CLIENT ALERTS & INSIGHTS

Going Back to the "Well": Plaintiffs Target Wellness Branding by Attacking Ingredients

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Featured Practices: Litigation, Consumer Protection & Class Actions, False Advertising & Unfair Competition

Featured Industries: Retail & E-Commerce, Food & Beverage

Key Takeaways

- Plaintiffs are increasingly targeting food and beverage companies' "wellness" and "free-from" marketing claims, focusing on ingredient-level details that allegedly contradict broad statements on the labels.
- This trend creates meaningful litigation risk for food, beverage, and supplement companies: these claims are attractive targets for class actions, can survive early motions, and may expose brands to costly discovery, settlements, and reputational harm tied to premium "clean label" positioning.
- Companies should carefully review their product formulations, pressure-test "free-from" and wellness claims against actual formulations and sourcing, ensure front-label messaging aligns with disclosures, and document substantiation-especially for categorical statements that plaintiffs can challenge based on a single ingredient or process.

Wellness-forward marketing is under attack. The growing wave of ingredient-level challenges to these marketing claims begs the question: how many of these claims are *truly* viable and under what circumstances?

Many of these lawsuits focus on categorical "free-from" language and similar "clean" claims appearing on product labels. Specifically, they target representations that products are "free from" ingredients such as artificial colors, flavors, or sugars, as well as statements concerning the "healthy" nature of the products themselves. Plaintiffs often argue that a single ingredient or manufacturing process renders broader "free-from" or health-based representations deceptive and misleading.

Two recent filings reflect the increasing litigation threat that the food-and-beverage industry faces from complaints pursuing these theories, as well as the robust defenses that remain available.

The Plaintiffs' Bar Targets "Free From" Representations

A recent example is *Marinelli v. Bloom Nu, LLC*, pending in the U.S. District Court for the Eastern District of New York. The plaintiff alleged that Bloom Nu falsely labeled its energy drinks as containing "no artificial colors, flavors, or aspartame." Specifically, she claimed the drinks contain commercially manufactured and chemically processed citric acid that functions as an artificial flavor-making the "no artificial" claim materially false and misleading. She also alleged the drinks include other synthetic ingredients, such as potassium benzoate and niacinamide.

Another example is *Cardenas v. Craftmix, Inc.*, pending in the U.S. District Court for the Eastern District of California. There, plaintiff asserted nearly identical allegations to *Bloom Nu*-that Craftmix's "all natural" labels and marketing were deceptive because the company's drink mixes contained artificial ingredients (specifically, manufactured citric acid and sodium benzoate).

The theory advanced in *Bloom Nu* and *Craftmix* reflects a broader plaintiffs' strategy: identify a technical formulation or ingredient-sourcing issue, then argue it undermines the brand's overall wellness message.

These Claims Face Significant Litigation Hurdles

Despite increased attention to these theories, plaintiffs must still overcome significant defenses: federal preemption, the reasonable-consumer standard, and disclosure-based arguments.

In *Testori v. Nestlé Health Science US Holdings, Inc.*, the plaintiff alleged that the protein-related labeling on Nestlé's "Carnation Breakfast Essentials Nutritional Drink" was misleading because the product contained 11 grams of added sugar per serving. The U.S. District Court for the Eastern District of California dismissed all claims with prejudice.

The court explained that FDA regulations govern health-related claims, including express and implied nutrient-content claims, and concluded that the plaintiff's state-law claims were preempted because the case turned on nutritional messages regulated by federal law. The court also found that the front label did not plausibly represent that the drink was "nutritionally balanced" or low in added sugar.

The court's reasonable-consumer analysis also highlights the importance of analyzing the full label in context. Citing Ninth Circuit authority, the court noted that plaintiffs must plausibly allege the front label is so unambiguously deceptive that an ordinary consumer would not look at the back label. Where front-label ambiguity can be resolved by the back label, a reasonable consumer would not necessarily be deceived. This reasoning may be particularly significant in cases involving disclosed nutrient information, as opposed to categorical "free-from" claims.

Overall, *Nestlé* is an important reminder that courts are particularly selective about which theories they allow to survive a motion to dismiss.

Key Takeaways for Food, Beverage, and Supplement Companies

Bloom Nu, *Craftmix*, and *Nestlé* remind companies using "free-from" or nutrition-forward marketing to ensure that those claims are supportable-not only on the front label, but across formulation, ingredient sourcing, and overall marketing. Pay particular attention to categorical statements; plaintiffs may argue that a single ingredient or manufacturing process makes the entire representation misleading.

As this litigation trend develops, companies should review their labeling and marketing claims with both formulation accuracy and litigation defensibility in mind.

Benesch's Retail & E-Commerce Industry Group is actively monitoring developments in this area. For questions about how these developments may affect your business, please contact Michael D. Meuti or Allyson Cady.