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Food & Consumer Packaged Goods Litigation

Federal Court Denies Class Certification of Ensure Muscle Health Omission Claims

Otto v. Abbott Laboratories, Inc., No. 5:12-cv-01411 (C.D. Cal.): The Central District of California granted Abbott's motion to deny class certification of plaintiff's claims that the labeling of Abbott's Ensure Muscle Health drink was materially misleading because it failed to inform customers that the drink's muscle rebuilding properties were not effective for customers with low vitamin-D levels. The plaintiff sought two classes: (1) a California class on various California statutory claims, and (2) a nationwide class on a negligent misrepresentation claim. The court denied both classes. First, because the alleged omission was only relevant to consumers with low vitamin-D levels, the Court held that the proposed class of all California consumers was overbroad as it would include many consumers who were not impacted by, or interested in, the alleged omission. Second, the court held that a nationwide class was not appropriate because (1) the plaintiff failed to show that Illinois law could be applied to consumers nationwide, meaning the laws of all 50 states would apply; and (2) the plaintiff failed to demonstrate how the class could be divided into manageable subclasses to account for variations in different states' laws. Finally, the court found the plaintiff failed to present evidence—the complaint's allegations were not enough—establishing any of the requirements of Rule 23. The plaintiff has until March 30, 2015, to file a renewed motion for class certification of his statewide claims based on a narrowed class definition and additional evidence. [Order](#).

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