

# Court Finds Article III Standing for Food Labeling Class Action Plaintiffs

MASS TORT AND PRODUCT LIABILITY | NOVEMBER 24, 2014



**Gregory Boulos**

In a consumer-protection class action filed against Gerber in the District of New Jersey, *In re Gerber Probiotic Sales Practices Litigation*, plaintiffs alleged that the marketing and labeling of Gerber's infant formula and cereal were deceptive. Specifically, they claimed that, despite contrary representations, the products provided no immune system benefits, and that Gerber's formula was not near equal to breast milk. Gerber moved to dismiss plaintiffs' fourth amended complaint, arguing, among other things, that plaintiffs lacked Article III standing to bring a claim related to Gerber's formula. Gerber's motion was denied in part and granted in part.

Article III Standing: Article III standing requires a plaintiff to suffer an "injury in fact" that is an invasion of a legally protected interest that is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical. Also, there must be a causal connection between the injury and the conduct complained of. Thus, it must be likely, not merely speculative, that the injury will be redressed by a favorable decision. Gerber argued that plaintiffs lacked Article III standing to assert claims related to its infant formula products because no remaining named plaintiff alleged to have purchased the specific product. As such, Gerber argued that plaintiffs failed to allege an injury in-fact.

Citing the Third Circuit's decision in *Hass v. Pittsburgh National Bank* and the District of New Jersey's decision in *Stewart v. Smart Balance*, the Court explained that a plaintiff has standing to pursue two closely related claims against the same defendant in a putative class action, notwithstanding the fact that the plaintiff lacks standing to pursue a particular claim. *Stewart* involved plaintiffs who brought a class action related to three products. Defendants moved to dismiss because the named plaintiffs did not purchase two of the three products. The court found dismissal inappropriate because the basis of the plaintiffs' claims as to each product was the same, all three products were closely related, and the defendants were the same.

With this background, the Court concluded that plaintiffs' claim as to Gerber's formula and cereal was the same. Plaintiffs alleged that Gerber falsely promoted both products as having the same probiotic bacteria that promotes the development of children's immune systems. The Court further concluded that the products were closely related because the formula and cereal are part of the same product line. The products also bear the same trademark, which was allegedly designed to help consumers recognize Gerber foods with important vitamins and minerals that support healthy growth as well as nutrients and ingredients that support a healthy immune system. Accordingly, the Court found dismissal of plaintiff's claim inappropriate.

Thus, a plaintiff who lacks Article III standing to bring a claim related to a particular product may nonetheless bring the claim in a putative class action when (a) the basis of Plaintiffs' claim as to another product at-issue was the same (b) the products were closely related, and (c) the products were manufactured by the same defendant.