

Parts Missing: Slack-Fill Case Dismissed for Lack of Particularity

A New Jersey federal court dismissed slack-fill claims against the manufacturer of Junior Mints and Sugar Babies products. Plaintiff Regan Iglesia purchased Junior Mints in 2017 and claimed that the boxes of the challenged products were about forty-five percent empty. He brought suit under a litany of alleged violations related to this area of empty packaging, called slack-fill. On October 18, the court dismissed each of Iglesia's claims, holding that the complaint was not plead with adequate particularity, including the date or exact location of the alleged purchase. The court went on to provide additional holdings, including:

- *No Standing for Products Plaintiff Did Not Purchase*: The court held that Iglesia had standing to bring claims for products he purchased (Junior Mints) and lacked standing to pursue claims regarding products he did not purchase (Sugar Babies).
- *The Challenged Labeling Was Not Misleading Under the Reasonable Consumer Standard*: The Court further held that the products were sold by weight, not volume, so the challenged net weight statement was not misleading, even if the claims were plead with particularity. Specifically, the labeling challenge failed under the reasonable consumer standard as the net weight of the products was displayed on the front of the packaging in easily discernable font. Relying on a 2018 slack-fill decision dismissing claims against Junior Mints products, the court found that "a consumer can easily calculate the number of candies contained in the Product boxes simply by multiplying the serving size by the number of servings in each box, information displayed in the nutritional facts section on the back of each box."
- *The Size of the Product's Packaging Did Not Create an Express Warranty*: Applying New Jersey law, the court held that the size of the product's boxes did not create an express warranty, writing "an express warranty based on the size of the box alone is, in essence, an *implied* express warranty, which the law does not permit."

The court granted the motion to dismiss without prejudice on all counts apart from unjust enrichment, finding that any amendment would be futile on that claim. Iglesia has thirty days to amend the complaint. The case is *Iglesia v. Tootsie Roll Industries LLC*, No. 3:20-cv-18751 (D.N.J.), and the order is available here ([link](#)).

Explore more in

[Food & Consumer Packaged Goods Litigation](#) [Food & Beverage](#)

Blog series

Food & Consumer Packaged Goods Litigation

Food & Consumer Packaged Goods Litigation shares timely insights into litigation developments, emerging arguments and challenges facing food and consumer packaged goods manufacturers and related industries.

[Subscribe ?](#)

[View the blog](#)