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May 18, 2018

Food & Consumer Packaged Goods Litigation

Notable Ruling: Another Motion to Dismiss for Diet Soda

Just two and a half months after the Northern District of California [ruled](#) that a reasonable consumer would not be misled to believe "Diet Coke" aids in weight loss, a similar suit against Pepsi-Cola for its Diet Pepsi product has been dismissed ([Manuel v. Pepsi-Cola Company](#)). This is the fourth ruling in the past three months dismissing similar claims. On Thursday, May 17, the Southern District of New York's Judge Paul A. Engelmayer entered an order granting Pepsi's motion to dismiss. The class alleged that Pepsi misrepresented its products with the label "diet," a word that may signify to consumers that the product aids in weight loss. The Court held that nothing in Pepsi's labeling or advertising claims suggested that the product would assist a consumer in weight loss or weight management. The Court referenced what a reasonable consumer would think – "diet does not stand in isolation," it said. As such, the Court stated, reasonable consumers would realize that "diet" in the context of a soda means a lower caloric count and that lower caloric count does not mean weight loss. Judge Alsup's was the first of three such decisions preceding *Manuel*. Judge Orrick of the Northern District of California granted a motion to dismiss [Becerra v. Dr. Pepper / Seven Up, Inc.](#), No. 17-cv-5921 (WHO), 2018 WL 1569697 (N.D. Cal. Mar. 30, 2018). Judge Daniels of the Southern District of New York granted a motion to dismiss [Excevarria v. Dr. Pepper Snapple Grp.](#), No. 17-cv-7957 (GBD), ECF No. 54 (S.D.N.Y. Apr. 18, 2018). Given the rapid succession of these motions to dismiss, it appears the courts have little tolerance for these claims.

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