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Food & Consumer Packaged Goods Litigation

Notable Ruling: A Swift Win for Coca-Cola in *Becerra v. Coca-Cola* (N.D. Cal.)

In yet another Rule 12 decision tied to the "reasonable consumer" standard, Judge William Alsup of the Northern District of California dismissed a putative class action against Coca-Cola challenging the name "Diet Coke" as misleading. Plaintiff in the lawsuit, Shana Becerra, alleged that the product name "Diet Coke," which has been in regular use since 1982, might mislead consumers into believing that merely drinking Diet Coke will necessarily lead to weight loss. The complaint cited scientific studies which the plaintiff claimed to show that consuming diet sodas actually leads to weight gain. In a trenchant decision relying heavily on whether plaintiff alleged facts sufficient to show a "*reasonable* consumer" might be misled, Judge Alsup reasoned that consumers are well aware that drinking diet soda alone will not necessarily cause weight loss. The Court further explained that depicting healthy-looking consumers in advertisements does not imply that merely drinking Diet Coke leads to weight loss, "without regard to exercise and nutrition." Finally, the Court carefully reviewed the studies cited by plaintiff, and held that these studies did not conclude that drinking diet sodas causes weight gain, as the complaint had alleged. Thus, the Court refused to allow plaintiff's over-reliance on these studies to displace what a reasonable consumer understands about diet soda consumption and weight loss: "In order to overcome the otherwise sensible view of reasonable consumers, that Diet Coke consumption alone will not lead to weight loss, the complaint would need to cite far more powerful evidence... With a conclusory wave of counsel's hand, Becerra has overstated the actual science set forth in the [studies]." *Becerra* is one of three cases filed last October challenging the use of the term "diet" for soft drinks. The Perkins Coie Food Litigation team is following these cases closely, and will monitor whether courts in the other two actions rely on Judge Alsup's ruling in *Becerra* in the motions to dismiss currently pending in those matters. [The dismissal order for *Becerra v. The Coca-Cola Company* is available here.](#)

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