

# Prebiotic or Placebo? False Advertising Class Action Lawsuit Filed Against Poppi Soda

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## Related Capabilities

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The company behind social media phenomenon, Poppi Soda (“Poppi”) may be in fizzy waters for its claims the beverage provides prebiotic benefits to consumers. In a recently-filed California suit, named plaintiff, Kristin Cobbs, initiated a class action lawsuit against the owner of Poppi, VNGR Beverage LLC (“VNGR”) claiming its advertisement and on-label representations of Poppi’s health benefits are unfounded and in violation of several California statutes.

Founded in 2016, Poppi is marketed as a healthy alternative to traditional sodas whose popularity took off in 2018 after an appearance on the well-known TV show, Shark Tank. As stated by Cobbs, “[Poppi’s] success is largely owed to its ability to preserve the flavor and sweetness of traditional sodas while claiming to be ‘gut healthy’ due to its inclusion

of ‘prebiotics’ – a specific type of dietary fiber commonly found in food like bananas and whole grains.” On each can of Poppi, consumers can see the company’s tagline “Be Gut Happy. Be Gut Healthy,” along with the claim that the soda contains “Prebiotics for a Healthy Gut.”<sup>[1]</sup>



Each Poppi beverage contains the natural soluble fiber, inulin, which when processed in the large intestine, promotes the growth of healthy gut bacteria known as “probiotics”. Cobbs’ claim, however, centers on the fact that each Poppi beverage contains just two grams of prebiotic fiber — an amount which has apparently been shown to be “too low to cause meaningful gut health benefits for [a] consumer from just one can.” In fact, to see any health benefits from the prebiotic fiber, Cobbs claims the science shows a consumer would need to drink *more than four cans of Poppi every day for twenty-one consecutive days*. Notably, consuming this amount of the soda would also mean consuming a substantial amount of cane sugar, which would allegedly “offset most, if not all, of [the] purported health benefits.”

Cobbs contends that these unsubstantiated claims are harmful to consumers who rely on beverage manufacturers to “accurately and honestly” advertise a product’s benefits. The Complaint as filed alleges violation of California’s False Advertising Law, California’s Consumer Legal Remedies Act, California’s Unfair Competition Law, and unjust enrichment as a result of these misrepresentations. To prevail on all of these claims, it will need to be proven that VNGR:

1. Knew or should have known its advertisements for Poppi were untrue or misleading in violation of Cal. Bus. & Prof. Code § 17500;
2. Represented that Poppi has “sponsorship, approval, characteristics ingredients, uses, benefits, or quantities which they do not” in violation of Civil Code § 1770(a)(5);
3. Represented that Poppi beverages are “of a particular standard quality, or grade” when in fact they are of another in violation of Civil Code § 1770(a)(7);

4. Advertised goods with the “intent not to sell them as advertised” in violation of Civil Code § 1770(a)(9); and
5. Engaged in unlawful and fraudulent business practices as a result of these advertising claims in violation of Cal. Bus. & Prof. Code § 17200.

In a day and age where consumers are increasingly seeking out healthier alternatives to their favorite products, food and beverage manufacturers may need to tread carefully when touting the medical benefits of these products, as it's clear consumers (and California law) want the science to back up these claims. For those who may be fans of the beverage (author's note: Orange is objectively the best flavor), the real outcome of this lawsuit may be whether we will all be humbled by our superiority complex that we only drink “healthy soda”.

Keep an eye on the TMCA blog for further updates as this lawsuit progresses.

[1] Since the time of the lawsuit's filing, these taglines have been removed from the Poppi website.