When the Strength of the Facts Cannot be Lifted – SDNY Dismisses Muscle Maker Slack-Fill Class Action

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The Southern District of New York recently dismissed a putative class action against Cytosport, the maker of Muscle Milk protein powder. The plaintiff, Orlando Bautista, alleged that he bought a container of Muscle Milk protein powder for $28 but was "surprised and disappointed" to discover that the package contained roughly 30% empty space. The suit claimed violations of New York state consumer fraud laws, fraud, negligent misrepresentation, and unjust enrichment for allegedly selling Muscle Milk protein powder with "nonfunctional slack-fill."... Continue Reading

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