CLIENT ALERTS & INSIGHTS

Not Quite Full of It: The Risk of "Shrinkflation" Lawsuits

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Authors: Michael D. Meuti, Michael B. Silverstein, Ruddy S. Abam

Key Takeaways:

- As companies grapple with inflation, many are forced to reduce product volume while keeping prices and packaging the same-a trend known as "shrinkflation." This common practice carries significant legal risk, especially amid a rise in class-action lawsuits alleging that packaging misleads consumers about the amount of product they are getting.
- Courts and plaintiffs' firms are zeroing in on packaging that appears to promise more product than it delivers, fueling a resurgence of suits targeting empty space in opaque containers.
- With this uptick in litigation, businesses should proactively audit packaging design when reducing product volume to mitigate exposure and avoid becoming the next target case.

Business Challenges Lead to Shrinkflation, Seemingly Saving Money

Companies across industries continue to face increasing production costs. Whether due to tariffs, inflation, supply chain disruptions, or simply a shortage of raw materials, the rising costs of goods have hit every part of the economy.

Companies can alleviate the pressures of these rising costs in many ways. One way-which some people call "shrinkflation"-is to decrease the product volume in a package without decreasing the package price. This allows companies to maintain or increase per-unit margin without raising consumer-facing prices. But this strategy can invite scrutiny.

Plaintiffs' Push To Make Companies Pay For Profit-Saving Moves

Recent months have seen a surge of new cases challenging a wide range of packaging practices. Of course, any company selling products to consumers knows that the plaintiffs' bar will often anchor false-advertising claims upon benign statements in advertising materials or product packaging-like complaining that a "footlong" sub did not measure exactly 12 inches. One detail the Plaintiffs' bar has paid particular attention to lately is representations regarding product quantity.

These product-quantity lawsuits are proving surprisingly durable and come in various forms. One is "slack-fill" litigation. In these lawsuits, plaintiffs claim that non-functional, empty space in a package misleads consumers into believing the package contains more product than it actually does. Even if the package accurately describes the weight and amount of product inside, the package could still supposedly deceive consumers into thinking it contains more product than it actually does.

Another type of product-quantity lawsuit are claims that the packaging directly misrepresents how much product a package contains. For instance, if a container of cookie mix claims that it will make 24 cookies, a consumer might claim that it actually makes only 18.

These product-quantity lawsuits depend on what courts call the "reasonable consumer standard." Under this standard, courts ask whether a reasonable consumer would think that a package contains more product than it actually does.

The "reasonable consumer standard," unfortunately is a low bar for consumers to meet early in a case, creating a fast-track to expensive discovery. Indeed, some important cases illustrate this threat:

1. **In re Folgers Coffee Marketing (No. 24-2830, 2025 WL 3292613 (8th Cir. Nov. 26, 2025):**
    1. **Claim:** Folgers faced a series of claims alleging that representations on its packaging about the amount of coffee that could be brewed from one container was false and misleading.
    2. **Outcome:** Folgers recently obtained a significant victory reversing class certification, but only after years of costly discovery.

2. **Bogren v. Hershey Salty Snack Sales Company (S.D. Cal. Sept. 2, 2025)**:
    1. **Claim:** This recent class-action lawsuit alleges that SkinnyPop bags mislead consumers by promising more popcorn than they actually contain.
    2. **Outcome:** The Southern District of California dismissed the first complaint, holding that reasonable consumers expect popcorn weight to remain consistent even if volume varies, and that the plaintiffs ignored the disclosed weight. Yet, the Court gave the plaintiffs a second chance to plead their fraud-based claims-a chance plaintiffs took. Now, SkinnyPop has to engage in a new round of motion-to-dismiss briefing, all while the plaintiffs had the benefit of trying to correct the deficiencies that the Court identified.

3. **White v. Just Born, Inc. (W.D. Mo. July 21, 2017):**
    1. **Claim:** This lawsuit alleged that the cardboard boxes for Mike and Ike and Hot Tamales candy were about 35% empty space, which misled consumers. Just Born argued the empty space was functional and necessary for the product.
    2. **Outcome:** After Just Born prevailed at the class-certification stage, the parties settled the plaintiff's claim on an individual basis.

Shrinkflation Solutions Create Legal Problems

While shrinkflation might appear to be an appealing option for offsetting increasing production costs, it could backfire by triggering increased legal costs.

Indeed, these costs could arise even when companies take measures like listing weight and serving sizes. If the package size remains the same as before the product volume changed, courts may find that a reasonable consumer would not notice the new listed weight and would thus be deceived about the amount of product actually contained.

Now, what was a maneuver aimed at saving money could create significant legal bills. Plaintiffs have filed numerous slack-fill suits in 2025 alone, particularly in West Coast jurisdictions, under the Unfair Competition Law, False Advertising Law, and other state consumer-protection statutes. These suits have targeted a range of products, from flower fertilizer,[1] seeds for gardening,[2] cosmetics,[3] and baked goods.[4] These claims seek a variety of remedies, including injunctive relief, disgorgement of profits, restitution, actual, statutory, and punitive damages. Some suits seek court-ordered redesigns requiring conspicuous "fill lines" showing the product amount-at the defendant's sole expense.

How to Mitigate Risks

Shrinkflation happens, and sometimes it is necessary. But how can companies keep a business solution from turning into a legal headache?

- **Audit Your Package-to-Product Ratio:** Before a plaintiff's lawyer does it for you, review your product lines. If a package contains a significant amount of empty space, ask why.
- **Document the "Function" of Empty Space:** Is the slack-fill necessary? Document the reasons. Common functional reasons include protecting a fragile product (e.g., chips), allowing for settling during shipping, or accommodating the packaging machinery. This documentation is crucial for building a defense, as federal regulations like 21 C.F.R. § 100.100 recognize that those factors can render slack-fill functional and therefore necessary.
- **Strengthen Quantity Disclosures**: If the package states the cookie mix makes 24 cookies, does it also state what size the cookies are? Is there clear, prominent language stating that quantity size might vary if instructions are not followed? Can you add prominent weight disclosures? These measures are necessary to make expectations clear to the reasonable consumer.
- **Involve the Legal Department in Redesigns:** Packaging and labeling changes should not be exclusively a marketing or design decision. Legal counsel must be involved early to assess potential product-quantity risks before a new design is finalized.

Shrinkflation may be a necessary response to economic pressures, but it requires careful legal navigation. A proactive review of your product packaging can prevent it from becoming the basis of your next costly class action.

[1] *Roberts v. Skyline Encap Holdings, LLC*, No. 25STCV33401 (CA. Sup. Ct., Los Angeles County, Nov. 2025).

[2] *Hernandez v. Ferry-Morse Seed Company, et al.*, No. 25STCV33382 25STCV33401 (CA. Sup. Ct., Los Angeles County, Nov. 2025).

[3] *Gonzales v. Ax Beauty Brands Global LLC*, No. 2:25-cv-10383 (C.D. Cal. Oct. 2025).

[4] *Cantu v. Gen. Mills, Inc.*, No. 24-cv-10664-GW-PDX, 2025 WL 942609, at *1 (C.D. Cal. Mar. 21, 2025)