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Food & Consumer Packaged Goods Litigation

# In Monster Victory, Court Dismisses Energy Drink Suit

*Fisher v. Monster Beverage Corp.*, No. 12cv2188 (C.D. Cal.): The court granted Monster's motion to dismiss plaintiffs' amended complaint, which alleged that the marketing of Monster Energy and Monster Rehab beverages was false and misleading under California's consumer protection statutes. The court had dismissed a previous complaint, finding that the allegations of harm were "attenuated and insufficient to establish an actual injury." Here, the court analyzed the amended complaint plaintiff by plaintiff, claim by claim, and dismissed the entire complaint without prejudice. The court took an aggressive approach to puffery claims, dismissing Monster's claims that its beverages "hydrate like a sports drink" and "rehydrate" as puffery as they are "difficult to measure concretely, and [have] no discernible meaning in the context of energy drinks or beverages." Further, the court affirmed its prior ruling that plaintiffs' claims were preempted by the NLEA to the extent that they were trying to regulate labeling "regarding the amount of caffeine or failure to warn" about caffeine. And finally, the court dismissed under the primary jurisdiction doctrine, noting the FDA's recent interest in resolving whether energy drinks contain unsafe levels of caffeine. [Order](#).

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