

# Ninth Circuit Drowns Out Alkaline Water Suit

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The Ninth Circuit recently affirmed the dismissal of a putative class action alleging Trader Joe's misled consumers by representing its Alkaline Water product as "ionized to achieve the perfect balance." In rejecting plaintiff's allegations that the advertising referred to balancing the consumer's internal pH rather than the balanced pH of the product itself, the Court recognized "a reasonable consumer does not check her common sense at the door of a store." [\*Weiss v. Trader Joe's\*, No. 19-55841 \(9th Cir. Mar. 3, 2021\)](#).

The Alkaline Water product label states the water is "ionized to pH 9.5+," will "refresh & hydrate," and depicts "hundreds of plus symbols." An advertisement for the water in Trader Joe's store newsletter likewise touted that the water was purified and charged through electrolysis, changing the structure of the water and raising the pH to 9.5+, making the product "water and then some." Plaintiff alleged these representations were misleading because they implied that the water would "balance" a consumer's internal pH after he or she has eaten acidic foods and would provide superior hydration as compared to other water.

The [district court found](#) several of these representations (including "water and then some," "a drink that can satisfy," and "refresh") constituted non-actionable puffery. The remaining challenged statements concerning the drink's pH and ionization, the court found, would not mislead a reasonable consumer.

Agreeing with the district court's analysis, the Ninth Circuit likewise found a reasonable consumer would not misinterpret these representations as suggesting internal pH balancing benefits or superior hydration. When considered in the context of the package as a whole, the Court found the phrase "ionized to achieve the perfect balance" clearly referred to the water itself being balanced – rather than to balance within the body.

The Ninth Circuit also rejected plaintiff's allegation that the term "hydrate" would mislead consumers into believing the water provided better hydration than other water. Plaintiff did not dispute that the water does, in fact, "hydrate." Finding this statement about the water's hydrating capability true and undisputed, the Ninth Circuit agreed with the district court that it would not plausibly deceive a reasonable consumer.

The Court also affirmed the district court's dismissal of plaintiffs' breach of warranty claims based on the same advertising. The Court noted that though the reasonable consumer standard technically does not apply to warranty claims, those claims still require some sort of actionable representation. No such misrepresentation existed here because nothing in the challenged labeling promised health benefits or superior hydration.

This case serves as a reminder that allegations founded on fanciful interpretations of advertising claims may cause a "splash" when filed, but courts exercising common sense will not hesitate to dispose of them at the pleading stage. While the Ninth Circuit's decision in *Weiss* is unpublished, it is consistent with other precedential decisions from the court. See for example [Ebner v. Fresh, 838 F.3d 958 \(9th Cir. 2016\)](#) – a case we have [previously blogged about](#).

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