



When the Front Label Isn't the Whole Story

Navigating Ambiguity in Advertising and Labeling



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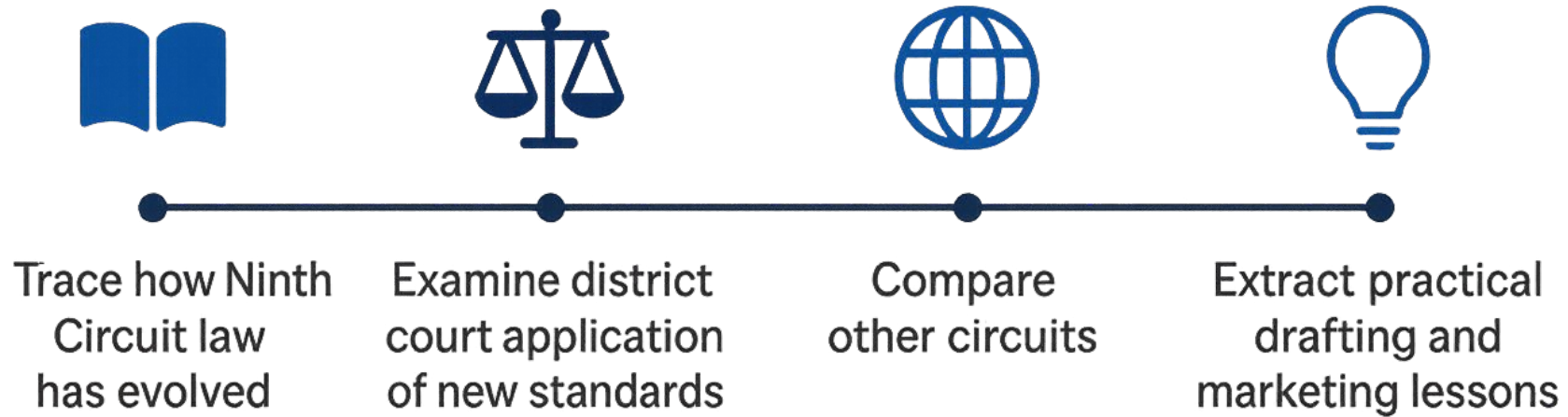
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Roadmap



The Core Issue

When do front label statements require additional qualifying language?



Statutory Framework

California's UCL, FAL, and CLRA and many other states' consumer protection statutes are governed by the **Reasonable Consumer Standard**:

“Plaintiff must demonstrate more than a mere possibility that the label might conceivably be misunderstood by some few consumers. . . rather, the reasonable consumer standard requires a probability that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled.”

Moore v. Trader Joe's Co. (9th Cir. 2021)

Williams v. Gerber Products Co. (9th Cir. 2008)



“We disagree with the district court that reasonable consumers should be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box.”

- Reasonable consumers rely on quick front label cues.
- Back panel should be confirmatory.
- Ingredient list cannot cure.

Moore v. Trader Joe's (9th Cir. 2021)



Not Deceptive as a Matter of Law

- “There is some ambiguity as to what 100% means in this phrase.”
- Reasonable consumer “should take into account all the information available to consumers and the context in which that information is provided and used.”
- “a reasonable honey consumer would know that it is impossible to produce honey that is derived exclusively from a single floral source.”
- Other cues from product label and external facts / consumer knowledge can cure.
- **First real retreat from *Gerber* and high-water mark for defendants.**

***McGinity v. Procter & Gamble* (9th Cir. 2023) (Gould)**



Not Deceptive as a Matter of Law

- “When [] a front label is ambiguous, the ambiguity can be resolved by reference to the back.”
- Ambiguity = more than one plausible meaning.
- If ambiguous, courts can read full packaging context.

Evolution of Ninth Circuit Front of Label Authority

Williams v. Gerber (2008)

- Front label governs.
- Back label cannot cure deception.
- Dismissal is “rare.”

Moore v. Trader Joe’s (2021)

- Introduced ambiguity concept.
- “100% New Zealand Manuka Honey” deemed not misleading.
- Context (price, consumer knowledge) resolves meaning.

McGinity v. P&G (2023)

- Expanded ambiguity doctrine.
- Back label may clarify meaning.

Whiteside v. Kimberly-Clark (9th Cir. 2024) (Gould)



- Two versions of the product at issue: one with asterisk after “Plant-based” and one without.
- Label with asterisk contained additional information on the front of label confirming that the product was 70%+ plant-based by weight.
- The labels with asterisks were **not misleading as a matter of law** because the presence of an asterisk puts a consumer on notice there are qualifications or caveats on the front AND back of the label.

Whiteside v. Kimberly-Clark (9th Cir. 2024) (Gould) (cont.)



- What about the un-asterisked “plant-based” statement??
- Reaffirms *McGinity*: “a product’s back label may be considered at the pleading stage if the front label is ambiguous”
- BUT a front label can be unambiguously deceptive “even if it may have two possible meanings, so long as the plaintiff has plausibly alleged that a reasonable consumer would view the label as having one unambiguous (and deceptive) meaning”
- “A front label is [only] ambiguous when reasonable consumers would necessarily require more information before reasonably concluding that the label is making a particular representation”

District Court Outcomes After *Whiteside*



Not Misleading as a Matter of Law

- Front label is ambiguous.
- “exactly the situation where a reasonable consumer would necessarily require more information before concluding how much meat the product contained”

District Court Outcomes After *Whiteside* (cont.)



Not Misleading as a Matter of Law

- Front label is ambiguous.
- Distinguishes cases where “natural” or “naturally” were used to describe ingredients specifically.
- Distinguished cases where back label ingredient list didn’t make obvious that product contains synthetic ingredients.

District Court Outcomes After *Whiteside* (cont.)



Unambiguously Misleading

- Reasonable consumer is not expected to check the back label.
- “representation of dosage amount on the front label without qualifying serving information may be considered unambiguously deceptive to survive a 12(b)(6) motion.”

District Court Outcomes After *Whiteside* (cont.)



Unambiguously Misleading

- Reasonable consumer is not expected to check the back label.
- “At the motion to dismiss stage, it is improper for the district court to select between competing plausible interpretations of an ambiguous term.”

Other Circuits

Second Circuit — Front Label First, but More Context if Not “Affirmatively Inaccurate”

- **Follows *Gerber***
 - “Reasonable consumers should not be expected to look beyond misleading front-label representations to the ingredient list.” *Mantikas v. Kellogg* (2d Cir. 2018) (ingredient list cannot cure front-label “whole grain” claims)
- **But court may consider the entire label if the front claim is not “affirmatively inaccurate”**
 - *La Rosa v. SPD Swiss Precision Diagnostics* (2d Cir. 2025) (“99% Accurate” ovulation kits weren’t misleading based on side panel disclosures)
- **McGinity-style approach**
 - *Montgomery v. Stanley Black & Decker* (2d Cir. 2024) (asterisks can clarify ambiguous claims)
 - SDNY – Any ambiguity in “**carbon neutral**” cured by **front context** and **back label**, prompting consumers to learn more (citing *McGinity*)

Other Circuits

Seventh Circuit — Rejects “Ambiguity Rule”

- ***Bell v. Publix Super Markets* (7th Cir. 2020)**
 - District court had allowed back label context to cure ambiguous front label claims (“100% Grated Parmesan Cheese”).
 - Seventh Circuit reversed: “The ambiguity rule for front-label claims would, we fear, encourage deceptive advertising and labeling.”
 - **Implication:** Seventh Circuit likely to follow *Whiteside* reasoning and reject a broader *McGinity*-style ambiguity rule.

Other Circuit

Eighth Circuit — Follows *Gerber*, but Room for Ambiguity

- **Follows *Gerber***
 - “Consumers are not expected to examine fine-print back labels to correct a prominent front-label misrepresentation.”
 - *Song v. Champion Petfoods* (8th Cir. 2022) (upholding dismissal of challenge to dog food with “Biologically Appropriate” and “Fresh Regional Ingredients” representations)
- **But district court decision indicates openness to *McGinity*-style ambiguity rule**
 - “While a manufacturer in this circuit may not rely on an ingredient list to avoid liability for a ‘prominent front-label misrepresentation,’ the Eighth Circuit has not foreclosed the possibility of looking to the back label to resolve ambiguity absent such a misrepresentation.”
 - *Ellison-Robbins v. Bimbo Bakeries* (E.D. Mo. 2024) (“All Butter Loaf Cake” was ambiguous but not misleading)

Emerging Themes

FRONT CONTROLS

CONTEXT SOMETIMES

QUALIFIERS SAVE

- **Front label back in driver's seat**
 - Courts will resist curing a clear front panel message with back panel fine print.
- **“Ambiguity” may not mean what you think**
 - “possible ambiguity” isn’t enough; courts ask whether consumers must look for more information (narrowing *McGinity*).
- **Qualifiers matter (and must be conspicuous)**
 - Asterisks and front panel qualifiers (e.g., “80%+”; “blend”; “flavored”) fare better than vague descriptors (e.g., “natural” or “plant-based”) without context.
- **Whole-package review is limited**
 - Courts consider full context mainly when the front is truly ambiguous or invites clarification (e.g., asterisk).
- **Circuits are aligning**
 - All circuits follow *Gerber*; Second and Eighth open to considering context, while Seventh rejects ambiguity rule.

Practical Lessons for Business

➤ **Label Strategy**

- Say exactly what you mean; avoid vague descriptors unless you define them right there.
- If you use an asterisk or qualifier, make the additional language proximate and readable.

➤ **Back/Side Panel Discipline**

- Ensure the ingredient list and disclaimers confirm (do not contradict) the front panel statements.
- If front invites context, ensure back/label clarifications are consistent.

➤ **Design Matters**

- Use sufficient size/contrast for qualifiers; don't hide material information in clutter or low contrast.
- Use consistent font/sizes.

➤ **Litigation Position**

- Lean on visible front label qualifiers and show why reasonable consumers would necessarily need more information if plaintiff presents unreasonable interpretations (true ambiguity).

Checklist to Approve a Label

- ✓ Is the front accurate and complete on its own?
- ✓ Do qualifiers appear on the front label (not just the back or side)?
- ✓ Does every panel align with the front's message?
- ✓ Would a court say consumers must look further? If not, back/side qualifier won't be considered.

Closing / Questions

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