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Food & Consumer Packaged Goods Litigation

Court Allows “No Sugar Added” Claims to Proceed

Bruton v. Gerber Products, No. 12cv2412 (N.D. Cal.): The court largely denied Gerber's motion to dismiss a complaint that asserts Gerber makes unlawful nutritional content claims on food for children under 2, and that its products claim to have "no added sugar" without making disclosures required by FDA regulations. The court denied Gerber's motion to dismiss claims related to "substantially similar" products that the named plaintiff did not purchase, holding that the plaintiff adequately alleged injury sufficient to establish standing, and sought through the class device to represent others who suffered a "substantially similar" injury. However, this was plaintiff's second chance to amend to allege adequately how the "substantially similar" products were like the purchased product, so for certain of the products that were subject to a previous motion to dismiss, the court granted the motion to dismiss claims related to "substantially similar" products with prejudice. The court also granted with prejudice the motion to dismiss claims from Gerber's website, which the plaintiff did not claim to have seen. Finally, the court denied the motion to dismiss national class allegations, ruling that was a question for the class certification process. [Order](#).

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