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March 06, 2014

Food & Consumer Packaged Goods Litigation

Ninth Circuit Court of Appeals Reverses Preemption Dismissal

Lilly v. Conagra Foods Inc., No. 12-55921 (9th Cir.): Plaintiff appealed dismissal of her putative class action complaint on federal preemption grounds. Plaintiff had alleged claims under California's consumer protection and unfair competition laws, contending that the labeling of defendant's sunflower seed products misleadingly provided a lower sodium content than the product contained. The panel held that the entire sodium content must be included, under the federal Nutrition Labeling and Education Act ("NLEA"), and that because plaintiff's state-law claims would impose no greater burden than under federal law, her state law claims were not preempted.

District Judge Vinson dissented, arguing that plaintiff's attempt to enforce different labeling was expressly preempted by the NLEA and that the labeling was in compliance with federal law. [Order.](#)

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