

**Johns Hopkins Center for Law and the Public's Health**

**TOOLKIT**

**Legal Approaches to Addressing Deceptive Claims  
on Foods and Beverages Marketed to Children**

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**Introduction:** This toolkit draws, in part, on a comprehensive legal review of claims on foods and beverages marketed to children that have been the subject of state, federal, or private litigation or governmental regulation. The comprehensive legal review was funded by the Robert Wood Johnson Foundation's Healthy Eating Research national program (#70755). The purpose of this toolkit is to translate legal research findings for stakeholders interested in learning more about legal approaches to address potentially deceptive claims on foods and beverages marketed to children.

This toolkit provides general information and is not intended to offer jurisdiction-specific guidance. The content focuses primarily on relevant federal and state options, although this content is not meant to be exhaustive. Other options, including those at the local level, may also be available as permitted by state law.

## **Contents:**

- 1) Issue brief: potentially deceptive claims on foods and beverages marketed to children
- 2) Frequently asked questions about potentially deceptive claims on foods and beverages marketed to children
- 3) Legal authority to address potentially deceptive claims on foods and beverages marketed to children
- 4) Relevant recent cases that involved a potentially deceptive claim on a food or beverage marketed to children

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**Disclaimer:** This toolkit is not meant to provide specific legal advice. Users of this toolkit should consult with an attorney for specific legal guidance and advice.

## Issue Brief: Potentially Deceptive Claims on Foods and Beverages Marketed to Children

Childhood obesity in the U.S.: Over one-third of U.S. children are overweight or obese.<sup>1</sup> This number has doubled over the course of the last three decades, with numerous health and social consequences.<sup>2</sup> Obese young people experience negative health effects as both children and adults. For example, obese children may develop cardiovascular disease risk factors, including elevated blood pressure or cholesterol, and are at higher risk to develop diabetes.<sup>3,4</sup> In addition, obesity places children at greater risk for psychological harms, including depression and weight-related stigma.<sup>5,6</sup> Obese children are more likely to be obese adults,<sup>7,8</sup> placing them at greater risk for chronic diseases associated with obesity in adulthood. One way to address childhood obesity is by limiting the number of calories (i.e., energy) that children consume.<sup>9</sup>

Advertising and marketing of energy-dense foods: The advertising of foods and beverages with low nutritional value has been identified as a contributor to swiftly rising obesity rates among children. Food and beverage manufacturers often use health claims to promote their products to consumers, including parents seeking nutritious options for their children.<sup>10,11</sup> These claims may take varied forms (e.g., “calcium helps build strong bones”; “fortified with vitamins and minerals”). The law prohibits the use of deceptive claims,<sup>12</sup> which may be addressed through a variety of legal options including litigation.

Deceptive claims: Deceptive claims have been defined by the Federal Trade Commission as follows<sup>13</sup>: 1) the claim is likely to mislead consumers due to a representation or omission within the claim; 2) the consumer viewing the claim is acting reasonably under the circumstances; and 3) the representation or omission in the claim is likely to have had an effect on the consumer's decision to purchase the product.

Sample claims that have received legal attention, 2005-2013: These claims are drawn from lawsuits in the federal and state court systems in which plaintiffs alleged that a manufacturer used a deceptive claim on a food/beverage marketed to children. Importantly, when a claim is the focus of a lawsuit, it does not necessarily mean that the food/beverage manufacturer who used the claim is guilty of deceptive marketing practices. For example, a court may determine that a challenged claim is, in fact, not deceptive for a reasonable consumer. The list below provides information about the types of claims that have received legal attention in recent years.

- “0 grams of trans fat”
- “0 grams trans fat same great taste”
- “0g trans fat per serving”
- “25% less sodium”
- “100% juice”
- “100% natural”
- “100% pure and natural”
- “All natural”
- “All natural flavors”
- “An example of a healthy and balanced breakfast”

- “Cholesterol free”
- “Contains 100% juice”
- “Fat free”
- “Fortified with calcium”
- “Healthy options”
- “Heart healthy”
- “Helping to support your family’s immunity”
- “Light”
- “Lower your cholesterol 4% in 6 weeks”
- “Made with a blend of nutritious oils”
- “Made with not from concentrate juice”
- “Made with real fruit”
- “No trans fat”
- “Nutrient-enhanced water beverage”
- “Promotes a healthy heart”

## Frequently Asked Questions about Potentially Deceptive Claims on Foods and Beverages Marketed to Children

### 1) *What is a health or nutrition-related claim?*

Claims about foods and beverages may take several forms. The U.S. Food and Drug Administration (FDA) divides these claims into three categories<sup>14</sup>: 1) health claims concern the relationship between a food/beverage and a disease or condition (e.g., “diets low in fat may reduce the risk of certain cancers”); 2) nutrient content claims describe the nutrient content within a food/beverage or compare its nutrient content to that of another food (e.g., “light in sodium”); and 3) structure/function claims address the role of a food/beverage ingredient or nutrient within the human body (e.g., “calcium builds strong bones”).

### 2) *When is a claim potentially deceptive?*

By law, deceptive claims are prohibited. The Federal Trade Commission (FTC) has defined a deceptive claim as follows<sup>15</sup>: 1) the claim is likely to mislead consumers due to a representation or omission within the claim (e.g., information contained in the claim is confusing or unclear); 2) the consumer viewing the claim is acting reasonably under the circumstances (e.g., how would a typical consumer interpret the claim); and 3) the representation or omission in the claim is likely to affect the consumer’s decision about the product (i.e., information in the claim is important to consumers making a purchasing decision).

### 3) *Who has federal authority to regulate in the area of deceptive claims?*

There are two federal agencies that share authority to address potentially deceptive claims on foods and beverages. The FDA has authority over content that appears on the labels of foods and beverages.<sup>16</sup> The FTC has authority over claims that appear in advertising for foods and beverages. These agencies can draw on a variety of regulatory tools to address potentially deceptive claims.<sup>17</sup>

### 4) *What legal approaches can be used to address a potentially deceptive claim?*

If a claim is potentially deceptive for consumers, a variety of legal approaches are available. Individuals may initiate litigation against the manufacturer of the food/beverage that used the allegedly deceptive claim. Litigation against the manufacturer may also be initiated by non-governmental organizations as well as certain government agencies.<sup>18</sup> In addition, if the claim falls within FDA’s regulatory purview, it may issue a warning letter to the manufacturer requesting that the claim be revised or eliminated.<sup>19</sup> If the claim falls within FTC’s regulatory purview, it may issue an administrative complaint against the manufacturer regarding the claim.<sup>20</sup> At the state level, the Attorney General (i.e., the chief legal officer for each state) may draw on a variety of tools to address a potentially deceptive claim, including launching an investigation, raising awareness about the claim through press conferences and other

media appearances, or initiating litigation using his or her state consumer protection authority.<sup>21</sup>

5) *Are there advantages to governmental action versus litigation by a private individual?*

Governmental action (e.g., issuance of a warning letter) and litigation by a private individual each have advantages and disadvantages. When a government agency acts to address a potentially deceptive claim, it may receive significant media attention. Since the agency's action is included within its mission, the action may not require additional personnel or financial resources. In addition, government agencies have well-established channels to disseminate information about their activities to the public. On the other hand, members of the public who were deceived by the claim may not directly benefit from government action. While the claim may be removed from the product, individuals who purchased the product after relying on the claim will not necessarily be compensated for the deception. When a private individual brings a lawsuit against a food/beverage manufacturer due to a potentially deceptive claim, he or she may be compensated for the harm associated with the deceptive claim. In addition, the deceptive claim may be revised or removed if a court finds for the plaintiff. But, such litigation may be time-consuming and expensive, and the plaintiff may not win after years of pursuing the lawsuit. In addition, the plaintiff may settle the claim and receive compensation with no benefit to other members of the public who were similarly affected.

6) *What might happen if a claim is determined to be deceptive?*

If a government agency finds a claim to be deceptive, it will first request that the food/beverage manufacturer cease using the claim. This may be done through a warning letter or the issuance of a complaint. If the manufacturer refuses to comply, other options become available, including an administrative trial. If a court finds a claim to be deceptive, due to litigation initiated by the government or an individual, then the manufacturer will be told how to proceed by the court (e.g., pay financial damages to the plaintiffs; discontinue use of the claim). Before a judgment is issued, the manufacturer may decide to settle the case, meaning that an agreement will be reached between the manufacturer and the plaintiff without the court issuing a decision.

7) *Why do some potentially deceptive claims remain on foods and beverages?*

Food/beverage manufacturers may continue to use potentially deceptive claims for a variety of reasons. Because of the large number of potentially deceptive claims, government agencies may not have the ability to respond to every claim, either due to personnel limitations or because they are unaware of the claim. In addition, not every potentially deceptive claim will be the subject of litigation. For example, consumers may not always rely on or be harmed by a deceptive claim. If the claim has not been subject to legal action, the manufacturer may have no incentive to discontinue its use. If litigation is brought to challenge a potentially deceptive claim, a court may find in favor of the food/beverage manufacturer. If this is the case, then the claim may continue to be used.

8) *I am concerned about a potentially deceptive claim on a food or beverage. What can I do?*

If the claim is on a product's label or in its advertising, but you haven't actually purchased the product, you may want to contact your state's Office of the Attorney General. You can request to speak to someone in the consumer protection division, report the potentially deceptive claim, and ask them to consider investigating it. If you relied on the claim when purchasing a food or beverage and subsequently realized that it was deceptive, you may want to initiate litigation, with the goals of obtaining financial damages and preventing the manufacturer from using the claim in the future. If you think you may be interested in litigation, you should seek out an attorney with a consumer protection practice who can discuss the potential lawsuit with you. Sometimes such lawsuits will be pursued as a class action in which the claims of many similar plaintiffs are aggregated into one lawsuit. Finally, you can contact various non-governmental organizations that work on this issue.

9) *What organizations can I contact about a potentially deceptive claim on a food or beverage?*

Several governmental and non-governmental organizations work in this area. The links below may provide helpful information:

- Center for Science in the Public Interest: <https://www.cspinet.org/>
- ChangeLab Solutions: <http://changelabsolutions.org/>
- Federal Trade Commission: <http://www.ftc.gov/>
- Food and Drug Administration: <http://www.fda.gov/>
- National Association of Attorneys General: <http://www.naag.org/>
- Network for Public Health Law: <https://www.networkforphl.org/>
- Public Citizen: <http://www.citizen.org/Page.aspx?pid=183>
- Public Health Advocacy Institute: <http://www.phaionline.org>
- Rudd Center for Food Policy & Obesity: <http://www.yaleruddcenter.org>
- Truth in Advertising: <https://www.truthinadvertising.org>

## Legal Authority to Address Potentially Deceptive Claims on Foods and Beverages Marketed to Children

Background: Legal authority to address potentially deceptive claims on foods and beverages is shared among several entities at the federal and state levels. As described below, this includes the ability of certain governmental agencies to exert their regulatory authority as well as the ability of governmental and private actors to initiate litigation.

Federal Regulatory Authority: At the federal level, the two primary agencies with authority to address potentially deceptive claims on foods and beverages are the U.S. Food and Drug Administration and the Federal Trade Commission.

- *U.S. Food and Drug Administration:* FDA has regulatory authority over content that appears on food and beverage labels.<sup>22</sup> When a potentially deceptive claim comes to FDA's attention, the FDA has several options: 1) it can issue a warning letter to the manufacturer who used the claim on a food/beverage<sup>23</sup>; or 2) seek an injunction against the manufacturer in coordination with the Department of Justice. The latter option is rarely used.<sup>24</sup> When a warning letter is issued, the manufacturer is informed that FDA believes a violation has occurred, and the manufacturer is expected to voluntarily comply with FDA's terms (e.g., revising or removing the deceptive claim).
- *Federal Trade Commission:* FTC has regulatory authority over advertising for foods and beverages,<sup>25</sup> and it can take action against deceptive claims. FTC has developed guidance about what constitutes a deceptive claim.<sup>26</sup> When FTC identifies a deceptive claim, it can conduct an investigation and issue an administrative complaint. Using this quasi-litigation route, FTC's options include limiting the use of a claim in the future, imposing a fine on the manufacturer, or requiring the provision of refunds to affected consumers.<sup>27</sup> If it seeks to create industry-wide change, FTC may promulgate a regulation that addresses a particular aspect of deceptive claims in advertising.

State Regulatory Authority: At the state level, each state's Attorney General may draw on a variety of tools to address potentially deceptive claims on foods and beverages. In addition, state health departments may act to raise awareness of these claims.

- *Attorneys General:* In each of the 50 states, the chief legal officer is known as the Attorney General. Attorneys General typically have strong consumer protection authority,<sup>28</sup> making them important policymakers relative to deceptive claims on foods and beverages. Once an Attorney General becomes aware of a potentially deceptive claim, through his or her own experiences or through information provided by constituents in his or her state, the Attorney General can initiate an investigation of the manufacturer using the claim.<sup>29</sup> This may result in a publicly available report or media appearances, and it may also serve as the basis for future litigation against the manufacturer.<sup>30</sup> The Attorneys General frequently act in collaboration on consumer protection cases, giving them the ability to have an even greater impact in multiple states.
- *Health Departments:* Each state has a department of health, which is typically overseen by the state's highest health officer.<sup>31</sup> Health departments' powers vary by state, but some health departments have active chronic disease prevention programs that focus on promoting healthy and active lifestyles for children.<sup>32</sup> As part of their programmatic activities, health departments may conduct community outreach and provide education



about potentially deceptive claims on foods and beverages. They may convene stakeholders to develop strategies to address these claims, and may work in conjunction with their state's Attorney General when specific deceptive claims are identified.

Litigation: Under certain circumstances, governmental actors as well as private individuals may initiate litigation against an allegedly deceptive claim.

- As described above, certain governmental actors, including the FTC and state Attorneys General, may become involved in litigation against a potentially deceptive claim. In addition, private individuals may initiate litigation against a manufacturer who has used a potentially deceptive claim to promote a food or beverage.<sup>33</sup> Private individuals may decide to bring a lawsuit on their own or on behalf of a larger group or class of individuals who were allegedly deceived by the claim.<sup>34</sup> Importantly, before initiating litigation, an individual must have personally experienced a harm due to the claim (e.g., relying on the deceptive claim when making a purchase). Without this type of clear connection between the individual and the claim, a court will not allow the lawsuit to proceed. Consumers most often rely upon state consumer protection law when bringing lawsuits against potentially deceptive claims.<sup>35</sup> Individuals contemplating litigation should meet with an attorney who specializes in consumer protection law to learn more about specific issues to consider in advance of filing lawsuit.

## Relevant Recent Cases that Involved a Potentially Deceptive Claim on a Food or Beverage Marketed to Children

Introduction: Litigation involving allegedly deceptive claims on foods and beverages marketed to children may be brought at the federal or state levels. The cases listed below, brought between 2005 and 2013, were initiated by private individuals or were used to represent a larger class of individuals allegedly harmed by a claim. While not exhaustive, this list is intended to aid stakeholders interested in familiarizing themselves with recent litigation in this area at the trial and appellate court levels.

### *Federal Cases:*

- *District Court:*
  - Vermont Pure Holdings, Ltd. v. Nestle Waters North America, Inc., No. Civ.A.03–11465 DPW, 2006 WL 839486 (D. Mass. 2006)
  - Reyes v. McDonald's Corporation, Nos. 06 C 1604, 06 C 2813, 2006 WL 3253579 (N.D. Ill. 2006)
  - Fraker v. KFC Corp., No. 06-CV-01284-JM (WMC), 2007 WL 1296571 (S.D. Cal. 2007)
  - Jernow v. Wendy's Intern., Inc., No. 07 Civ. 3971(LTS)(THK), 2007 WL 4116241 (S.D.N.Y. 2007)
  - In re: Tyson Foods, Inc. Chicken Raised Without Antibiotics Consumer Litigation, 582 F.Supp.2d 1378 (U.S. Jud. Pan. Mult. Lit., 2008)
  - In re PepsiCo, Inc., Bottled Water Marketing and Sales Practices Litigation, 588 F.Supp.2d 527 (S.D.N.Y. 2008)
  - Hansen Beverage Company v. Innovation Ventures, LLC, No. 08-CV-1166-IEG (POR), 2009 WL 6597891 (S.D.Cal. 2009)
  - Wright v. General Mills, Inc., Civil No. 08cv1532 L(NLS), 2009 U.S. Dist. LEXIS 90576 (S.D. Cal. 2009)
  - Wiley v. Gerber Products Company, 667 F.Supp.2d 171 (D. Mass. 2009)
  - Hitt v. Arizona Bev. Co., LLC, CASE NO. 08cv809 WQH (POR), 2009 U.S. Dist. LEXIS 16871 (S.D. Cal. 2009)
  - Lockwood v. Conagra Foods, Inc., 597 F.Supp.2d 1028 (N.D. Cal. 2009)
  - Hildreth v. Unilever United States, Inc., No. CV 10-07936 MMM (SSx), 2010 WL 5174385 (C.D.Cal. 2010)
  - Peviani v. Hostess Brands, Inc., 750 F.Supp.2d 1111 (C.D.Cal. 2010)
  - Fine v. ConAgra Foods, Inc., No. CV 10-01848 SJO (CFOx), 2010 WL 3632469 (C.D.Cal. 2010)
  - Pom Wonderful LLC v. Welch Foods, Inc., 737 F.Supp.2d 1105 (C.D.Cal. 2010)
  - Silvius v. Ungar's Food Prods., Civil Action No. 10–0639 (JDB), 2010 WL 3324747 (D.D.C. 2010)
  - Rosen v. Unilever United States, Inc., No. C 09–02563 JW, 2010 WL 4807100 (N.D.Cal. 2010)
  - Zupnik v. Tropicana Prods., No. CV 09-6130 DSF (RZx), 2010 WL 6090604 (C.D.Cal. 2010)

- National Consumers League v. General Mills, Inc., 680 F.Supp.2d 132 (D.D.C. 2010)
- Red v. Kroger Co., Case No. CV 10-01025 DMG (MANx), 2010 U.S. Dist. LEXIS 117043 (C.D. Cal. 2010)
- Ackerman v. Coca-Cola Co., CV-09-0395 (JG) (RML), 2010 U.S. Dist. LEXIS 73156 (E.D.N.Y. 2010)
- Pelman v. McDonald's Corp., 272 F.R.D. 82 (S.D.N.Y. 2010)
- In re Ferrero Litig., 794 F.Supp.2d 1107 (S.D.Cal. 2011)
- Astiana v. Ben & Jerry's Homemade, Inc., Nos. C 10-4387 PJH, C 10-4937 PJH, 2011 WL 2111796 (N.D.Cal. 2011)
- Dvora v. General Mills, Inc., No. CV 11-1074-GW(PLAx), 2011 WL 1897349 (C.D.Cal. 2011)
- Catanese v. Unilever, 774 F.Supp.2d 684 (D.N.J. 2011)
- Smajlaj v. Campbell Soup Co., 782 F.Supp.2d 84 (D.N.J. 2011)
- Yumul v. Smart Balance, Inc., No. CV 10-00927 MMM (AJWx), 2011 WL 1045555 (C.D.Cal. 2011)
- Coyle v. Hornell Brewing Co., Civil No. 08-2797 (JBS/JS), 2011 WL 3859731 (D.N.J. 2011)
- Hansen Bev. Co. v. Vital Pharm., Inc., No. 08cv1545-IEG(WVG), 2011 WL 290828 (S.D.Cal. Jan. 26, 2011)
- Weeks v. Kellogg Co., 2011 U.S. Dist. LEXIS 155472, (C.D. Cal. 2011)
- Henderson v. J.M. Smucker Co., CV 10-4524-GHK (VBKx), 2011 U.S. Dist. LEXIS 27953 (C.D.Cal. 2011)
- Pom Wonderful LLC, v. Ocean Spray Cranberries, Inc., No. CV 09-00565 DDP (RZx), WL 4852472 (C.D. Cal. 2011)
- Colucci v. ZonePerfect Nutrition Co., No. 12-2907-SC, 2012 WL 6737800 (N.D.Cal. 2012)
- Jones v. Conagra Foods, Inc., 912 F.Supp.2d 889 (N.D.Cal. 2012)
- Miller v. Ghirardelli Chocolate Co., 912 F.Supp.2d 861 (N.D.Cal. 2012)
- In re ConAgra Foods, Inc., 908 F. Supp. 2d 1090 (C.D. Cal. 2012)
- Khasin v. Hershey Co., No. 5:12-CV-01862 EJD, 2012 WL 5471153 (N.D. Cal. 2012)
- Zeisel v. Diamond Foods, Inc., No. C 10-01192 JSW, 2012 WL 4902970 (N.D. Cal. 2012)
- In re: Cheerios Mktg. & Sales Practices Litig., Civil Action No. 09-cv-2413, 2012 WL 3952069 (D.N.J. 2012)
- Anderson v. Jamba Juice Co., 888 F. Supp. 2d 1000 (N.D. Cal. 2012)
- Scheuerman v. Nestle Healthcare Nutrition, Inc., Civil Case Nos. 10-3684 (FSH)(PS), 10-5628(FSH)(PS), 2012 WL 2916827 (D. N.J. 2012)
- Guerrero v. Target Corp., 889 F. Supp. 2d 1348 (S.D. Fl. 2012)
- Boysen v. Walgreen Co., No. C 11-06262 SI, 2012 WL 2953069 (N.D. Cal. 2012)
- Pappas v. Naked Juice Company et al., No. LA CV11-08276 JAK (PLAx), 2012 WL 1925598 (C.D. Cal. 2012)
- Vital v. One World Co., LLC, Case No.: SACV 12-00314-CJC(MLGx), 2012 U.S. Dist. LEXIS 186203 (C.D. Cal. 2012)

- Reid v. Johnson & Johnson, Civil No. 11cv1310 L (BLM), 2012 U.S. Dist. LEXIS 133408 (S.D. Cal. 2012)
- Stewart v. Smart Balance, Inc., Civil Action No.: 11-6174 (JLL), 2012 U.S. Dist. LEXIS 138454 (D.N.J. 2012)
- Red v. Kraft Foods, Inc., CV 10-1028-GW(AGR<sub>x</sub>), 2012 U.S. Dist. LEXIS 186948, (C.D. Cal. 2012)
- Lam v. Gen. Mills, Inc., 859 F.Supp.2d 1097 (N.D. Cal. 2012)
- Astiana v. Dreyer's Grand Ice Cream, Inc., Nos. C-11-2910 EMC, C-11-3164 EMC, 2012 WL 4892391 (N.D. Cal. 2012)
- Delacruz v. Cytosport, Inc., No. C 11-3532 CW, 2012 WL 2563857 (N.D. Cal. 2012)
- In re Quaker Oats Labeling Litig., No. C 10-0502 RS, 2012 WL 1034532 (N.D. Cal. 2012)
- Askin v. Quaker Oats Co., No. 11 CV 111, 2012 WL 517491 (N.D. Ill. 2012)
- Ries v. Arizona Beverages USA LLC, No. 10-01139 RS, 2013 WL 1287416 (N.D. Cal. 2013)
- Henderson v. J.M. Smucker Co., CV 10-4524-GHK (VBK<sub>x</sub>), 2013 U.S. Dist. LEXIS 87030 (C.D. Cal. 2013)
- Lynch v. Tropicana Products, Inc., Civil Action No. 2:11-cv-07382 (DMC) (JAD), 2013 U.S. Dist. LEXIS 82829 (D.N.J. 2013)
- Krzykwa v. Campbell Soup Co., CASE NO. 12-62058-CIV-DIMITROULEAS, 2013 U.S. Dist. LEXIS 74749 (S.D. Fla. 2013)
- Kosta v. Del Monte Corp., Case No.: 12-cv-01722-YGR, 2013 U.S. Dist. LEXIS 69319 (N.D. Cal. 2013)
- Janney v. Mills, No. C 12-3919 PJH, 2013 U.S. Dist. LEXIS 67187 (N.D. Cal. 2013)
- N. Am. Olive Oil Ass'n v. Kangadis Food Inc., 13 Civ. 868 (JSR), 2013 U.S. Dist. LEXIS 59557 (S.D.N.Y. 2013)
- Ogden v. Bumble Bee Foods, LLC, Case No.: C 12-1828 LHK, 2013 U.S. Dist. LEXIS 55443; 85 Fed. R. Serv. 3d (Callaghan) 775 (N.D. Cal. 2013)
- Maxwell v. Unilever United States, Inc., Case No.: 5:12-CV-01736-EJD, 2013 U.S. Dist. LEXIS 51195, (N.D. Cal. 2013)
- Campen v. Frito-Lay North Am., Inc., Case No. 12-1586 SC, 2013 U.S. Dist. LEXIS 47126 (N.D. Cal. 2013)
- Ross v. Sioux Honey Ass'n, No. C-12-1645 EMC, 2013 U.S. Dist. LEXIS 6181 (N.D. Cal. 2013)
- Larsen v. Trader Joe's Co., No. C 11-05188 SI, 2013 U.S. Dist. LEXIS 3602 (N.D. Cal. 2013)
- Brod v. Sioux Honey Ass'n, No. C-12-1322 EMC, 2013 U.S. Dist. LEXIS 27081 (N.D. Cal. 2013)
- Samet v. P&G, Case No.: 5:12-CV-01891 PSG, 2013 U.S. Dist. LEXIS 86432 (N.D. Cal. 2013)
- Perea v. Walgreen Co., EDCV 13-00119 DOC (AN<sub>x</sub>), 2013 U.S. Dist. LEXIS 53404 (C.D. Cal. 2013)
- Thomas v. Costco Wholesale Corp., Case No.: 5:12-CV-02908 EJD, 2013 U.S. Dist. LEXIS 51189 (N.D. Cal. 2013)

- Chad Braz. v. Dole Food Co., Case No.: 12-CV-01831-LHK, 2013 U.S. Dist. LEXIS 42026 (N.D. Cal. 2013)
- Lanovaz v. Twinings N. Am., Inc., Case No. C-12-02646-RMW, 2013 U.S. Dist. LEXIS 25612, (N.D. Cal. 2013)
- Ivie v. Kraft Foods Global, Inc., Case No. C-12-02554-RMW, 2013 U.S. Dist. LEXIS 93940 (N.D. Cal. 2013)
- Veal v. Citrus World, Inc., CASE NO. 2:12-CV-801-IPJ, 2013 U.S. Dist. LEXIS 2620, (N.D. Ala. 2013)
- Silber v. Barbara's Bakery, Inc., 12-cv-5511 (WFK) (RLM), 12-cv-6087 (WFK) (RLM), 2013 U.S. Dist. LEXIS 84039 (E.D.N.Y. 2013)
- *Appellate Court:*
  - Williams v. Gerber, 552 F.3d 934 (9th Cir. 2008)
  - POM Wonderful LLC v. Purely Juice, Inc., 362 Fed.Appx. 577 (9th Cir. 2009)
  - Holk v. Snapple Beverage Corp., 575 F.3d 329 (3d Cir. 2009)
  - In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation, 621 F.3d 781 (8th Cir. 2010)
  - Welch Foods, Inc. v. Nat'l Union Fire Ins. Co., 659 F.3d 191 (1st Cir. 2011)
  - Carrea v. Dreyer's Grand Ice Cream, Inc., 475 Fed.Appx. 113, No. 11–15263, 2012 WL 1131526 (9th Cir. 2012)
  - POM Wonderful LLC v. Coca-Cola Co., 679 F.3d 1170 (9th Cir. 2012)
  - Kuenzig v. Kraft Foods, Inc., No. 12–11180, 505 Fed.Appx.937, 2013 WL 385524 (11th Cir. 2013)
  - Dennis v. Kellogg Co., 697 F.3d 858 (9th Cir. 2013)
  - Young v. Johnson & Johnson, 525 Fed.Appx. 179, 2013 WL 1911177 (3rd Cir. 2013)

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- Brandt v. CremaLita Mgmt. LLC, 600566/04, 2006 N.Y. Misc. LEXIS 4101; 235 N.Y.L.J. 111 (N.Y. 2006)
- Boca Burger, Inc. v. Forum, 912 So.2d 561 (Fla. 2005)
- State v. Seelig, NO. COA12-442, 738. S.E.2d 427; 2013 N.C. App. LEXIS 277, (N.C. Ct. App. 2012)

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<sup>26</sup> For additional information about how FTC defines a deceptive claim, see the Frequently Asked Questions document in this Toolkit, Question 2.

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