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How Food, Beverage Claims May Preview Cosmetic Litigation

By **Robbie Jost, Julia Carbonetti and Helen Ogunyanwo** (April 27, 2026, 10:38 AM EDT)


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Class action litigation targeting cosmetics and personal care products is accelerating — and the playbook comes from the food and beverage industry.

For cosmetic and personal care products, U.S. Food and Drug Administration scrutiny is intensifying as it regulates and enforces in the wake of the 2022 passage of the Modernization of Cosmetics Regulation Act.

In parallel, consumers are demanding greater transparency for product claims and ingredient lists, leading cosmetic and personal care companies to face a wave of false advertising, consumer protection and product liability lawsuits.

In recent years, the food and beverage industry has been hit with a surge of similar class actions challenging false labeling, misleading claims and deceptive packaging.

Following the Trump administration's February 2025 executive order establishing the Make America Healthy Again initiative, food and beverage companies have also faced heightened regulatory oversight.

On Feb 10, 2026, the FDA announced the launch of a comprehensive assessment of butylated hydroxyanisole, a chemical preservative used in food and other products, citing the MAHA initiative.

This may presage claims relating to the presence of BHA as part of the next wave of consumer litigation against the food and beverage industry.

Cosmetic and personal care product manufacturers should take note, because claims against food and beverage products quickly seep into actions against beauty products. The defenses that succeeded — and those that failed — in past class actions offer a critical road map for beauty and personal care brands bracing for what comes next.

"Natural" Claims Litigation

Class actions challenging various food claims — including "natural" flavors, organic claims and "free from" language on product labels — increased in 2024 and 2025, and are expected to expand further in 2026. These lawsuits typically target foods with ingredients that plaintiffs perceive as synthetic, harmful

or containing trace amounts of hidden ingredients.

Successful motions to dismiss these complaints focused on arguments that the plaintiff's testing failed to test the actual product or products the plaintiff purchased,[1] or failed to identify the allegedly harmful ingredients the plaintiff asserts caused the injury.[2]

These dismissals follow a pattern among a growing number of courts that have said that plaintiffs can only maintain standing if they make specific allegations that the products they actually purchased were contaminated.

When cases proceed to the merits, expert testimony on consumer expectations can become critical.

For example, in Bustamante v. Kind LLC, Kind was granted summary judgment in 2024 by the U.S. District Court for the Southern District of New York in a class action, on the basis that the plaintiffs failed to present admissible evidence of what a reasonable consumer would expect from "All Natural" labeling claims on a snack food.[3]

In 2024, the U.S. Court of Appeals for the Second Circuit affirmed the district court's finding that the plaintiffs failed to meet the reasonable consumer standard and could not present a cohesive consumer definition of "All Natural."

Class actions asserting that beauty and personal care products labeled "natural" are misleading consumers are similarly on the rise. In at least a few of these putative class actions, arguments similar to those employed by the food industry have succeeded.

For example, last month, the U.S. District Court for the Northern District of California granted a motion to dismiss McWhorter v. The Procter & Gamble Co., a proposed class action alleging that shampoo and conditioner products were improperly labeled as containing a percentage of "natural-origin" or "naturally derived ingredients."[4]

The court agreed that the plaintiffs' allegations failed to meet the reasonable consumer standard because the products included asterisks on the front of the label, and the back label explained the basis for the "natural" claims.

Slack-Fill and Deceptive Packaging Litigation

Slack-fill litigation in the food and beverage industry has been around since as early as 2015. The underlying allegations have remained largely consistent — asserting that allegedly nonfunctional empty space in packaging misleads consumers regarding product quantity.

At the motion to dismiss stage, arguments that slack-fill in food products did not meet the reasonable consumer standard have largely been unsuccessful: Courts have concluded that plaintiffs plausibly allege a reasonable consumer could be deceived by the packaging.[5]

However, courts have granted motions to dismiss or resolved cases on the merits on the basis that the plaintiff failed to plausibly allege that the slack fill is nonfunctional.

For instance, in 2024, in Diesel v. Mariani Packing Co. Inc., the U.S. District Court for the Eastern District of Missouri granted summary judgment on claims under the Missouri Merchandising Practices Act, in

part because the defendant established via affidavit that any slack fill in the product served a functional purpose expressly permitted by the exemptions under Title 21 of the Code of Federal Regulations, Section 100.100(a).

Specifically, the defendant asserted that the slack fill prevented the product from becoming crushed, smashed or broken, and that it was unable to use a smaller bag without creating unreasonable amounts of spillage and waste. The plaintiff offered no evidence to rebut those safe harbor assertions.[6]

Plaintiffs are now bringing similar suits alleging that makeup product packaging contains nonfunctional slack fill.

For example, Gonzales v. e.l.f. Cosmetics Inc., a putative class action, was filed in February 2025 in the U.S. District Court for the Central District of California, alleging that certain exfoliant and lip stain products were packaged in oversized packaging that is approximately 50% empty.

The plaintiffs asserted that this constituted unlawful slack fill and misled consumers about product quantity.[7]

While this particular action was voluntarily dismissed, it demonstrates how the slack-fill concept can be deployed against cosmetic and personal care products.

Greenwashing Litigation

Greenwashing litigation targeting the food industry is also on the rise, with plaintiffs alleging that product labels and advertisements misrepresent a company's sustainability practices.

In recent motions resulting in early dismissals, companies facing litigation over "100% Recyclable" claims successfully relied on the Federal Trade Commission's Green Guides, which include guidelines for companies and their green messaging.[8] Where a company can show that its claims follow those guidelines, courts have shown a willingness to dismiss greenwashing litigation.

Notably, even where plaintiffs assert that a company's sustainability advertisements constitute false and deceptive marketing, courts have also dismissed claims based on vague corporate aspirations that cannot be objectively measured for achievement, as well as collections of representations not tied to a specific product.

And heightened consumer scrutiny over corporate sustainability practices is spilling into litigation aimed at the personal care products industry as well.

For instance, in 2025, Melissa Lowry v. Proctor & Gamble Co., a putative class action filed in the U.S. District Court for the Western District of Washington, claimed that Proctor & Gamble violated the FTC Green Guides and misrepresented its commitment to protect the environment and restore primary forests through its campaigns and logos related to a toilet paper product, despite allegedly sourcing the product from an important biological ecosystem.[9]

The complaint asserted claims for fraudulent concealment and violation of consumer protection statutes under the laws of 28 states and the District of Columbia.

Key Takeaways for Cosmetic and Personal Care Products Industry

Recent food and beverage class action litigation and regulatory actions offer a preview of emerging trends and what lies ahead for the cosmetics and personal care products industry.

As plaintiffs attorneys increasingly apply similar theories — challenging "natural" claims, targeting deceptive packaging and scrutinizing sustainability messaging — beauty and personal care brands should take notice.

The following key takeaways can help companies position themselves for successful early defense short of trial.

Review labels and supporting records.

Because courts evaluating these actions focus on how brands substantiate their claims, it is critical for companies to review their labels and supporting records to ensure both express and implicit claims are supported by competent scientific evidence.

Define terms.

Companies should ensure their labels and the imagery used on their packaging include clear, explicit definitions of their marketing terms.

This definitional clarity will likely remain a central issue in future litigation, with courts examining not only consumer perceptions, but also how brands communicate and substantiate their standards.

Particular attention should be paid to "natural" or "clean" descriptors and green marketing claims.

Follow the Green Guides.

Companies should ensure their marketing practices and procedures comply with the FTC Green Guides, and be on the watch for the FTC to release updated Green Guides.

Document sourcing, safety and compliance.

Good documentation of ingredient sourcing, safety assessments and regulatory compliance will be critical for litigation defense.

Conduct proper tests.

Companies should conduct strict, independent testing for contaminants, especially as FDA scrutiny of the supply chain intensifies.

Substantiate marketing claims.

Because many of these cases hinge on the reasonable consumer standard, any research into clean or green marketing should be matched with an equal level of substantiation.

Prepare for scrutiny.

Companies should anticipate increased regulatory and litigation scrutiny of product formulations, ingredient lists, marketing claims, and any and all implications from product packaging.

Evaluate complaints carefully.

Critically evaluating each consumer complaint and lawsuit is essential to determine potential standing, testing and other arguments for successful early dismissals.

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[1] See, e.g., Barnes v. KOS Inc., 2025 WL 1928027, at *1, *4–6 (S.D.N.Y. July 14, 2025) (dismissing proposed class action alleging that a plant protein powder marketed as "nature-powered" and "organic" contained dangerously high levels of PFAS for lack of Article III standing, because the plaintiffs did not plausibly allege a material link between the testing and their purchase of the product).

[2] See, e.g., Gradney v. Polar Beverages, 797 F. Supp. 3d 1016 (N.D. Cal. 2025) (granting motion to dismiss putative class action alleging flavored seltzer water labeled "100% Natural" was falsely advertised, because plaintiffs failed to adequately identify synthetic ingredients in the products, and had not alleged they tested the specific flavors they purchased or that the tested flavors were in any way representative of flavors purchased).

[3] Bustamante v. Kind LLC, 100 F.4th 419 (2d Cir. 2024) (affirming summary judgment and excluding plaintiffs' expert reports because plaintiffs lacked a cohesive, objective definition of "All Natural," and did not meet evidentiary burden to show consumer deception under the reasonable consumer standard).

[4] McWhorter v. The Procter & Gamble Co., No. 3:24-cv-00806-AMO, 2025 WL 948061 (N.D. Cal. March 28, 2025).

[5] See, e.g., Cody v. Conagra Brands Inc., 773 F. Supp. 3d 890 (C.D. Cal. 2025) (denying motion to dismiss action alleging that frozen cauliflower packaging contained slack fill deceived consumers, because the plaintiff plausibly pleaded consumer deception and justifiable reliance, and noting that the reasonable consumer standing is not suitable at motion to dismiss stage); Oh v. Catalina Snacks Inc., 764 F. Supp. 3d 903 (C.D. Cal. 2025) (rejecting motion to dismiss argument that plaintiff failed to particularly and plausibly allege a consumer would be deceived by slack-fill cereal packaging); Reyes v. Just Born Inc., 729 F. Supp. 3d 971 (C.D. Cal. 2024) (refusing to answer whether a consumer would be deceived by slack-fill candy packaging at motion to dismiss stage).

[6] See Diesel v. Mariani Packing Company Inc., No. 4:22-cv-01368-AGF, 2024 WL 4263944 (E.D. Mo. Sept. 23, 2024).

[7] See Gonzales v. E.L.F. Cosmetics Inc., No. 2:25-cv-01580-CAS-RAO (C.D. Cal. Feb. 25, 2025).

[8] See Duchimaza v. Niagara Bottling LLC, 21 Civ. 6434 (PAE) (S.D.N.Y. Aug. 5, 2022).

[9] Melissa Lowry et al. v. Proctor & Gamble Co., Case 2:25-cv-00108-JHC (W.D. Wash Jan. 16, 2025).