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Food & Consumer Packaged Goods Litigation

Dismissal Without Prejudice of False Advertising Claims Related to Gerber “Puffs” Cereal Products

Henry v. Gerber Prods. Co., 3:15-cv-2201 (D. Ore.): The Court granted Defendant's motion to dismiss without prejudice in this putative class action asserting violations of Oregon's consumer protection statutes. Plaintiffs claim that Defendant's Graduate Puffs cereal snack products are misleading because the advertising highlights names and colorful pictures of fruits and vegetables that are not actually contained in the product. The Court held that the claims were preempted by the federal Food, Drug, and Cosmetic Act, which permits manufacturers to use the names and images of fruits and vegetables on packaging to describe the product's flavor, even if the product does not actually contain the fruit or vegetable. In doing so, the Court rejected Plaintiffs' argument that section 343(a) of the FDCA "preserves the right of . . . private litigants to sue . . . for a false or misleading label even when the label does not violate another more specific food labeling statute or regulation." The Court also rejected Plaintiffs' efforts to enforce FDCA violations through Oregon's consumer protection statutes, noting that Oregon had not created a private right of action for damages based on FDCA violations. [Order.](#)

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