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Food & Consumer Packaged Goods Litigation

Claims in Chocolate Case Survive Dismissal

Gustavson v. Mars, Inc., No. 5:13cv4537 (N.D. Cal.): In a putative class action alleging claims under California's UCL, FAL, and CLRA, the plaintiff alleged that defendant's labels for its chocolate products 1) make misleading nutrient content claims regarding flavanols, 2) make misleading calorie claims, and 3) fail to identify certain ingredients contained in the product on its labelling. The court denied defendant's motion to dismiss. Following similar rulings, the court held that "source of" and similar statements about antioxidants were not preempted. The court similarly concluded that the plaintiff's calorie claims did not seek requirements different than those imposed by the FDCA. Finally, the court held that the "front of the pack" calorie claims were not subject to dismissal because, while the FDA had recently issued some statements addressing these claims, the agency's regulatory process was not sufficiently "concrete or advanced" as to warrant dismissal.

[Order.](#)

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