

No Pain, No Grain: Golden Grain Company's Slack Fill Victory

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In a deep sea of consumer fraud and deceptive packaging litigation, [glimpses of reason](#) are starting to emerge in the slack fill space, suggesting that these cases may (finally) be on the decline.

In a recent proposed class action, Brendan Abbott alleged that Golden Grain Co. misled customers into thinking they were getting more of the manufacturer's rice pilaf mixture than the box actually contained, and that Abbot was "disappointed" when he opened the box and found it was no more than one-third full. The Eastern District of Missouri dismissed Abbott's claims with prejudice, finding that Abbott got exactly what he bargained for: "Golden Grain's boxes say that they contain 6.09 ounces of rice pilaf, and Abbott does not allege that they contain, or that he received, anything less than 6.09 ounces of rice pilaf."

Notably, the Court held that Abbott's "subjective, package-disclosure-defying expectations" of the box's contents would *not* be shared by other reasonable consumers, something that Abbot was required to allege pursuant to recent amendments to the Missouri Merchandising Practice Act. Rather, the Court ruled that reasonable consumers would understand that the box contained 6.09 ounces of rice pilaf simply by "reading the package." Indeed, not only did the package accurately disclose its weight and specifically advise consumers that the product was sold by weight and not by volume, Golden Grain went so far as to include a "fill line" on the side of the box, demonstrating exactly how much grain was in the package. Under these circumstances, the Court found that "[w]hether his disappointment was feigned for the purpose of propagating litigation or real, Abbott got what he bargained for and fail[ed] to plausibly allege an ascertainable loss."

Abbott's reference to FDA nonfunctional slack fill regulations (a common practice in class action complaints these days) was similarly unpersuasive because the complaint did "not explain how FDA regulations can set the standard for what a state legislature deems misleading, and necessary to state a cause of action, under a state consumer-protection law."

This case serves as a noteworthy example of judges' growing frustration with class actions premised on irrational and unreasonable interpretations of product labels and packages. In this instance, a single grain of rice pilaf (or rather, 6.09 ounces thereof) was just enough to tip the scales of justice.