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Gibson Dunn Secures Reversal of Class Certification for Folgers in Published Eighth Circuit Decision

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Gibson Dunn represented the J.M. Smucker Co. on appeal after a series of class actions across the country were consolidated in a multidistrict litigation before the Western District of Missouri. The plaintiffs claim that they were misled by the labels on Folgers canisters, many of which contain statements that the canister will produce “up to” a certain number of eight-ounce cups of coffee, based on the theory that (under some conditions) the canisters allegedly produced less than that number of cups. The district court certified a class of Missouri consumers who bought relevant Folgers products with corresponding labels.

Gibson Dunn was hired to represent Folgers after the class was certified. The Gibson Dunn team first convinced the Eighth Circuit to grant interlocutory appellate review under Rule 23(f). And after full briefing and argument by Los Angeles partner Ted Boutrous, the Eighth Circuit reversed, rejecting class certification.

The court of appeals’ published opinion will prove useful in many consumer-fraud class actions in the future. The court recognized “that fraud cases are typically unsuitable for class treatment,” largely because “the proof required in such cases often varies with respect to what representations consumers received and whether those consumers relied on those representations.” The court also explained that many state consumer-fraud statutes require proof of “a causal connection between the deceptive act and [the] harm” plaintiffs assert, and that even if affirmative proof of causation were not required from the plaintiff, that “would not foreclose the defendant from presenting evidence of a lack of causation or reliance, which too would raise individualized questions.” This remains the case even where the challenged representations “appeared on each of the…products,” especially where there are indications “that a significant proportion of the proposed class did not read those representations or, if they did, did not care about them one way or the other” or “did not interpret the[m] in the manner [the plaintiff] suggests.”

The court also rejected the plaintiff’s effort to rely on a price-premium theory (i.e., that every consumer paid more because of the alleged label misrepresentations and so necessarily was injured), explaining that “someone with full knowledge of the facts and a willingness to make the purchase anyway cannot have suffered an ascertainable loss.”

Along with Ted Boutrous, our team includes partners Perlette Michele Jura and Bradley Hamburger and associates Daniel Adler, Patrick Fuster, and Matt Aidan Getz.

Related Capabilities

Litigation

Related People

Theodore J. Boutrous Jr.

Perlette Michèle Jura

Bradley J. Hamburger

Daniel R. Adler

Patrick J. Fuster

Matt Aidan Getz

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