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## Dishing Out the Latest F&B Litigation Updates: Part 2

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### Food and Beverage Deception Cases Still Must Pass the “Are you Serious?” Test

*Becerra v. The Coca-Cola Co., No. 17-cv-05916, 2018 WL 1070823 (N.D. Cal. Feb. 27, 2018)*

#### The Skinny:

It is not Coca-Cola’s fault if you think Diet Coke should make you lose weight. In the highly litigious area of false advertising claims, this case reminds us that, first and foremost, zealous plaintiffs must remain reasonable in their assertions. The level of proof needed to demonstrate that a reasonable consumer may be misled by a product’s advertising demands more than just merely stating so. See [Manuel v. Pepsi-Cola Co.](#) and [Excevarria v. Dr. Pepper Snapple Grp.](#) for very similar rulings.

#### The Meat and Potatoes:

The Honorable William Alsup of the Northern District of California [dismissed a putative class action](#) against Coca-Cola. This class action claimed the name “Diet Coke” misleads consumers into believing that merely drinking the product will result in weight loss. However much we may wish that were true, Judge Alsup determined that the reasonable consumer knows that drinking diet soda (without more) does not lead to weight loss. He reasoned that using healthy looking actors in advertisements does not imply that drinking Diet Coke causes drinkers to lose weight, “without regard to exercise and nutrition.”

The Case is currently on appeal to the Ninth Circuit, where the plaintiffs are relying on studies showing that nonnutritive sweeteners, like the aspartame found in Diet Coke, interfere with the body’s ability to process foods and causes weight gain.

Read [Part 1](#) [Part 3](#) and [Part 4](#).

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