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Food & Consumer Packaged Goods Litigation

# Smart Balance Milk Labeling Suit Not Preempted

*Koenig v. Boulder Brands, Inc.*, No. 1:13-cv-01186-ER (S.D.N.Y.): In a putative class action over "fat free" labeling on defendants' Smart Balance milk products, the court held that nonbinding FDA opinions do not preempt state law claims. Plaintiffs alleged the "fat free" labeling of Smart Balance milk products infused with a blend of omega-3 fatty acids violates the New York General Business Law. Defendants argued that plaintiffs' suit conflicted with federal law, and was therefore preempted, because FDA guidance documents and advisory opinions for related products showed that defendants' labeling was compliant with federal regulations. The court denied the motion, reasoning that advisory opinions regarding other products did not control the issue. The court also dismissed plaintiffs' express warranty and unjust enrichment claims on other grounds, but granted plaintiffs leave to amend. [Order.](#)

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