



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

- *National Association of Wheat Growers, et al. v. Rob Bonta*, No. 20-16758 (9th Cir.—November 7, 2023): The U.S. Court of Appeals for the Ninth Circuit affirmed summary judgment in the plaintiffs' favor. The panel held that California cannot enforce proposed Proposition 65 carcinogen warning labels on *products containing glyphosate*. The panel's majority concluded that these warning labels were not purely factual and uncontroversial and were subject to intermediate scrutiny. The majority noted that the warning labels would require the plaintiffs to convey a controversial, fiercely contested message with which they fundamentally disagree. Applying intermediate scrutiny, the panel concluded that the proposed warnings were not narrowly drawn to advance California's interests, and the state had less burdensome ways to

- convey the intended message rather than compelling the proposed warning label. Opinion linked [here](#).
- *Tawneya Houser v. GlaxoSmithKline Consumer Healthcare Holdings (US) LLC*, No. 4:21-cv-09390-JST (N.D. Cal.—November 3, 2023): The Northern District of California dismissed a putative class action alleging that the labeling of the defendant's *over-the-counter cold sore treatment* was false or misleading because of representations that would lead reasonable consumers to believe that the treatment would typically heal cold sores in 2.5 days. The court concluded that the representation "You Can Get Rid Of Your Cold Sore In 2 ½ Days\*" was not likely to mislead a reasonable consumer because (1) the term "can" denotes possibility, not probability, and (2) even if the representation were misleading, a corresponding disclaimer eliminates any doubt as to its meaning. Opinion linked [here](#).

If you are a food or CPG company contact interested in receiving our daily email update on filings and notable rulings, please reach out to Kellie Hale with your request to be added: [khale@perkinscoie.com](mailto:khale@perkinscoie.com).

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