

EASTERN DISTRICT ROUNDUP

NY Federal Court Roundup: Food-Labeling Claims, Suppression, and RICO

By Samuel Butt and Thomas Kissane

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1. Alleged Misrepresentations About an Electrolyte Drink Mix's Suitability for Certain Diets Support GBL Claims

In *Sciortino v. Drink LMNT, Inc.*, 25 CV 3126 (EDNY, Aug. 14, 2026), Judge Gonzalez denied in part and granted in part defendant's motion to dismiss claims under New York General Business Law (GBL) §§349 and 350 arising from alleged misrepresentations concerning the suitability of LMNT electrolyte drink mix for keto, paleo, and whole-foods diets.

Plaintiffs Michael Sciortino and Josh Sawyer alleged that defendant Drink LMNT, Inc., marketed LMNT as "keto" and "paleo" friendly and "consistent with" a whole-foods diet, despite the fact that the product contains between 300 and 450 milligrams of maltodextrin per serving.

Defendant argued, among other things, that the claims were preempted by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§301, et seq., and the Nutrition Labeling and Education Act, 21



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U.S.C. §343-1. The preemption argument failed because plaintiffs did not seek an additional labeling requirement, but rather challenged affirmative representations concerning the product's suitability for particular diets. Slip op. 6–9 (citing, *inter alia*, *Jackson-Mau v. Walgreen Co.*, 115 F.4th 121, 128 (2d Cir. 2024)).

The court therefore considered the GBL claims, which require allegations that defendant engaged in consumer-oriented conduct that was materially misleading and caused an injury to plaintiff. Consumer-oriented conduct was undisputed. Plaintiffs adequately alleged causation as to the keto, paleo, and whole-foods representations they claimed to have viewed before purchasing LMNT.

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Materially misleading injury was satisfied by plaintiffs' allegations that consumers could be misled by the keto, paleo, and whole-foods representations, particularly because defendant's own advertising described processed foods as inconsistent with a whole-foods diet while plaintiffs alleged that LMNT contained highly processed maltodextrin.

Plaintiffs' allegations that defendant's marketing caused LMNT to command a premium based on qualities the product allegedly did not possess also alleged injury under a price-premium theory.

The court reached differing conclusions as to different allegations in considering defendant's argument that the alleged misrepresentations were unactionable "puffery"—that is, subjective statements that cannot be proved true or false or objectively verifiable statements so exaggerated that no reasonable buyer could rely on them.

The keto, paleo, and whole-foods representations could reasonably be understood to refer to identifiable dietary criteria, while representations that the product contained "no dodgy ingredients" were too vague to constitute an objectively verifiable representation.

Plaintiffs' allegations regarding the front of defendants' packaging failed. Although the package prominently identified sodium, potassium, and magnesium over maltodextrin, the ingredient list confirmed that this was consistent with actual contents, "and thus there is no misleading statement as to their predominance."

The motion was therefore denied as to the keto, paleo, and whole-foods claims, while the remaining claims were dismissed with prejudice. Slip op. 32.

2. Motion to Suppress Denied

In *United States v. Osorio*, 25 CR 182 (EDNY, Aug. 27, 2026), Judge Kovner denied defendant's motion to suppress statements she made to federal officers as well as the fruits of the government's warrant-based search of her home.

Defendant was indicted for unlawful concealment of evidence and obstruction of justice by hiding the cell phone of Rashad Ruhani, who had been charged with wire fraud and other offenses, and making false statements to federal agents about Ruhani's cell phone. The government agents searched Ruhani at JFK Airport after he and defendant arrived together on a flight from Los Angeles.

Although Ruhani had been observed with a phone prior to boarding the flight and cell-site location information indicated that the phone was in the vicinity of JFK, the agents did not find any electronic devices in their search of him.

Two agents then approached defendant in the airport concourse, an encounter that defendant filmed. The agents told defendant that they believed she was carrying an electronic device that belonged to someone else and warned her that lying to federal agents was a crime.

Defendant responded that she was not going to have any conversation with the agents without an attorney present and that she did not have any devices with her that did not belong to her. She told the agents that they were holding her against her will, which the agents denied, after which she said she was going home and walked away from the agents.

The next day, defendant participated in a voluntary interview with law enforcement personnel connected with Ruhani's arraignment. Two weeks later, agents obtained and executed a

warrant to seize all electronic devices found in a search of defendant's person, vehicle, and home.

Contrary to defendant's argument, law enforcement officers did not seize defendant at the airport or subject her to a custodial interrogation subject to Miranda protections.

The agents who approached defendant did not display any firearms, wear uniforms, touch her, or retain any of her personal effects. The agents' positions—one in front of defendant and the other approximately six feet away—did not indicate that defendant was not free to walk away from the encounter. Indeed, when defendant announced that she was leaving, the agents permitted her to do so.

Because a reasonable person in defendant's position would have felt free to leave, she was not subject to a custodial interrogation in violation of her Miranda rights and so was not entitled to suppress the statements she made to federal agents at the airport.

Nor was defendant entitled to suppress statements she made during an interview with federal agents the next day. Although she invoked her right to counsel, she had not done so in the context of a custodial interrogation, and thus had not triggered her right to counsel under Miranda. The officers' questioning of her the next day therefore was not a prohibited reinitiation of an interrogation.

The warrant to search defendant's person, vehicle, and home for electronic devices was not improper. Probable cause supported such a search given that Ruhani and defendant were traveling together, Ruhani had a phone before boarding the plane, the phone appeared to be at JFK after the plane landed (before it was apparently powered off), and Ruhani did not have a

phone with him when he was searched immediately after disembarking.

Any errors in the warrant—including alleged overbreadth—did not justify suppression because of the good faith exception to the exclusionary rule, under which officers may rely on a validly issued warrant absent certain indications that the government acted in bad faith. No such indicia were present here.

3. Motion To Dismiss RICO Claims Granted

In *Uber Technologies, Inc. v. Wingate, Russotti, Shapiro, Moses and Halperin, LLP*, 25 CV 522 (EDNY, Aug. 14, 2026), Judge Merchant granted defendants' motions to dismiss Uber's Racketeer Influenced and Corrupt Organizations Act (RICO) claims.

Under New York's No-Fault Insurance Law, a plaintiff injured in a motor vehicle accident cannot recover non-economic damages without a "serious injury." Uber alleged that three personal injury law firms and associated attorneys recruited passengers involved in minor collisions and referred them to two doctors. Uber further alleged that the law firms paid the doctors above-market compensation, directly or through third-party litigation-funding.

In exchange, the doctors allegedly provided false diagnoses, unnecessary treatment, and causation statements manufacturing serious injury, which were used to induce larger settlements from Uber. Uber identified five state-court cases against it and twelve other instances in which defendants engaged in similar conduct.

Merchant held that Uber failed to allege a common purpose for the association-in-fact enterprise. The allegations permitted only the inference that defendants engaged in ordinary business activities, such as client referrals and third-party

litigation funding of medical treatment. Uber's sole example of an above-market payment was a \$36,500 lumbar discectomy compared with a "median" fee of \$20,000.

That comparison did not plausibly show the fee was above market. Moreover, Uber alleged 17 separate schemes, each involving only subgroups of defendants.

In six of them, a single law firm directed a passenger to one of the doctors alone. Citing *D'Addario v. D'Addario*, 901 F.3d 80, 101-02 (2d Cir. 2018), the court concluded that such "allegations of various [d]efendants and subgroups agree[ing] at different times to engage in various fraudulent schemes does not plausibly support an inference of common purpose" and were "precisely the parallel conduct the Second Circuit has expressed skepticism towards". (Internal quotations marks omitted, alterations in original). Uber could not allege the necessary interpersonal relationships because it did not allege a common purpose.

The legal-entity enterprise allegations fared no better. Any legal entity may qualify as a RICO enterprise, but the law firms had not participated in operating or managing the medical practices. Referring passengers and coordinating litigation funds for their services were akin to the professional services of banks, accountants, and lawyers, not direction of the enterprise's affairs.

Reciprocal referrals and shared surgical space between the two doctors likewise did not show that either managed the other's practice. Each doctor plausibly conducted the affairs of his own

practice, and Uber alleged no nexus between those practices and the racketeering. No passenger was alleged to have been referred to the Gerling Institute, one of the defendant medical practices, and the Institute was not alleged to have accepted payment.

Payments instead went to doctor defendant Gerling individually or to a nonparty practice. The invocation of the Institute's name in one affirmation was insufficient, and the use of two sets of books did not, alone, suggest illegitimacy. Similarly, there was no allegation that doctor defendant Reyfman leveraged Pain Physicians NY, the other defendant medical practice, or that the practice received any funds.

The RICO conspiracy claim rested on the same factual predicate as the substantive claims, and thus Uber's failure to allege a substantive RICO violation meant that it failed to allege a meeting of the minds sufficient to plead a conspiracy.

Independently, Uber had no standing as a RICO plaintiff because three of the five cases against Uber remained pending, so its defense costs depended on their outcomes and on possible recovery of costs or sanctions. Uber was dismissed from the fourth and, while it settled the fifth, the single case was not sufficient to establish RICO's pattern element. Since "the actual amount of its injury is not yet provable," Uber lacked standing.

Having dismissed the federal claims, the court declined supplemental jurisdiction over Uber's state law claims and dismissed them without prejudice.