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Food & Consumer Packaged Goods Litigation

Silk Soy Milk “Misbranding” Case Dismissed as Preempted and Implausible

The Northern California federal judge assigned to *Ang v. Whitewater Foods Co.*, No. 13cv1953 (N.D. Cal.) dismissed the case, rejecting plaintiffs' allegations that a variety of Horizon yogurt products and Silk soy and other nondairy "milks" are misbranded because their labels disclose "evaporated cane juice" (ECJ) as opposed to "sugar" or because the nondairy "milks" do not come from lactating cows and therefore do not satisfy the standard of identity for "milk." First, the court found the class bound by a previous national settlement in Florida related to the ECJ and yogurt claims, in which plaintiffs tried to intervene but were denied when the court found their interests adequately protected by the Florida litigants. Second, with respect to the nondairy "milks" claims, the court found the standard of identity for milk "pertains to what milk is, rather than what it is not, and makes no mention of non-dairy alternatives such as the Silk Products." The court agreed that "the names 'soymilk,' 'almond milk,' and 'coconut milk' accurately describe" the products, and found claims based on those statements preempted and implausible. [Order](#).

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