintiffs argued that the products' labeling was misleading because it used the serving size applicable to "spray type fat or oils" rather than serving sizes for "butter, margarine, oil, and shortening" because consumers allegedly use this product like butter. The court held that the plaintiff's arguments defied common sense, as it requires 40 pumps of the sprayable butter to equal one tablespoon of butter. The court further held that U.S. Food and Drug Administration (FDA) regulations preempted plaintiffs' claims because the labeling complied with FDA food labeling requirements for "spray type" fats and oils. [Order linked here.](#)

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