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COCA-COLA CO: **Frankfurt Kurnit** Discusses Diet Coke Suit Ruling

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Dorian Thomas, Esq. -- dthomas@fkks.com -- of **Frankfurt Kurnit** Klein & Selz PC, in an article for Lexology, reports that in yet another suit against The Coca-Cola Company alleging that it was misleading to call Diet Coke a "diet" drink, the United States District Court for the Southern District of New York granted Coca-Cola's motion to dismiss.

In their complaint, plaintiffs alleged that Diet Coke was falsely advertised as "diet" because the drink leads to weight gain. Plaintiffs alleged the aspartame in Diet Coke contributes to weight gain as well as an increased risk of metabolic disease, diabetes, and cardiovascular disease. Plaintiffs' claims were based, in part, on ads depicting thin men and women drinking Diet Coke. In response, Coca-Cola argued that it never advertised Diet Coke as contributing to weight loss or aiding in weight management.

In dismissing the complaint, Judge Louis L. Stanton relied upon, in part, a survey the plaintiffs conducted that found that only 15% of respondents believed that drinks labeled "diet" would aid in weight loss. Judge Stanton held that "[t]he brand name 'Diet Coke' conveys to reasonable consumers that the soft drink contains fewer calories than non-diet soft drinks -- not that it will, on its own, lead to weight loss or healthy weight management."

Although Judge Stanton granted Coca-Cola's motion to dismiss, Judge Stanton did reject Coca-Cola's argument that plaintiffs' claims were preempted under the Federal Food, Drug, and Cosmetic Act. [GN]

**---- Index References ----**

Company: COCA COLA CO (THE)

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