

CALIFORNIA AMENDS SLACK FILL LAW TO PROVIDE ADDITIONAL EXEMPTIONS

Oct 03, 2018

Governor Jerry Brown recently signed into law Assembly Bill 2632, which amended California's slack fill statute to create several exemptions. This amendment will be an additional hurdle to the plaintiff bar, which has been flooding the courts with slack fill related lawsuits in recent years. These lawsuits, typically filed as class actions, allege that product packaging is misleading to the extent it contains nonfunctional empty space, known as slack fill, which causes consumers to believe they are receiving more of the product than they actually are.

The new law, which will amend California Business and Professions Code Sections 12606 and 12606.2, includes the following key changes:

- The amended law exempts packaging sold in a mode of commerce that “does not allow the consumer to view or handle the physical container or product.” It could be argued that this exempts online sales.
- The amended law exempts product packaging that clearly and conspicuously depicts the product “fill line” on exterior packaging or the immediate product container if visible at point of sale.
- Food containers are now exempt where “[t]he actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging, excluding the bottom, accompanied by a clear and conspicuous disclosure that the depiction is the ‘actual size’ of the product or immediate product container” and “[t]he dimensions of the product or immediate product container are visible through the exterior packaging.”

The new amendment comes in the wake of yet another defense victory in a slack fill decision. In *Spacone v. Sanford, L.P.*, the U.S. District Court for the Central District of California recently denied class certification, holding that the plaintiff lacked standing and could not satisfy the commonality and typicality requirements of Rule 23 of the Federal Rules of Civil Procedure.

Spacone asserted “slack fill” claims against Sanford relating to his purchase of Krazy Glue, claiming that the space between the interior of the container and the inner tube of glue constituted

nonfunctional slack fill, in violation of California Business and Professions Code Section 12606(b).

Spacone's case was doomed by his own deposition testimony, in which he denied having been "ripped off" and admitted he did not overpay for the Krazy Glue. Spacone's only injury was that there was not enough glue in the package for him to complete his project, requiring him to return to the store to purchase a second tube. Notwithstanding Spacone's conflicting self-serving declaration, which the court disregarded, the court found that his inconvenience did not constitute an economic injury, and therefore did not satisfy California's statutory standing requirement.

For questions or more information, contact the authors, [Sarah Burwick](#) or [Robert Boone](#), or any member of our [Retail](#) or [Agribusiness & Food](#) practice teams.

RELATED PRACTICE AREAS

- Retail & Consumer Products

MEET THE TEAM



Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

[+1 415 675 3435](tel:+14156753435)