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Court Grants-in-Part and Denies-in-Part Defendant's Partial Motion to Dismiss in False Labeling Action Involving Yogurt

Stolz v. Fage Dairy Processing, S.A., No. 1:14-cv-3826 (E.D.N.Y.): The Court granted-in-part and denied-in-part Defendant's partial motion to dismiss in this putative class action alleging consumers were misled by Defendant's "Total 0%" packaging on its yogurt products because consumers believe the product lacks fat, sugar sodium, cholesterol, calories or carbohydrates. First, the Court dismissed Plaintiffs' claims for injunctive relief for lack of standing because they failed to allege they will purchase the product again in the future. The Court dismissed Plaintiffs' negligent misrepresentation claims under California, Florida, New Jersey and Pennsylvania laws because the claims are premised on omissions rather than positive assertions and the parties did not have a fiduciary or fiduciary-like relationship. Plaintiffs' UCL and CLRA claims, however, survived dismissal. The Court held Plaintiffs' allegations sufficiently alleged misrepresentations that could deceive a reasonable consumer, as well as that they alleged reliance. Finally, the Court rejected Defendant's contention that Plaintiffs could not seek restitution under the CLRA because they did not provide notice. The Court analyzed the California Supreme Court's explanation of the distinction between restitution and damages and reasoned that a CLRA claim for restitution is not a damages claim and does not require advance notice of the lawsuit. [Order](#).

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