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Weekly Notable Ruling Roundup



Our weekly roundup aims to keep our readers up to date on recent notable rulings in the food & consumer packaged goods space.

- ***Zaida Hicks, et al. v. L'Oreal USA, Inc.***, No. 1:22-cv-03926-JPC (S.D.N.Y. – September 30, 2023): The Southern District of New York dismissed an amended complaint in a putative class action. The amended complaint had alleged defendant misled consumers by representing that the company's waterproof mascaras "were safe, effective, high quality, and appropriate for use on consumers' eyelashes and around their eyes." Plaintiffs alleged that this representation was false or misleading because many of these products contained "detectable amounts" of Per- and Polyfluoroalkyl Substances ("PFAS"). The court held that plaintiffs did not allege sufficient facts to allow the inference that the mascaras they individually purchased (i) actually contained PFAS or (ii) were at a material risk of containing PFAS. The court further held that plaintiffs lacked standing as they did not plausibly allege injury. The court noted that the amended complaint did not allege how many products were tested in plaintiffs' study, whether all those tested products revealed the presence of PFAS, and if not, what percentage of the products had PFAS. Opinion linked [here](#).
- ***Lisa Boss, et al. v. The Kraft Heinz Co., et al.***, No. 1:21-cv-06380 (N.D. Ill. – September 7, 2023): The Northern District of Illinois dismissed a putative class action complaint alleging that the labeling of defendants' water-flavoring products was false and misleading. Specifically, plaintiffs claimed that the products were represented to contain no artificial flavors, even though those products contain dl-malic acid, an artificial ingredient. The court held that although the products' front labeling states the products contain "Natural Flavor with Other Natural Flavors," that statement was not an affirmative representation that the products are free from artificial flavors. Absent an affirmative representation that the products are "all natural" or free from artificial ingredients, the court concluded that the omission of an "artificial flavor" disclosure would not mislead a reasonable consumer into believing that the products are completely natural and free from artificial flavors. Opinion linked [here](#).

If you are a food or CPG company contact interested in receiving our daily email update on filings and notable rulings, please reach out to Kellie Hale with your request to be added: khale@perkinscoie.com.

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