



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

- ***Kenneth Telesco v. Starbucks Corp.***, No. 7:22-cv-02687-NSR (S.D.N.Y. – July 18, 2023): The Southern District of New York granted dismissal of a putative class action alleging defendant misled consumers into believing that a package of its ***cold brew coffee concentrate*** yields eight servings when it actually only yields five. The court held that plaintiff's claim failed because a reasonable consumer would not be misled by the labeling instructions for the product's preparation and, consequently, the expected yield. The court highlighted that the label clearly states it is a 32-ounce container, which following the 1:1 ratio on the label's instructions, means that it would produce 64 ounces of coffee. The court added that the reasonable consumer test for false advertising claims "is not based on the 'least sophisticated consumer' who is unable

to perform simple math." Opinion linked [here](#).

- **Anthony Moreno v. Vi-Jon, LLC**, No. 3:20-cv-01446-JM-BGS (S.D. Cal. – July 18, 2023): The Southern District of California granted dismissal of a fourth amended complaint in a putative class action alleging defendant's **hand sanitizers** contain labels that misrepresent their ability to kill germs. The court held that plaintiff failed to plausibly allege that a reasonable consumer would be misled by the product's labeling into thinking that the products kill 99.99% of all germs in existence. Instead, a reasonable consumer would not ignore the labeling's asterisk leading them to a disclosure on the back panel clarifying that the hand sanitizer is effective at eliminating 99.99% of many common harmful germs. The court denied further leave to amend. Opinion linked [here](#).

Authors



[David T. Biderman](#)

Partner

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



[Thomas \(Tommy\) Tobin](#)

Counsel

TTobin@perkinscoie.com [206.359.3157](tel:206.359.3157)

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](#)