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Court Dismisses for Lack of Standing But Applies Pom Wonderful to Avoid Primary Jurisdiction

Ibarrola v. Kind LLC, No. 3:13-cv-50377 (N.D. Ill.): The court granted defendant's motion to dismiss in a putative class action alleging claims under the Illinois Consumer Fraud Act, common law fraud, and unjust enrichment, claiming that defendant's use of evaporated cane juice in its products was misleading and misbranded because plaintiff was not aware that ECJ was "sugar." First, the court found that plaintiff failed to plead an economic injury for standing purposes as she did not allege that she would have purchased no cereal or a cheaper cereal but for the misrepresentations, or that the products had no value. Further, plaintiff had insufficiently pled that she was deceived by the alleged misrepresentations because she did not contend that she believed the products to be sugar free, the product labels indicated that the products contained sugar, and plaintiff had failed to allege what she thought ECJ was if not sugar. Finally, the court dismissed the unjust enrichment claim because unjust enrichment is not a separate cause of action in Illinois. The court refrained from considering defendant's primary jurisdiction argument, citing the Supreme Court's recent decision in POM Wonderful. [Order](#).

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