

The Case of the Piggyback Class Action

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In increasing numbers, courts have granted summary judgment to the defendants in (or dismissed) consumer class actions in which the plaintiffs have alleged that certain advertising claims are false, deceptive, and/or misleading because the defendants do not possess "prior substantiation" for the claims (i.e., the advertisers do not have a reasonable basis for making the challenged claims in the first instance). These "piggyback" cases often were filed shortly after the defendants entered into settlement agreements with the Federal Trade Commission ("FTC") resolving the agency's investigations into the defendants' respective advertising and marketing campaigns; and the complaints did little more than parrot the FTC's allegations of falsity and deception.

The issue of piggyback class actions was discussed in a [previous blog post](#). A new article co-authored by John Villafranco, which appears in *Nutritional Outlook* magazine - "[The Case of the Piggyback Class Action](#)" - examines recent developments and issues relating to piggyback class actions, such as which party bears the burden of proof in such cases, what evidentiary showing is required, and how courts have responded to plaintiffs who have attempted to place the burden on the defendants to prove that their advertising claims are substantiated and/or not deceptive.