

California Court of Appeal Clarifies Reach of “Reasonable Consumer” Standard in Food Labeling Cases

Simpson v. The Kroger Corp., B24205 (Cal. Ct. App.): The California Court of Appeal affirmed dismissal of a claim that Challenge Butter With Canola or Olive oil were mislabeled as "butter" and should have been labeled as a "spread" under California's Milk and Milk Products Act (MMPA). The trial court dismissed, finding that the MMPA claims preempted by federal regulations allow "nonstandardized butter." Plaintiffs originally argued that the products could not be labeled "butter" because they contained ingredients other than those in butter's standard of identity. But during the appeal—in response to defendant's argument that the products satisfied federal standards defining "butter"—plaintiffs argued instead that the labels overstated the butter content in a manner confusing to the reasonable consumer. The Court of Appeal rejected this argument and affirmed dismissal. The court explained that because the defendant's labels truthfully described the products' ingredients, no "reasonable consumer" could have been misled: "The labels of the products here clearly informed any reasonable consumer that the products contain both butter and canola or olive oil. . . . No reasonable person could purchase those products believing that they had purchased a product containing only butter." [Order](#).

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