Court Considers Whether a “Smidgen” is Material in a False Advertising Suit

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August 7, 2025

Feeling a little sluggish, three New Yorkers purchased Logan Paul’s Prime energy drink in hopes of getting a little boost from the advertised 200 mg of caffeine in each can. Perhaps they got more of a boost than expected, because these individuals engaged lawyers who had the drinks tested and allegedly determined that some cans contained 15-25 mg more caffeine than advertised.

Too much caffeine can lead to anxiety, and too much anxiety can lead to lawsuits, and that’s exactly what happened here. The plaintiffs filed a class action lawsuit alleging that Prime Hydration had misrepresented the amount of caffeine in its energy drinks. One of the questions before the court was whether “the inclusion of a smidgen more caffeine than advertised amount[s] to a deceptive practice.”

In this case, a NY federal court determined that reasonable consumers would not be materially misled. It reasoned that “consumers of the Products are generally seeking more caffeine, not less, as evidenced by their desire to purchase the Product in the first place….” Therefore, “it defies common sense to suggest that it would be material that the Products contain a mere 7-11% additional caffeine—the exact thing those consumers are seeking.”

Change the facts a smidgen and the case may have turned out differently. For example, imagine that you’re selling a drink that is intended to help wind people down, rather than to help wind them up. In that case, it’s possible that advertising that your drink has less caffeine than it actually does could be material. As always, the context of a claim matters.