LET'S BE REASONABLE: PROPOSING A TEST FOR THE SUPREME COURT TO ADOPT TO MORE CLEARLY DEFINE A REASONABLE CONSUMER IN THE CONTEXT OF DECEPTIVE FOOD LABELING AND MARKETING

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ABSTRACT

Despite having more information and choices regarding food and beverages than ever in history, Americans are overwhelmingly unhealthy and are making uninformed purchasing decisions. A recent trend of American consumers becoming more health-conscious has resulted in the number of class action deceptive labeling lawsuits skyrocketing over the last fifteen years. Often, these lawsuits hinge on the "reasonable consumer" standard; a standard that considers whether the label would be likely to deceive a significant portion of consumers acting reasonably. What a reasonable consumer looks like varies from court to court, and courts across jurisdictions (and even in the same jurisdictions) have developed inconsistent interpretations, resulting in a fragmented body of caselaw that leaves both consumers and producers uncertain about their rights and responsibilities. This Comment first explores the current state of the American consumer, state and federal law pertaining to deceptive labeling, the current reasonable consumer standard, and notable deceptive labeling cases. Ultimately, this Comment argues that the Supreme Court needs to grant certiorari and provides a test for the Court to adopt that more clearly defines the reasonable consumer standard in deceptive labeling cases to promote consistency and stability in this exploding area of litigation. This solution will benefit consumers with legitimate claims by providing predictability in how the law is enforced, producers by informing them of their rights, and courts across the country by promoting uniformity a clear standard.

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I. INTRODUCTION

Picture Nakia, one of many concerned parents, who, with limited time to shop for groceries and a desire to provide healthy food for herself and her young children, grabs a box of fruit juice snacks from a trusted brand.[1] She trusts the label's advertisements that the snacks contain real juice and will be a viable health-conscious option for her young children.[2] Later, she discovers the product contained almost no real fruit juice at all, and the fruit snacks contained artificial ingredients and added sugars.[3] She feels betrayed and misled by this label she believes to be deceptive, so she and other frustrated parents file a class action lawsuit against the fruit snacks producer.[4] Luckily for the parents, the court of appeals reversed the original dismissal by the trial court because the judge found this label likely to deceive a reasonable consumer.[5] The court explained that reasonable consumers should not be expected to read the fine print of every label to avoid being misled.[6] Nakia and these parents receive the opportunity to have their day in court and proceed with their class action against the fruit snack company.[7]

Compare these parents to Melissa, who wanted to purchase a healthy and natural protein shake for herself and her family.[8] Melissa selected a protein shake that marketed itself as organic and vanilla bean flavored.[9] Melissa was then frustrated to learn that the protein shake actually contained minimal traces of vanilla and was flavored by a synthetic vanilla flavoring.[10] Melissa brought a deceptive labeling and negligent misrepresentation lawsuit against the protein shake company, alleging that the representations would likely deceive a reasonable consumer.[11] The court disagreed, and despite the shakes' labels containing the terms "organic nutrition" and "vanilla bean flavor," the court concluded that a reasonable consumer would not expect the shake to contain vanilla or vanilla bean, and that reading the ingredients on the back of the label would confirm this.[12] Melissa does not get her day in court.

These two brief examples, derived from real deceptive labeling lawsuits, provide a 10,000-foot view of how the ambiguous "reasonable consumer"

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1. *See* Williams v. Gerber Prods. Co., 552 F.3d 934, 936 (9th Cir. 2008).
2. *See id.*
3. *See id.*
4. *See id.*
5. *Id.* at 940.
6. *See id.* at 939.
7. *See generally id.* (reversing trial court's dismissal because the pleadings stated a plausible claim for relief).
8. *See* Zahora v. Orgain LLC, No. 21 C 705, 2021 WL 5140504, at *2 (N.D. Ill. Nov. 4, 2021).
9. *Id.* at *1.
10. *Id.* at *3.
11. *Id.*
12. *See generally id.* (dismissing the claim as it would not likely deceive a reasonable consumer).

standard that governs deceptive labeling lawsuits has frustrated consumers.[13] This inconsistency doesn't just frustrate consumers; courts and businesses also suffer from this unpredictable standard.[14] Courts are facing a recent surge in deceptive labeling lawsuits and lack a clear test or consistent caselaw to rely on when making decisions, and courts have expressed this confusion and frustration in their opinions.[15] Businesses are also susceptible to this problem because they struggle to create labels that comply with the law while still competing to get and retain business from consumers.[16]

Deceptive labeling lawsuits have become a prominent issue in the United States, and the current state of how courts handle these lawsuits has created a chaotic landscape that has left consumers frustrated without a reliable remedy for when they believe they have been deceived by food producers.[17] This chaos has also left courts overwhelmed by inconsistent rulings and a lack of guidance for how to evaluate deceptive labeling claims, and businesses uncertain about the legality of how they market and label their products.[18] The root of this issue lies in the current test used to evaluate these claims, the ambiguous reasonable consumer standard, which serves as the baseline test for determining whether a label is deceptive and can proceed past a motion to dismiss stage under the law.[19]

This Comment highlights the alarming number of inconsistent decisions courts across the United States produced in deceptive labeling lawsuits and acknowledges that these issues will continue if the current standard for how courts handle them continues.[20] This Comment ultimately urges the United States Supreme Court to grant certiorari on a deceptive labeling lawsuit and provides the Court with a comprehensive test that clearly defines what a reasonable consumer is, which will provide courts nationwide a uniform standard to use when evaluating a deceptive labeling claim, offering an effective solution for all parties.[21] Part II provides the reader with background

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13. *See id.* at *4; Williams v. Gerber Prods. Co., 552 F.3d 934, 939 (9th Cir. 2008).

14. *See generally* DeMaso v. Walmart Inc., 655 F. Supp. 3d 696 (N.D. Ill. 2023) (highlighting the difficulties courts have had in deceptive labeling lawsuits); Trisha Gedon, *Food Labels Often Mislead Consumers*, OKLA. STATE UNIV. (Aug. 1, 2019), https://news.okstate.edu/articles/agriculture/2019/gedon_food_labels.html (discussing the impact of confusion in deceptive labeling lawsuits on businesses).

15. *See DeMaso*, 655 F. Supp. 3d at 702 (discussing how the inconsistent standard has complicated what should be straightforward pleading decisions).

16. Gedon, *supra* note 14.

17. *See* CARY SILVERMAN & JAMES MUEHLBERGER, TRENDS IN FOOD AND BEVERAGE CLASS ACTION LITIGATION 1–2 (U.S. Chamber Inst. for Legal Reform 2017), https://instituteforlegalreform.com/wp-content/uploads/2020/10/TheFoodCourtPaper_Pages.pdf (highlighting the growing number of lawsuits and where they are most prominent).

18. *Id.* at 8–10.

19. *See infra* Section II.C (discussing the reasonable consumer standard in depth and how it has caused a large part of the confusion in deceptive labeling lawsuits).

20. *See infra* Section II.D (discussing deceptive labeling caselaw and how courts apply inconsistent standards in evaluating motions to dismiss and cases).

21. *See infra* Part III (discussing why the Supreme Court addressing this issue is the most effective way to address the current problem).

information on the status of American consumers, state and federal deceptive labeling laws, the development and current application of the reasonable consumer test, and notable deceptive labeling cases.[22] Part III lays out that the Supreme Court should adopt the proposed reasonable consumer test and then establishes why Supreme Court intervention is necessary: Because the Supreme Court establishing a reasonable consumer test is the best solution to the current problem compared to other alternatives, a more clearly defined reasonable consumer standard will promote uniformity and consistency, something all parties involved desire, and will increase transparency and restore the relationship between businesses and consumers.[23]

The Supreme Court needs to establish a reasonable consumer test when evaluating deceptive labeling lawsuits that clearly defines what a reasonable consumer is to protect consumers, provide a uniform standard for courts to use, and give food and beverage producers clear expectations for how they can market their products.[24]

II. BACKGROUND

A. The Current State of American Food Consumers

Understanding the current state of the American consumer, including health statistics and shopping tendencies, sheds important light as to why deceptive labeling lawsuits have been on the rise in the last twenty years, and why it is important for the courts nationwide to be able to effectively make clear, consistent rulings on deceptive labeling lawsuits.[25]

The average American consumes almost a ton (almost two thousand pounds) of food annually.[26] Despite availability to unprecedented amounts of information regarding health and nutrition on the internet, social media, and studies, Americans are increasingly unhealthy.[27] In twenty-three states, over one-in-three adults are obese, a stark contrast to 2013, where no state had an adult obesity rate above 35%.[28] In 2021, cardiovascular disease accounted for

22. *See infra* Part II (describing the current state of deceptive labeling law).

23. *See infra* Part III (proposing that the Supreme Court should adopt a reasonable consumer test and its benefits).

24. *See infra* Section III.C (explaining how the Supreme Court clarifying this issue would benefit consumers, court, and businesses).

25. *See* SILVERMAN & MUEHLBERGER, *supra* note 17, at 5 (discussing how filings have increased rapidly in class action lawsuits in federal court).

26. Andrzej Blazejczyk & Linda Kantor, *Food Availability (Per Capita) Data System*, USDA (last updated June 26, 2025), https://www.ers.usda.gov/data-products/food-availability-per-capita-data-system/.

27. CDC Media Relations, *New CDC Data Show Adult Obesity Prevalence Remains High*, CDC (Sep. 12, 2024), https://www.cdc.gov/media/releases/2024/p0912-adult-obesity.html.

28. *Id.*

931,578 deaths in the United States,[29] with doctors believing "[s]trong evidence shows that a higher intake of ultra-processed foods was associated with approximately 50% higher risk of cardiovascular disease-related death and common mental disorders."[30] The average American consumes about seventy-seven grams of sugar per day, almost more than three-times the amount the American Heart Association recommends.[31]

These statistics are alarming; however, it doesn't mean that all American consumers are just sitting idly by, willfully destroying their health.[32] A survey of American consumers revealed nearly 50% of consumers report that their diet could be somewhat healthier.[33] About four out of ten consumers reported they closely monitor what they eat, three out of four said they're trying to include more vegetables in their diet, and there has been a rise in "healthier" products, such as products with more antioxidants, plant-based foods, and foods and drinks with protein.[34]

Food labels and how products market themselves play an important role in how consumers make decisions, which is why America badly needs a clear standard on how to govern deceptive labeling lawsuits.[35] In the United States, grocery stores have become a hotbed for competition and manipulation, as thousands of different brands combat and strategize amongst each other hoping to convince consumers to purchase their products.[36] A recent survey indicated that a majority of consumers do not use a shopping list when they grocery shop, indicating that they browse hundreds of different labels every time they shop.[37] Ideally, food labels serve as both an important source of nutrition information and as an advertisement by food producers to sway consumers to purchase their products.[38] Although many consumers value nutrition when deciding which foods they will purchase, the nutrition information on food labels can be complex and doesn't always live up to its

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29. MARTIN SS ET AL., 2024 HEART DISEASE AND STROKE STATISTICS UPDATE FACT SHEET (Am. Heart Ass'n 2024), https://www.heart.org/-/media/PHD-Files-2/Science-News/2/2024-Heart-and-Stroke-Stat-Update/2024-Statistics-At-A-Glance-final_2024.pdf.

30. Sandee LaMotte, *Ultraprocessed Foods Linked to Heart Disease, Diabetes, Mental Disorders and Early Death, Study Finds*, CNN HEALTH (last updated Feb. 28, 2024 at 18:38 EST), https://www.cnn.com/2024/02/28/health/ultraprocessed-food-health-risks-study-wellness/index.html.

31. *See* MARTIN SS ET AL., *supra* note 29 (providing statistics about heart disease and the risk factor associates).

32. A. Elizabeth Sloan, *What, When, and Where America Eats*, IFT (Jan. 1, 2020), https://www.ift.org/news-and-publications/food-technology-magazine/issues/2020/january/features/what-when-and-where-america-eats.

33. *Id.*

34. *Id.*

35. *See* Kati Barnhill & Bryce Gibbs, *5 Common Barriers to the Grocery Store Market*, PINION (Dec. 20, 2023), https://www.pinionglobal.com/5-common-barriers-to-the-grocery-store-market/.

36. *See id.*

37. Raksha Goyal & Neeta Deshmukh, *Food Label Reading: Read Before You Eat*, 7 J. EDUC. & HEALTH PROMOTION 56, 56 (2018), https://journals.lww.com/jehp/fulltext/2018/07000/food_label_reading_read_before_you_eat.56.aspx.

38. *See id.* ("[]71.9%[] of the participants claimed that they do not use a shopping list . . . .").

potential to effectively communicate with consumers.[39] Further, less than one in ten of consumers stated they use nutrition knowledge when shopping.[40]

Most grocery shoppers, over two-thirds, look for food products that include avoidance claims, with special attention to claims about sugar and sodium.[41] Six out of ten consumers seek out food packaging with minimal food processing claims and specifically value foods with no artificial ingredients, preservatives, or genetically modified organisms (GMOs).[42] American consumers also have more choices than ever, with tens of thousands of food and beverage brands launching within the last ten years.[43] Because of this, food and beverage labels have great influence on consumers, and research has found that consumers are willing to pay a premium for foods they consider to be "healthy."[44]

While these attempts by consumers to purchase healthier foods for their families are noble, the end result often leaves consumers having their lack of full understanding be taken advantage of by compelling food labeling using health buzz words that are mostly without merit.[45] When consumers do realize they have been taken advantage of or have suffered from labels they believe to be deceptive, consumers will often look to the courts to hold these food and beverage producers accountable.[46] Unfortunately, as this Comment discusses, these types of lawsuits are governed by a vague reasonable consumer standard that produces unpredictable outcomes that has resulted in frustrated consumers, food and beverage producers, and courts.[47]

B. State and Federal Consumer Protection Statutes

There are numerous consumer-protection statutes at both the state and federal level designed to prevent deceptive labeling and marketing practices.[48] Despite these laws, deceptive labeling and marketing practices continue to plague the marketplace, causing scholars to question the

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39. *Id.*

40. *See id.* (stating 9.3% of consumers claimed they use nutrition information knowledge when shopping).

41. Sloan, *supra* note 32.

42. *Id.*

43. *See id.* ("13,000 new UPC food/beverage brands were launched in 2018 . . .").

44. *See* Moosa Alsubhi et al., *Consumer Willingness to Pay for Healthier Food Products: A Systematic Review*, NAT'L LIBR. OF MED., Jan. 2023, at 13, https://pmc.ncbi.nlm.nih.gov/articles/PMC10909406/#:~:text=Twenty%20three%20out%20of%20the,price%20premium%20for%20healthier%20foods.

45. *See* Gedon, *supra* note 14 ("The supermarket is full of misleading food marketing, all of which is aimed at unsuspecting customers who simply want to purchase healthy foods for their family . . . consumers don't always have a good understanding of the verbiage used on labels.").

46. *See, e.g.*, Williams v. Gerber Prods. Co., 552 F.3d 934, 936 (9th Cir. 2008) (highlighting that consumers resorted to the courts when they found out the snack's label was deceptive).

47. *See infra* Section II.C (providing an overview of the reasonable consumer standard).

48. *See, e.g.*, 15 U.S.C. §§ 45, 1125(a); CAL. BUS. & PROF. CODE § 17200 (providing examples of applicable federal and state level consumer protection statutes).

effectiveness of these statutes in place.[49] The current ambiguous standard that governs claims under these statutes plays a key role in the failure to prevent deceptive business practices as the lack of clear standards specifically in determining what a reasonable consumer is in this context has resulted in judicial inconsistency and uncertainty that render some of these statutes ineffective at protecting the consumer and preventing deceptive labeling practices.[50] This Section highlights these federal and state consumer protection statutes to demonstrate how deceptive labeling cases originate, and highlights the need for the Supreme Court to provide a clear, uniform standard that meaningfully protects consumers and provides businesses with predictable guidelines for marketing and labeling practices that allows these statutes to fulfill their purpose.[51]

The first federal law in the United States that attempted to dissuade deceptive representations on food labels was the Pure Food and Drug Act in 1906.[52] This law has evolved into what is recognized today as the Food, Drug, and Cosmetic Act (FDCA), which Congress enacted in 1938, that decides if labeling is false or deceptive in particular after discovering harmful effects of chemical additives and other harmful additions to foods.[53] Prohibited acts under the FDCA include "[t]he introduction or deliver[ance] for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded."[54]

The Nutrition Labeling and Education Act (NLEA) of 1990 modifies the federal FDCA and requires uniform nutrition labeling standards on most food packages sold.[55] The Act mandates that food manufacturers provide baseline nutrition facts on food packages, including information regarding vitamins and minerals, calories, and serving sizes.[56] The Act serves the purpose of enabling consumers to make more informed food decisions and gives food producers a uniform standard for how they should label their products.[57] The Food and Drug Administration is the agency that enforces the NLEA.[58]

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49. *See* Lauren Willis, *Performance-Based Consumer Law*, 82 U. CHI. L. REV. 1309, 1318 (2015) (arguing consumer protection laws have failed to prevent market deception).

50. *See* Moore v. Trader Joe's Co., 4 F.4th 874, 882–85 (9th Cir. 2021) (highlighting circuit-level confusion about consumer deception standards).

51. *See infra* notes 52–62 and accompanying text (noting that consumer protection statutes illustrate the origins of deceptive labeling claims and the need for uniform Supreme Court standard).

52. Jessica Guarino, Nabilah Nathani & A. Bryan Endres, Comment, *What the Judge Ate for Breakfast: Reasonable Consumer Challenges in Misleading Labeling Claims*, 35 LOY. CONSUMER L. REV. 82, 97 (2023).

53. Mario Moore, *Food Labeling Regulation: A Historical and Comparative Survey* (2001) (Third Year Paper, Harvard Law School) (on file with Digital Access to Scholarship at Harvard), http://nrs.harvard.edu/urn-3:HUL.InstRepos:8965597.

54. 21 U.S.C. § 331(a).

55. *Id.* § 343.

56. *Id.*

57. *Id.*

58. *Id.*

The Trademark Act of 1946 is another federal statute governing deceptive labeling and advertising claims, and it established a federal cause of action for unfair competition from misleading advertising or labeling.[59] Section 1125(a) provides civil action claims for anyone, in connection with goods or services, who uses in commerce any communication that contains false or misleading representations that are likely to cause confusion or deceive.[60]

The Food and Drug Administration (FDA) is the government agency primarily responsible for the enforcement and carrying out of these statutes, with other agencies, like the United States Department of Agriculture, having similar authority over meat products.[61] The Federal Trade Commission has stated:

> The Federal Trade Commission Act is the primary statute of the Commission. Under this Act, as amended, the Commission is empowered, among other things, to (a) prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce; (b) seek monetary redress and other relief for conduct injurious to consumers; (c) prescribe rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; (d) gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and (e) make reports and legislative recommendations to Congress and the public.[62]

Despite these federal provisions, deceptive labeling lawsuits are almost entirely brought under state law because there is no overarching federal law that provides a private right of action for consumers in these types of cases.[63] While the FDCA, the Trademark Act, and Federal Trade Commission Act provide *federal* causes of action for false advertising and labeling, these Acts are more intended to address unfair competition than to protect consumers.[64] The FDCA does not allow individual consumers to bring lawsuits based on labeling violations.[65] Instead, only business competitors or the FDA can act

59. 15 U.S.C. §§ 1051–1141n.

60. *Id.* §1125.

61. 21 U.S.C. §§ 601–83.

62. *Federal Trade Commission Act*, FTC, https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act (last visited Sep. 30, 2025).

63. *See* POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102, 107 (2014) (The Lanham Act creates a cause of action for unfair competition . . . for competitors, not consumers.").

64. *Id.*

65. *See* 21 U.S.C. § 337.

against companies for violating these standards, leaving consumers limited in their ability to seek redress directly under federal law.[66]

Additionally, individual consumers generally suffer relatively small monetary damages from purchasing misleadingly labeled products.[67] While individual consumers acting alone do not have sufficient damage claims to make any real impact, the aggregate harm, when combined with other consumers, can be substantial.[68] This is why deceptive labeling lawsuits are almost entirely class actions, and they serve as a crucial tool to pursue meaningful relief and protection for consumers.[69] Class actions also create financial incentives for plaintiffs' attorneys that would not be feasible on an individual basis.[70] Without the availability of class action lawsuits, it's likely many deceptive labeling practices would go unchallenged, as consumers would not likely pursue individual claims despite feeling misled because of the lack of damages.[71]

Therefore, in nearly all deceptive labeling claims, plaintiffs assert their claims under state consumer protection statutes spanning across several states.[72] These statutes are often referred to as "Little-FTC Acts," as "they are patterned on the Federal Trade Commission Act (FTCA)" and "broadly prohibit unfair business practices, including deceptive advertising."[73] These state statutes offer private rights of action to plaintiffs to complement government enforcement.[74] "Many of these statutes were enacted in the [mid-to late-] 1970s and 1980s," and while they are a useful tool to protect consumers, their power varies from state to state.[75]

Because roughly three-quarters of food class actions that end up in federal courts appear in four states, California, New York, Florida, and Illinois,[76] this Comment will focus on the laws and lawsuits in these states. However, the proposed solution of the Supreme Court establishing a clear test to define a reasonable consumer would guide courts across the entire

66. *See generally* Buckman Co. v. Plaintiffs' Legal Comm., 531 U.S. 341 (2001) (explaining enforcement of the FDCA is exclusively within the jurisdiction of the FDA, and allowing private litigants to bring claims based on FDCA violations interferes with the FDA's authority).

67. SILVERMAN & MUEHLBERGER, *supra* note 17, at 38–45.

68. *See In re* ConAgra Foods, Inc., 90 F. Supp. 3d 919, 981–83 (C.D. Cal. 2015) (discussing class actions under California state law).

69. *Id.*

70. *See* SILVERMAN & MUEHLBERGER, *supra* note 17, at 38–45.

71. *Id.*

72. *See* Bell v. Publix Super Mkts., Inc., 982 F.3d 468, 474–75 (7th Cir. 2020).

73. *Id.* at 474 (citing Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts?*, 63 FLA. L. REV. 163, 165 (2011)).

74. *Id.* at 475.

75. Guarino, Nathani & Endres, *supra* note 52, at 103–04.

76. SILVERMAN & MUEHLBERGER, *supra* note 17, at 8–10.

country.[77] This is important for promoting uniformity, especially when many companies sued for deceptive labeling sell their products nationwide.[78]

Class action plaintiffs in California have standing under the Unfair Competition Law and the Consumers Legal Remedies Act.[79] Similar to the Federal Trade Commission Act, these California statutes give a cause of action against unfair or deceptive business practices.[80] Under the Unfair Competition Law, plaintiffs must allege facts sufficient to show a violation of underlying law and demonstrate the harm suffered as a result.[81] Case law under this statute has established that a representation is not considered false or deceptive just because an unrepresentative segment of the consumer class may misunderstand it.[82] California's Consumer Legal Remedy Act, separate from the Unfair Competition Law, offers remedies for social and economic issues resulting in deceptive business practices; it intends for liberal construction to protect consumers and recognizes that damages may include harms other than pecuniary damages.[83]

In Illinois, its Consumer Fraud and Deceptive Business Practices Act is where consumers can bring deceptive labeling claims.[84] This broadly interpreted statute allows consumers to bring a claim even if they themselves were not in fact deceived or damaged by the wrongful conduct and only requires that the defendant acted with an intent that others relied on in concealing a material fact.[85]

Florida's consumer protection law also provides a framework that allows consumers to bring actions for deceptive labeling through the Florida Deceptive and Unfair Trade Practices Act.[86] It explicitly provides a private right of action, allowing consumers to file deceptive labeling lawsuits; however, the Act excludes claims for consequential or indirect damages.[87]

New York's consumer protection law also does not require actual reliance on representations.[88] It mostly mirrors the other mentioned state statutes with the differences not having a substantial impact on deceptive labeling claims.[89] Washington D.C.'s prominent protection law that prohibits deceptive business practices is the Consumer Protection Procedures Act, which, in addition to providing a cause of action against deceptive and

77. *See infra* Section III.A (discussing why the Supreme Court is best equipped to solve this issue for the entire country).

78. *See infra* Section III.C (arguing why this solution best promotes uniformity).

79. CAL. BUS. & PROF. CODE § 17200.

80. *Id.*

81. *See* Lavie v. Procter & Gamble Co., 129 Cal. Rptr. 2d 286, 496–99 (Cal. Dist. Ct. App. 2003).

82. *See id.*

83. *See* CAL. CIV. CODE § 1770(a).

84. *See* 815 ILL. COMP. STAT. 505/2, 505/4.

85. *See id.*

86. *See* FLA. STAT. §§ 501.201–.213.

87. *See id.*

88. *See* N.Y. GEN. BUS. LAW § 349.

89. *See id.*

fraudulent business practices, empowers the mayor to have broad rulemaking authority aligning with the Act.[90] Again, this statute does not require a showing of in-fact reliance on the representations nor a showing of public interest or public policy.[91] These state consumer protection laws provide the framework for deceptive labeling and advertising claims this Comment discusses.[92]

These consumer protection statutes are designed to prevent deceptive labeling and marketing of products, and the state laws are what allow consumers to bring their claims.[93] The problems arise when these claims are made and courts are tasked with determining whether the label in question would be likely to deceive the reasonable consumer, for which there is not a clear standard that courts can look to, nor is there consistency within case law that allows judges to form consistent conclusions.[94] While the current legislation in place is a good tool to prevent deceptive labeling, the lack of a clear, uniform test for how to evaluate these claims leaves these statutes ineffective at preventing deceptive labeling practices and providing a remedy for injured consumers.[95]

C. The Ambiguous "Reasonable Consumer" Standard and Deceptive Labeling Lawsuits

The current standard governing deceptive labeling lawsuits is the reasonable consumer standard.[96] While this is the uniform standard for all deceptive labeling cases across the country, the application of this reasonable consumer standard looks different from case to case, as there is no clear guidance for courts as to how it should interpret what a reasonable consumer is.[97] This Section discusses the development of and how different courts apply the reasonable consumer standard, often inconsistently, which demonstrates the need for the Supreme Court to address this issue and

90. *See* D.C. CODE §§ 28-3901 to 3913.

91. *See id.*

92. *See infra* II.C–D (discussing inconsistent applications of the reasonable consumer standard in deceptive labeling cases).

93. *See, e.g.*, FLA. STAT. §§ 501.201–13 (providing a cause of action for deceptive labeling under the Florida Deceptive and Unfair Trade Practices Act).

94. *See infra* Section II.C (discussing a lack of a clear standard).

95. *See supra* notes 53–92 and accompanying text (discussing federal and state statutes and causes of action regarding deceptive labeling).

96. *See* Bustamante v. KIND, LLC, 100 F.4th 419, 425–26 (2d Cir. 2024) (finding the reasonable consumer standard governs deception); *see also* Maurizio v. Goldsmith, 230 F.3d 518, 521–22 (2d Cir. 2000) (per curiam) (stating under the reasonable consumer standard, "the court defined 'deceptive acts' objectively as acts that are 'likely to mislead a reasonable consumer acting reasonably under the circumstances'").

97. *See* DeMaso v. Walmart Inc., 655 F. Supp. 3d 696, 702 (N.D. Ill. 2023) (discussing how the inconsistent standard has complicated what should be straightforward pleading decisions).

provide a clear standard as to how courts should interpret the reasonable consumer standard.[98]

When courts view deceptive labeling claims, plaintiffs must first plead enough facts to state a claim to relief that is on its face plausible under the *Bell Atlantic Corp. v. Twombly* standard.[99] In theory, this means plaintiffs need only to "nudg[e] their claims across the line from conceivable to plausible."[100] Essentially, every deceptive labeling claim is governed by the state's law where the claim originates, and these statutes are interpreted using the reasonable consumer test.[101]

The reasonable consumer standard is a close relative of the "reasonable person" standard, a standard that is prevalent and exists in tort law nationwide.[102] This reasonable person, broadly, represents an individual with an ordinary degree of reason, care, foresight, or intelligence whose conduct, action, or expectation regarding the particular circumstance or fact is used as an objective standard to make a determination for the particular case at hand.[103] All members of a community in the context of tort law "owe a duty to act as a reasonable person in undertaking or avoiding" certain actions to avoid the risk of harm to others.[104] The reasonable consumer in deceptive labeling lawsuits describes a consumer who is assumed to weigh the benefits and costs of their purchasing decisions, and like a reasonable person in tort law, they behave in a logical and reasonable manner.[105]

The majority of deceptive labeling claims brought under state consumer protections statutes require the plaintiff to prove that this hypothetical reasonable consumer is "likely to be deceived by the product's label[]" in question.[106] The Seventh Circuit described this as a requirement by plaintiffs to show "a probability that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled."[107] The Ninth Circuit stated that plaintiffs must "show that 'members of the public are likely to be deceived.'"[108] While most courts have

98. *See infra* Section II.C (discussing the development and application of the reasonable consumer standard).

99. Williams v. Gerber Prods. Co., 552 F.3d 934, 938 (9th Cir. 2008); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 547 (2007).

100. *Twombly*, 550 U.S. at 570.

101. *Williams*, 552 F.3d at 938; Freeman v. Time Inc., 68 F.3d 285, 289 (9th Cir. 1995).

102. *See, e.g.*, Clanton v. United States, 20 F.4th 1137, 1141–45 (7th Cir. 2021) (discussing the reasonable person standard in a comparative negligence claim).

103. *See Reasonable Person*, CORNELL L. SCH.: LEGAL INFO. INST. (last updated May 2025), https://www.law.cornell.edu/wex/reasonable_person.

104. *Id.*

105. *See* Jeffrey S. Jacobson, *In Search of the Elusive "Reasonable Consumer"*, N.Y. L.J. (July 9, 2020, at 13:50 CST), https://www.law.com/newyorklawjournal/2020/07/09/in-search-of-the-elusive-reasonable-consumer/?slreturn=20251029191515.

106. Clay D. Sapp, *Citizen Surveillance of Misleading Food Labeling*, 126 PENN. ST. L. REV. 389, 413 (2022).

107. Bell v. Publix Super Mkts., Inc., 982 F.3d 468, 474–75 (7th Cir. 2020).

108. Williams v. Gerber Prods. Co., 552 F.3d 934, 938 (9th Cir. 2008).

this same test or standard it views deceptive labeling claims with, the application of this standard varies between different courts even within the same jurisdictions, and a single widely accepted definition of this standard does not exist.[109]

This determination of what would deceive a reasonable consumer remains inherently subjective, which explains why generally the question of whether a reasonable consumer would be misled is a fact question generally reserved for twelve consumers—a jury.[110] Courts have even explicitly stated that dismissal of deceptive labeling claims is only very rarely appropriate, and only in situations when the pleadings fail to plausibly allege that a company deceived a reasonable consumer.[111] However, many courts permit dismissal on the pleadings if the judge believes the plaintiffs have based their deceptive advertising claim on a claim that is unreasonable or a more ridiculous interpretation of a label or an advertisement.[112]

For example, in *Carrera v. Dreyer's Grand Ice Cream, Inc.*, the Ninth Circuit justified its dismissal of a deceptive label claim by determining that no reasonable consumer would be likely to think an original vanilla ice cream refers to a natural ingredient.[113] Often, despite the concept that a jury of actual consumers is the one who will make the determination of whether a misleading label claim has merit, courts often will dismiss the case at the pleading stage, because the court finds the claim implausible under the reasonable consumer test.[114] But there is not much of an explanation as to *why* the label would or would not likely deceive a reasonable consumer, and in many situations, it appears that the life of the consumer's deceptive labeling claim is really based off of the judge's interpretation of what exactly a reasonable consumer is—something that is not clearly defined.[115]

Clearly, although all jurisdictions agree that the reasonable consumer standard governs deceptive labeling lawsuits, there is a lack of uniformity amongst courts as to what that reasonable consumer standard looks like in practice.[116] This includes inconsistencies on what should be considered and what behaviors a reasonable consumer practices, driving the need for the Supreme Court, as the highest court in the country, to step in and address the issue.[117]

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109. *Contrast Bell*, 982 F.3d at 476 (weighing the context of the packaging in its entirety to determine what would deceive reasonable consumers), *with Williams*, 552 F.3d at 939–40 (concluding that reasonable consumers do not need to search beyond the misleading front of a package to see an accurate ingredient list).

110. *See* Sapp, *supra* note 106, at 413–14.

111. *See Bell*, 982 F.3d at 477.

112. *Id.*

113. Carrera v. Dreyer's Grand Ice Cream, Inc., 475 F. Appx. 113, 115 (9th Cir. 2012).

114. *See id.*

115. Guarino, Nathani & Endres, *supra* note 52, at 114.

116. *See id.*

117. *See id.*

While most deceptive label and advertisement allegations are unique in nature and vary on a case-to-case basis, essentially all the lawsuits fall into a few blanket categories: claims that a product is deceptively marketed as "all natural"; claims that a product is explicitly labeled healthy while not containing healthy ingredients; slack fill claims when consumers are led to believe by the label or packaging they are getting extra space that the product does not actually contain; and specific health claims when products assert they provide a health benefit that is overstated or lacks support.[118] While there are also many other types of deceptive labeling lawsuits, the vast majority fall under one of these categories.[119]

One of the main categories is for products that are marketed as "natural" or containing no artificial ingredients or preservatives.[120] These claims represent the largest share of the food class action case docket, representing roughly a third of the claims.[121] These claims have been especially favored by plaintiffs' attorneys because of the lack of a legal definition of what it means for a product to be all natural.[122] "The FDA has [defined] the term 'natural' to mean that nothing artificial or synthetic . . . has been included . . . or . . . added to[] a food [where] that would not normally be expected . . . in that food."[123] This policy does not address food production methods such as pesticides or other important policy concerns such as whether the FDA's definition of natural should determine the appropriate use of the term on food labels.[124] The FDA has been pushed to more clearly define natural, and in 2015 the FDA published a request for information and comments on how to define the term.[125] A New York court discussed this lack of definition of the term natural in a lawsuit brought against a sour cream company for claims their primary ingredient is derived from cows whose feed may have contained GMOs.[126]

Class action lawsuits against producers for allegedly deceptively marketing their product as healthy is another popular class action.[127] These types of actions target products that may mislead consumers to believe a product is healthier than it really is.[128] An example of one of these cases is *Williams v. Gerber Products Co.*, when the basis of the class action was that

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118. SILVERMAN & MUEHLBERGER, *supra* note 17, at 6.

119. *Id.*

120. *Id.*

121. *Id.* at 17.

122. *Id.* at 2.

123. *Use of the Term Natural on Food Labeling*, U.S. FOOD & DRUG ADMIN., https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/use-term-natural-food-labeling#:~:text=The%20FDA%20has%20considered%20the,to%20be%20in%20that%20food (last visited Sep. 30, 2025).

124. *See id.*

125. *See id.*

126. Newton v. Kraft Heinz Foods Co., No. 16 CV 04578 (RJD)(RLM), 2018 WL 11235517, at *7–9 (E.D.N.Y. Dec. 18, 2018).

127. SILVERMAN & MUEHLBERGER, *supra* note 17, at 6.

128. *Id.*

Gerber deceptively marketed its Gerber's Fruit Juice Snacks as healthy with the words "Fruit Juice" juxtaposed alongside images of various fruits, despite the only juice in the product being white grape juice concentrate.[129]

These primary deceptive labeling lawsuits are the main controversies currently flooding court dockets, and the reasonable consumer standard governs all of them.[130] The Supreme Court establishing a clear test defining a reasonable consumer and giving a clear standard of how to evaluate these claims will be useful in analyzing all types of these deceptive labeling lawsuits and establishing a consistent standard which courts nationwide can utilize; therefore, Supreme Court intervention would instrumentally address the issues in deceptive labeling lawsuits arising out of the ambiguous reasonable consumer standard.[131]

D. Notable Deceptive Labeling Caselaw

The following deceptive labeling cases serve to highlight some of the inconsistencies present when applying the reasonable consumer standard.[132] They also provide insight on how courts analyze different deceptive labeling claims and ultimately show the beneficial nature of a uniform standard for analyzing these types of cases.[133]

Williams v. Gerber Products Co.

In *Williams,* the consumers argued that Gerber's "Fruit Juice Snacks" label, including images of fruit and the words "made with real fruit juice," was deceptive, because the product actually contained mostly corn syrup and sugar with the only fruit juice being white grape extract.[134] The Ninth Circuit discussed that a reasonable consumer would likely be misled by the product's labeling as it appeared healthier and more natural than in actuality.[135] The court also disagreed with the district court that consumers should not be expected to look beyond "misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box."[136] Ultimately, it reversed the district court's dismissal and allowed this case to proceed.[137]

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129. 552 F.3d 934, 936 (9th Cir. 2008).

130. SILVERMAN & MUEHLBERGER, *supra* note 17, at 5–6.

131. *See, e.g.*, *id.* at 32–35 (highlighting how often courts use the reasonable consumer standard).

132. *See infra* notes 134–57 and accompanying text (showing the inconsistences in applying the reasonable consumer standard).

133. *See infra* notes 137–58 and accompanying text (displaying how different courts analyze deceptive labeling claims and how a uniform standard would help).

134. *Williams*, 552 F.3d at 936 & n.2.

135. *See id.* at 939–40.

136. *Id.* at 939.

137. *Id.* at 940.

Bell v. Publix Super Markets, Inc.

In *Bell*, one of the most famous deceptive labeling lawsuits, the plaintiffs alleged that the labeling of Publix's parmesan cheese, stated that it was "100% Grated Parmesan Cheese."[138] In reality, the plaintiffs alleged the cheese contained "between four and nine percent [of] added cellulose powder and potassium sorbate."[139] Like the court in *Williams*, the 7th Circuit reversed the district court and allowed the claim to proceed, after discussing that a reasonable consumer could interpret the phrase "100% Grated Parmesan Cheese" to mean the product was pure cheese without fillers.[140] The court emphasized that even if small-print disclosures clarified ingredients on the back of the label, that measure cannot entirely eliminate the potential for deception, especially if the main label is misleading.[141] It also mentioned how consumer-protection laws do not impose on average consumers an obligation to question the labels they see and to inspect them as lawyers would for ambiguities.[142]

Moore v. Trader Joe's Co.

This Ninth Circuit case dealt with consumers alleging that Trader Joe's "100% New Zealand Manuka Honey" label was deceptive because, similar to the *Bell* case, the product contained only a percentage of Manuka honey, with the remainder of honey being from other floral sources.[143] The Ninth Circuit ultimately affirmed the dismissal this case, holding that a reasonable consumer would understand that honey is typically derived from multiple floral sources and that it is not reasonable to interpret 100% as meaning the honey was exclusively from the Manuka flowers, despite the advertisement.[144] This shows a narrower interpretation and an expectation of consumers to have a base level of consumer knowledge, different from the same court's reasoning in *Williams*.[145]

Mantikas v. Kellogg Co.

In *Mantikas v. Kellogg Co.*, the consumers argued that the popular "Cheez-It" snacks that were labeled with "Made With Whole Grain" were misleading and deceptive, as the top ingredient was refined flour.[146] The

138. Bell v. Publix Super Mkts. Inc., 982 F.3d 468, 473 (7th Cir. 2020).
139. *Id.*
140. *Id.* at 476–78.
141. *Id.* at 476.
142. *See id.*
143. Moore v. Trader Joe's Co., 4 F.4th 874, 882–85 (9th Cir. 2021).
144. *Id.* at 886.
145. *Contrast id.* at 883–85 (holding that a reasonable honey consumer would be aware that honey is not derived from a single floral source), *with* Williams v. Gerber Prods. Co., 552 F.3d 934, 939 (9th Cir., 2008) (reasoning that "fruit juice and other all natural ingredients" could easily be falsely understood to mean all the ingredients are natural).
146. Mantikas v. Kellogg Co., 910 F.3d 633, 634–35 (2d Cir. 2018).

Second Circuit held that this was misleading, despite there being disclosures about refined flour on the side of the box.[147] The Second Circuit established that prominent labels can be potentially misleading even if there are clarifications on the back of the label.[148]

DeMaso v. Walmart, Inc.

Here, the consumers claimed that Walmart's "fudge and mint" cookie labels were misleading because they were deceptively labeled to contain fudge or mint flavors, when the cookies actually contained processed ingredients and artificial flavors.[149] The court decided that the consumers' interpretation that the words "mint" and "fudge" on the back was not misleading because the label did not promise an ingredient, only a flavor.[150] Despite acknowledging that previous case law has not imposed the burden on consumers to read the back of the label, the court held that the plaintiffs' claims were not reasonable and that advertising mint and fudge, despite not having mint and fudge in the ingredients, was not enough to allege a plausible deceptive labeling case.[151] The court dismissed this case.[152]

Zahora v. Orgain, LLC

In *Orgain*, the plaintiffs filed suit after expecting a protein shake that stated "Organic Nutrition" was "Vanilla Bean" flavored to derive most of its vanilla flavoring from vanilla beans.[153] In reality, the flavoring came from synthetic vanilla flavoring.[154] Despite this, the court dismissed the claim, stating it was not likely to deceive reasonable consumers.[155] The court clarified and stated that this case turned on whether reasonable consumers would be deceived by the "vanilla bean flavor" on the protein shake and that the label promised vanilla flavor, not vanilla bean extract.[156] The court concluded that reasonable consumers would not expect a protein drink to be flavored with natural vanilla beans, and dismissed the complaint.[157]

These cases provide context for what some of the common claims look like under the consumer protection statutes and highlight how the courts have inconsistent standards they will use when determining whether these cases should be dismissed. The current problems plaguing courts and consumers in

147. *Id.* at 635–39.
148. *See id.* at 637.
149. DeMaso v. Walmart, Inc., 655 F. Supp. 3d 696, 699 (N.D. Ill. 2023).
150. *Id.* at 702–03.
151. *Id.* at 702–04.
152. *Id.* at 705.
153. Zahora v. Orgain, LLC, No. 21 C 705, 2021 WL 5140504, at *1 (N.D. Ill. Nov. 4, 2021).
154. *Id.*
155. *Id.* at *5.
156. *Id.* at *4.
157. *Id.* at *5.

deceptive labeling lawsuits are clear, and the following proposal offers an effective solution to these current challenges.[158]

III. WHY THE SUPREME COURT CLEARLY DEFINING WHAT A REASONABLE CONSUMER IS BENEFITS CONSUMERS, COURTS, AND BUSINESSES

Up until this point, this Comment has primarily focused on highlighting the current problems plaguing deceptive labeling lawsuits due to the ambiguous reasonable consumer standard and the inconsistent application of it by courts nationwide.[159] This Comment now shifts focus to offering a straightforward solution that addresses the problem: The United States Supreme Court should grant a writ of certiorari on a deceptive labeling lawsuit to address the current uncertainty surrounding the reasonable consumer standard and provide a clear test and framework for how courts across the country should analyze deceptive labeling claims and the reasonable consumer standard.[160]

The first Section of this argument discusses why the Supreme Court is uniquely positioned to address this issue compared to other potential solutions to the current problem.[161] The next Section lays out the actual test and definition of what a reasonable consumer is, giving courts a clear framework for how to view deceptive labeling controversies in the future.[162] Next, the Comment lays out why the Supreme Court addressing this problem benefits consumers, businesses, and courts by promoting uniformity, consistency, and transparency to deceptive labeling lawsuits at a time when these things are desperately needed.[163]

A. The Supreme Court Is Best Equipped to Effectively Address This Issue

As the highest court in the United States, the Supreme Court is uniquely positioned to address inconsistencies present in the lower courts and promote uniformity and clarify uncertainties.[164] Its power to resolve conflicts amongst lower courts is directly derived from its enumerated powers in Article III of the United States Constitution.[165] This power is crucial as it enables the

158. *See infra* Part III (arguing the Supreme Court should address the reasonable consumer standard for deceptive labeling lawsuits).

159. *See supra* Part II (providing background information on consumers, discussing the reasonable consumer standard, and highlighting the inconsistencies with the reasonable consumer standard's application).

160. *See infra* Part III (proposing the solution that the Supreme Court should use to address this issue).

161. *See infra* Section III.A (discussing why the Supreme Court's intervention is necessary as the ultimate legal interpreter among lower courts).

162. *See infra* Section III.B (discussing the proposed test the Supreme Court could adopt).

163. *See infra* Section III.C (discussing why this proposed solution will be beneficial and solve the current issue).

164. U.S. CONST. art. III, § 2.

165. *Id.*

Supreme Court to provide interpretations of federal statutes and provisions, maintain legal consistency across the country, and ensure that notions of justice and fundamental legal principles are applied consistently and equitably nationwide.[166]

The Supreme Court acts as the ultimate legal interpreter, established to ensure uniformity and consistency regarding federal law.[167] Alexander Hamilton argued in his writings that the Supreme Court is the "least dangerous" branch of government because of its lack of political power, but for its authority to interpret and harmonize legal principles.[168] The Supreme Court's intervention here is necessary to resolve the ongoing ambiguities regarding the reasonable consumer standard in deceptive labeling litigation.[169] The current fragmentation has resulted in the undermining of federal consumer protection laws and leaves consumers and attorneys uncertain of how their deceptive labeling claims will play out in courts and whether or not they will survive a motion to dismiss.[170]

There is well known and established precedent for the Supreme Court resolving similar inconsistencies and uncertainty amongst lower courts.[171] A specific example of such intervention by the Supreme Court is when the Court established a comprehensive test for admitting scientific testimony in *Daubert*.[172] In *Daubert*, the Court recognized that the current *Frye* standard[173] for admitting expert evidence based on whether the expert testimony passes the "general acceptance" test was relatively overbroad and resulted in significant inconsistencies regarding the application of this test across jurisdictions.[174] To resolve these inconsistencies, the Supreme Court established a clear test that required judges to act as gatekeepers of scientific evidence, considering factors such as the testability of the expert's theory, its subjection to peer review, the potential error rate, the standards controlling the theory's operation, and the general acceptance within the scientific community.[175] The *Daubert* test did not bind courts to strictly only use the factors it provided in determining the admissibility of evidence, but rather it

166. *See id.* (providing the implications of the Supreme Court's constitutional powers).

167. *See generally* THE FEDERALIST NO. 78 (Alexander Hamilton) (discussing that while the Supreme Court's lack of political power is debatable, the ultimate point stands that its role to interpret and harmonize legal principles is key).

168. *Id.*

169. *See* discussion *supra* Part II (highlighting the current inconsistencies of the reasonable consumer standard and the implications of it).

170. *See* discussion *supra* Part II (discussing how the reasonable consumer standard has been inconsistently applied and the effect of that on consumers).

171. *See, e.g.*, Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 584–85 (1993) (providing an example of a time when the Supreme Court provided a solution to confusion in the lower courts).

172. *Id.* at 589–94.

173. Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923).

174. *See Daubert*, 509 U.S. at 585 (addressing the variance across jurisdictions and providing a new test for courts to use when evaluating admissibility of expert evidence).

175. *Id.* at 593–95.

provided courts with relevant factors that all courts would apply, while empowering trial courts to have general discretion.[176] *Daubert* illustrates a specific instance in which the Supreme Court astutely recognized there was a test courts used nationwide, but that the test was relatively vague and resulted in courts applying the test inconsistently.[177]

While admissibility of scientific evidence and the standard determining whether a label is deceptive are undoubtedly different, the Supreme Court's ability to provide clarity and promote uniformity by establishing a comprehensive test to define a reasonable consumer is analogous to what the Court did in *Daubert*.[178] Similar to how the Court in *Daubert* recognized that the current "generally accepted" *Frye* test resulted in inconsistent application amongst courts, the Supreme Court should recognize that the current reasonable consumer standard governing deceptive labeling lawsuits results in courts inconsistently applying and defining the standard.[179]

Because of the Supreme Court's unique position as the ultimate interpreter of federal law because of the powers granted to it in the United States Constitution, and given its long track record of resolving inconsistencies and ambiguities present amongst lower courts, the Supreme Court is in the best position to resolve the current inconsistencies that are ever-present in deceptive labeling lawsuits.[180] This is precisely why the Supreme Court should address the current reasonable consumer standard that governs deceptive labeling lawsuits and provide a comprehensive multi-factor test that gives courts clarity regarding what a reasonable consumer is when analyzing the validity of a deceptive labeling claim.

B. Proposed Test and Definitions for the Supreme Court to Adopt

The United States Supreme Court is clearly best positioned to effectively address the current inconsistencies and ambiguities surrounding the reasonable consumer standard governing deceptive labeling lawsuits.[181] Because of this, the Supreme Court should grant a writ of certiorari on a deceptive labeling case and provide a clear multi-factored test for determining what a reasonable consumer standard is when evaluating a deceptive labeling claim.[182] The following is a proposed test for defining the

176. *See id.*

177. *See id.* at 585.

178. *See generally id.* (illustrating the Supreme Court's ability to promote uniformity across jurisdictions by establishing a uniform factor-test).

179. *Id.*

180. *See supra* Section II.C (discussing the current problems and inconsistent applications of the reasonable consumer standard).

181. *See supra* Section III.A (arguing why the Supreme Court is best equipped to solve the current issue regarding the reasonable consumer standard).

182. *See supra* Section III.A (discussing why the Supreme Court is uniquely positioned to solve ambiguity regarding the reasonable consumer standard).

reasonable consumer standard that provides a comprehensive framework for evaluating deceptive labeling claims.

Proposed Test for Defining the "Reasonable Consumer"

The proposed test for defining the reasonable consumer in deceptive labeling controversies seeks to provide courts with an unambiguous, comprehensive framework for evaluating deceptive labeling claims. Inspired by the Supreme Court's methodological approach in *Daubert*,[183] this proposed test acknowledges the complexities of consumer perception, the food and beverage market, and consumer protection legal standards.

Courts should apply this test flexibly, recognizing that "no single factor is dispositive."[184] The framework requires a holistic assessment, with judges playing the role of gatekeepers who evaluate the totality of the present facts surrounding the specific deceptive labeling claim.[185] This test recognizes its own potential limitations and encourages ongoing judicial and scholarly refinement as further issues may arise. This test offers a dynamic framework that was created with the changing market conditions and consumer behaviors in mind.

In the context of deceptive labeling lawsuits, a reasonable consumer is an individual who exercises the ordinary level of care, attention, and judgement that a typical person of average intelligence and experience would employ when purchasing, consuming, or using goods or services in the relevant marketplace.[186] Furthermore, this standard takes into consideration the average income, education level, and nutritional health knowledge of consumers in the relevant marketplace, and the general marketplace conditions where consumers generally purchase the product.[187] The following factors should be considered when evaluating whether a label would be likely to deceive a reasonable consumer.

Intended Market:

Courts should conduct an objective assessment of the product's target consumer demographics: average age, educational background, economic status, and marketplace experience.[188] Other considerations regarding the

183. *Daubert*, 509 U.S. at 593.

184. *See generally* United States v. Reyes, 24 F.4th 7, 28 (1st Cir. 2022) (finding that when considering the balancing test for speedy trial violations "no single factor is dispositive").

185. *See generally* Doe v. Bogan, 542 F. Supp. 3d 19, 22 (D.D.C. 2021) (using balancing tests should lead to a flexible fact driven).

186. *See generally* Timmins v. Unilever U.S., Inc., 785 F. Supp. 3d 774, 780 (E.D. Cal. 2025) (finding that applying the reasonable consumer standard requires a showing that the general public would be deceived).

187. *See* Lugino's, Inc. v. Stouffer Corp., 170 F.3d 827, 831 (8th Cir. 1999) (considering the likelihood of consumer confusion requires understanding market conditions).

188. *See generally* Lavie v. Procter & Gamble Co., 129 Cal. Rptr. 2d 486, 494 (Cal. Ct. App. 2003) (determining that advertising that targets a vulnerable ground of the population should be held to the reasonable consumer in that group instead of the general public).

marketplace factors that courts should consider are product positioning, price point, and industry specific standards and practices. This is important for courts to consider because different product markets require different standards of consumer understanding.[189]

Information Accessibility and Transparency:

Courts should analyze the extent to which additional product information is readily available to consumers at the point of purchase.[190] Consumers should not be expected to consult secondary sources to determine the legitimacy of a label's claims.[191] Courts should also consider the complexity of the language on the label.[192] This factor serves to encourage manufacturers to provide clear and readily accessible information about their products to improve the consumer's ability to make informed purchasing decisions.[193]

Materiality of Alleged Misrepresentation:

When analyzing the deceptive labeling claim, courts should consider the significance of the alleged misrepresentation in the reasonable consumer's purchasing decision.[194] Factors to consider include the impact of the alleged misrepresentation on the purchaser's likelihood to purchase the product, the likelihood that the alleged misrepresentation would mislead a reasonable consumer, material facts about the product that are adequately disclosed, whether disclaimers or qualifications are clear and visible, and whether the overall impression of the tendency of the representation on the label is misleading when viewed in totality.[195] These factor will help courts distinguish between trivial misrepresentations and material misrepresentations that are deceptive and mislead consumers.

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189. *See generally* Telesco v. Starbucks Corp., 682 F. Supp. 3d 397, 404 (S.D.N.Y. 2023) (finding that context is crucial in determining whether a particular advertisement is misleading to a reasonable consumer).

190. *See generally* Tomasella v. Nestle USA, Inc., 962 F.3d 60, 82 (1st Cir. 2020) (determining that including additional information online mitigated the absence of information at the point of sale).

191. *See generally* Kahn v. Walmart, Inc., 107 F.4th 585, 600 (7th Cir. 2024) (discussing how reasonable consumers cannot be expected to audit their transactions by doing additional research).

192. *See generally* Sinato v. Barilla Am., Inc., 635 F. Supp. 3d 858, 879 (N.D. Cal. 2022) (finding that purported misrepresentations made by a label should be judged based on a reasonable consumer's belief).

193. *See generally* Paraco, Inc. v. Dep't of Agric., 457 P.2d 981, 984–85 (Cal. Dist. Ct. App. 1953) (noting that the buyer should be able to know what he is purchasing).

194. *See generally* Mueda v. Pinnacle Foods Inc., 390 F. Supp. 3d 1231, 1250–51 (D. Haw. 2019) (finding that deceptive trade practice occurs when a misrepresentation affects a consumer's purchasing decisions).

195. *See generally id.* (finding that misrepresentations are material when they affect purchasing decisions).

Reasonable Interpretation Efforts:

Courts should consider the level of effort a reasonable consumer would have to expend when evaluating a deceptive labeling product claim.[196] These criteria may include average time spent examining the product's label, the level of intelligence required to understand the label's claims, and the typical consumer's decision-making process.[197] This factor serves to balance consumer responsibility with protection against predatory deceptive labeling practice.

Enhanced Protection of Vulnerable Consumers:

Lastly, when a marketed product specifically targets vulnerable populations (namely children, elderly persons, persons with disabilities, or economically disadvantaged individuals), the courts shall consider the characteristics and limitations of the targeted vulnerable population, apply a modified reasonable consumer standard that accounts for the targeted population's typical level of sophistication and vulnerability, and require enhanced clarity of disclosures and warnings for the targeted population.[198]

Conclusion of Proposed Test:

This proposed test provides courts across the United States with a comprehensive test that defines a reasonable consumer and provides clear factors to consider when determining whether an allegedly deceptive label is likely to deceive a reasonable consumer.[199] The importance of the Supreme Court establishing this proposed test or a similar test is not necessarily to greatly alter the outcomes of deceptive labeling lawsuits.[200] Providing all courts with a comprehensive framework for analyzing these deceptive labeling claims most importantly establishes consistency and uniformity in an area of law in which these two foundational concepts are lacking.[201] This means that when deceptive labeling claims are brought to courts, the consumers bringing the claim, the attorneys arguing the issue, and the judges who ultimately decide the case are all on the same page regarding how these

196. *See generally* Bell v. Publix Super Mkts., Inc., 982 F.3d 468, 476 (7th Cir. 2020) (holding that the average consumer does not have the responsibility to look for ambiguities in consumer labels).

197. *See generally id.* (noting that the average consumer may only spend seconds looking at a label before deciding to purchase).

198. *See generally* Lavie v. Procter & Gamble Co., 129 Cal. Rptr. 2d 486, 494 (Cal. Ct. App. 2003) (finding that advertising that targets a vulnerable group of the population should be held to the reasonable consumer in that group instead of the general public).

199. *See supra* Section III.B (discussing a proposed test for the Supreme Court to adopt).

200. A clear multi-factor test may alter the outcomes of deceptive labeling lawsuits. However, the Author argues that this is not the primary reason for test. *See supra* Section II.A (discussing the main reason why the Supreme Court should establish this test is to address uncertainty and provide a clear test or framework for courts to use).

201. *See supra* Sections II.B–D (discussing the lack of consistency and uniformity in deceptive labeling lawsuits).

claims will be analyzed and governed.[202] Further, food and beverage manufacturers will understand the factors that are considered when determining if a label is deceptive, which will ultimately incentivize them to produce labels that are not deceptive to avoid risk of a lawsuit.

1. Alternatives to the Supreme Court Addressing This Issue

Considering there are thousands of certiorari petitions filed every year, and the Supreme Court typically grants certiorari and hears oral arguments in about only eighty of these, it is appropriate to consider alternatives to the Supreme Court granting certiorari.[203] In the absence of a definitive Supreme Court test for defining the reasonable consumer standard, there are several alternatives to attempt to resolve the current issues surrounding deceptive labeling lawsuits.

Circuit courts could adopt a collaborative approach that harmonize existing standards and create a stronger sense of stare decisis.[204] Additionally, the Federal Judicial Center[205] may develop model guidelines that are not binding on courts but can provide guidance to resolve ambiguities.[206] This would essentially serve the same purpose that the Supreme Court addressing the issue would serve, except the Federal Judicial Center guidelines would not be binding on courts like the Supreme Court holding would be.[207]

Another alternative to the Supreme Court addressing this issue is for legislatures to address the current ambiguous and inconsistent reasonable consumer standard that governs deceptive labeling. This could be accomplished by either federal legislation that includes a federal preemption statute with it, or by state legislatures developing model state legislation.[208] The Uniform Law Commission could play a role in this as it created uniform laws written by lawyers from differing backgrounds hoping that states will adopt them.[209] Several states have adopted uniform laws, and this could be a reasonable alternative.[210]

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202. *See supra* Section II.D (reviewing notable case law for deceptive labeling to show a need for a uniform standard).

203. *FAQs – General Information*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/about/faq_general.aspx (last visited Sep. 30, 2025).

204. *See generally* Stephen Wasby, *Intercircuit Conflicts in the Court of Appeals*, 63 MONT. L. REV. 119 (2002) (considering inter-circuit conflicts and highlighting potential remedies).

205. The Federal Judicial Center is a research and education agency that supports the judicial branch of the United States government. *About the FJC*, FED. JUD. CTR., https://www.fjc.gov/about (last visited Sep. 30, 2025).

206. Wasby, *supra* note 204, at n.1.

207. *See supra* Section III.B (proposing a test for the Supreme Court to adopt).

208. *Preemption*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/preemption (last visited Sep. 30, 2025).

209. *Uniform Law*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/uniform_law#:~:text=Uniform%20laws%20are%20laws%20written,in%20order%20to%20be%20effective (last visited Sep. 30, 2025).

210. *Id.*

While all these potential alternatives to addressing the issue are viable and may slightly improve deceptive labeling litigation, it is clear that all of these alternatives are ineffective in comparison to the U.S. Supreme Court.[211] The U.S. Supreme Court, as the highest court, is uniquely able to hear a case on this matter and provide courts nationwide with a consistent and comprehensive test that is binding on the other courts.[212] This would also be a much quicker and more effective process than the rigorous process of creating a law, and it has a more substantial impact than if the state courts addressed this issue.[213] Accordingly, while it is important to recognize and identify alternatives to the proposed solution, it's clear that the strongest solution to the proposed problem is the U.S. Supreme Court addressing the current reasonable consumer standard and providing a comprehensive test to evaluate these claims.[214]

C. The Supreme Court Addressing the Reasonable Consumer Standard Issue Promotes Uniformity, Consistency, and Transparency for Consumers, Courts, and Businesses

Considering the high volume of deceptive labeling lawsuits, the inconsistent and unpredictable outcomes in these lawsuits, and the variance in the average American consumer's health and labeling knowledge, the U.S. Supreme Court needs to take on this issue and establish a test to clearly define the reasonable consumer standard.[215] A clear definition of a reasonable consumer and the reasonable consumer standard would serve as a critical advancement in consumer protection jurisprudence; it offers a solution that would provide consistency and clarity nationwide and would address many persisting issues that have created uncertainty in deceptive labeling litigation.[216]

A clear definition of the reasonable consumer standard in the context of deceptive labeling is necessary to assist courts and eliminate unpredictable outcomes in litigation.[217] When predictability and stability is lacking in the

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211. *See supra* Section III.A (arguing why the Supreme Court is best equipped to address this issue).

212. *See supra* Section III.A (explaining the court's unique ability to resolve inconsistencies and ambiguities among the circuit courts).

213. *How Laws Are Made*, USAGOV (Nov. 5, 2024), https://www.usa.gov/how-laws-are-made.

214. *See supra* Section III.A (addressing the Court's ability to recognize inconsistencies and to provide a clear test for analyzing these claims).

215. *See* SILVERMAN & MUEHLBERGER, *supra* note 17, at 5; Gedon, *supra* note 14; *supra* Section III.A (reasoning that the Court is uniquely situated to provide a consistent test to address these widespread issues).

216. *See supra* Section III.B (proposing a test for the U.S. Supreme Court to adopt that would classify the reasonable consumer standard).

217. *See* DeMaso v. Walmart Inc., 655 F. Supp. 3d 696, 702 (N.D. Ill. 2023) (discussing issues and complexities that arise from the inconsistencies in the current standard).

law, citizens struggle to effectively manage their affairs.[218] This lack of predictability and stability is specifically notable in these deceptive advertising or labeling cases.[219]

While courts in most states apply the reasonable consumer standard at the pleading stages of the case to eradicate unreasonable or frivolous claims moving forward, in practice many courts decline to decide the reasonableness of a plaintiff's claim at the pleading stage, and courts that do discuss this question "apply different and seemingly subjective standards. This range of decisions makes it difficult to predict the outcome . . . ."[220] Inconsistent decisions resulting from a subjective application of an ambiguous reasonable consumer test in deceptive labeling cases are problematic because they can reward frivolous claims plaintiffs bring in some jurisdictions, while in other cases dismiss legitimate claims harmed and misled consumers may bring.[221] Additionally, producers are left unsure what they can or cannot advertise on their labels.[222]

The deceptive labeling cases discussed in Part II are not isolated incidents of courts being inconsistent when deciding whether claims should be dismissed or go to a trial.[223] Compare a Minnesota case in which a product claiming it was 100% whole grain had pesticides, thus was not 100% whole grain, but the court dismissed the claim, stating that the label would not be deceptive to a reasonable consumer,[224] to a Second Circuit case in which a whole grain label that contained enriched white flour would mislead a reasonable consumer.[225] Also compare these to a Second Circuit claim that was dismissed because the court determined there was not sufficient evidence to show what a reasonable consumer would expect from an all-natural label.[226]

The issue with these inconsistencies and unpredictability is ultimately not the conclusion the courts have made, but that consumers who have deceptive labeling claims are being denied a trial because courts find their claims not likely to deceive a reasonable consumer in some cases, while allowing them to proceed in other jurisdictions without clear reasoning.[227]

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218. Stefanie A. Lindquist & Frank C. Cross, *Stability, Predictability and the Rule of Law: Stare Decisis as Reciprocity Norm*, UNIV. OF TEX. SCH. OF L., https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf (last visited Sep. 30, 2025).

219. *See* Jacobson, *supra* note 105.

220. *Id.*

221. *See id.* at 4–5.

222. *See id.* at 4.

223. *See supra* Section II.D (discussing notable deceptive labeling lawsuits).

224. *In re* Gen. Mills Glyphosate Litig., No. 16-2869, 2017 WL 2983877, at *1 (D. Minn. July 12, 2017).

225. Mantikas v. Kellogg Co., 910 F.3d 633, 637 (2d Cir. 2018).

226. Bustamante v. KIND, LLC, 100 F.4th 419, 434 (2d Cir. 2024).

227. *See supra* Section II.D (illustrating dissensus in case law regarding requirement of a deceptive labeling claim).

The proposed test for the Supreme Court resolves this issue.[228] While the proposed test may not dramatically change the outcome of these cases, what it will do is provide clarity, uniformity, and consistency regarding *how courts will assess these cases*, parting with the current ambiguous reasonable consumer standard that is currently governing these claims.[229]

Currently, judges, mainly due to a lack of a clear standard to analyze deceptive labeling claims, must resort to using their own personal opinions and experiences when determining whether the label in question would deceive a reasonable consumer, instead of a jury, despite the language and standard being clear that whether a reasonable consumer would be deceived is a fact question that a jury should almost always decide.[230] When courts use an ambiguous standard to determine whether these cases will proceed to a jury, it adds extra strain on courts, encourages litigious attorneys to see if they can survive the pleading stage and obtain a large settlement offer, and both punishes plaintiffs with legitimate claims and rewards plaintiffs with frivolous claims.[231]

Unlike most areas of tort law, which often look at subjective expectations of the people involved in the facts of the case, food labelling laws address a highly regulated area of law that is shaped not only based on marketing and advertising, but also by public health considerations, and courts need to consider this when determining food label lawsuits.[232] A reasonable person standard in tort law for driving accidents is logical as there are similar driving laws for every state.[233] Everyone must pass a test to get their driver's license, so it makes sense.[234] This is not the case with food and food laws.[235] While everyone does eat food, people have vastly different knowledge when it comes to nutrition and reading labels.[236] Further, people have different cultures, backgrounds, and upbringings that make a subjective reasonable consumer almost impossible to define, and when there is no binding authority that defines this consumer, courts are left to use their own

228. *See supra* Sections III.A–B (arguing why the Supreme Court is best positioned to address the reasonable consumer standard issue and the proposed test).

229. *See supra* Section II.C (discussing the current reasonable consumer standard).

230. Sapp, *supra* note 106, at 413–14.

231. *See* NICOLE E. NEGOWETTI, FOOD LABELING LITIGATION: EXPOSING GAPS IN THE FDA'S RESOURCES AND REGULATING AUTHORITY 1 (Christine Jacobs & Beth Stone eds., 2014), https://www.brookings.edu/wp-content/uploads/2016/06/Negowetti_Food-Labeling-Litigation.pdf.

232. *See* Moore, *supra* note 53, at 23 (discussing the Food, Drug, and Cosmetic Act of 1936's impact on manufacturers, consumers, and public health).

233. *See also Do Driving Laws Change State by State?*, DMVEDU.ORG (July 15, 2022), https://www.dmvedu.org/do-driving-laws-change-state-by-state/ ("Certain driving laws are universal throughout the United States, such as obeying the speed limit and traffic signals.").

234. *See Driving in the United States*, DEP'T OF HOMELAND SEC., https://studyinthestates.dhs.gov/students/study/driving-in-the-united-states (last visited Sep. 30, 2025).

235. *See supra* Section II.A (noting that the typical American consumer is unaware of food nutrition specifics).

236. *See supra* Section II.A (explaining the current state of the American consumer and the varying knowledge of nutritional information).

personal subjective experiences to make this determination.[237] Food law is a functional area of law that places emphasis "on societal application rather than on doctrinal distinctions."[238] Food laws regarding deceptive labeling have a unique historical and regulatory context surrounding food safety and, importantly, the protection of consumers.[239] Thus, the Supreme Court adopting the proposed comprehensive test would provide a clear and uniform standard that courts nationwide would adopt when analyzing deceptive labeling cases, allowing predictability and certainty of what the law is for consumers and businesses.[240]

Consumers are suffering from the current ambiguous reasonable consumer standard because many of them make purchasing decisions based on representations made on labels, without being able to fully understand the implications of many claims.[241] Many consumers believe claims about food products mean that the product they are purchasing is a healthier and safer option, which leads to them purchasing it for themselves and their families.[242] The inconsistent application of the reasonable consumer standard has resulted in a situation in which the consumer's ability to seek relief or prevent deceptive labeling can often depend more on geography or which judge oversees the case than the merits of the claim.[243] This undermines the principle that consumer protection laws should provide consistent and reliable remedies for deceptive practices harming consumers.[244]

This current ambiguity also burdens business that operate across the country.[245] Companies are tasked with varying interpretations across jurisdictions of what constitutes a reasonable consumer, potentially having to adjust their labeling and marketing strategies depending on the region.[246] This uncertainty can increase costs and threatens to chill innovation and marketing.[247] With litigation in this area of law continuously rising, businesses need consistent applications of the law to promote the best

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237. *See supra* Section II.A (explaining the disparity in knowledge of nutrition among American consumers).

238. B. van der Meulen, *Food Law*, *in* ENCYCLOPEDIA OF AGRICULTURE AND FOOD SYSTEMS 186 (Neal K. Van Alfen ed., 2d ed. 2014).

239. *Id.*

240. *See supra* Section III.B (proposing a more definitive solution).

241. Laurie J. Beyranevand, *Regulating Inherently Subjective Food Labeling Claims*, 37 ENV'T L. REV. 543, 556 (2017).

242. Gedon, *supra* note 14.

243. *See* David Hoffman, *The Best Puffery Article Ever*, 91 IOWA L. REV. 1395, 1397 (2006).

244. *See id.*

245. *See Capitalizing on the Shifting Consumer Food Value Equation*, DELOITTE, https://www.fmi.org/docs/default-source/research/foodinfographic_07v2.pdf?sfvrsn=2 (last visited Sep. 30, 2025).

246. *Id.*

247. *See also* PERKINS COIE LLC, FOOD & CONSUMER PACKAGED GOODS LITIGATION 2023 YEAR IN REVIEW 7–8 (2024), https://live-perkins-coie.pantheonsite.io/sites/default/files/2024-08/2023-Food-and-CPG-Litigation-YIR-Report.pdf (companies can mitigate reasonable consumer claims through disclaimers on packaging, but it is not a guaranteed defense).

business and marketing practices.[248] The proposed solution of the Supreme Court addressing this issue promotes this consistency and clarity for businesses.[249]

Lastly, courts have also suffered without clear guidance, as there were over four hundred food and beverage class actions filed, with many of them alleging deceptive labeling.[250] The reasonable consumer standard's inconsistency in some courts, like the Ninth Circuit, has encouraged forum shopping, whereas other courts dismiss similar claims very early in the litigation process.[251] The complex nature of these deceptive labeling claims compounds this problem.[252] Courts must wrestle with terms like natural, healthy, and other marketing and nutrition buzzwords with very little guidance on how to interpret these claims.[253] This has frustrated both federal and state courts, and the lack of standards for evaluating reasonable consumer claims makes it hard to predict motion to dismiss outcomes.[254]

IV. CONCLUSION

Inconsistent interpretations of what a reasonable consumer would believe, in the context of deceptive labeling, have created substantial ambiguity and inconsistency in consumer protection litigation.[255] Courts across jurisdictions diverge widely in their application of this standard, leading to unpredictable outcomes for consumers and producers alike.[256] Cases like *Williams v. Gerber* and *Mantikas v. Kellogg* demonstrate a more consumer-protective approach, when courts have allowed claims to proceed based on prominent labeling that might mislead, even if additional disclosures are present.[257] Conversely, cases such as *Moore v. Trader Joe's* and *Zahora v. Orgain* illustrate a stricter application of the reasonable consumer test, requiring plaintiffs to demonstrate a heightened level of misunderstanding and often assuming consumers bring an advanced level of skepticism to everyday food and beverage labeling.[258] These discrepancies

248. *See id.*

249. *See supra* Section III.B (proposing a comprehensive test for Supreme Court to adopt).

250. PERKINS COIE LLC, *supra* note 247, at 6 (discussing a 27% increase in food labeling litigation 2021–2022).

251. SILVERMAN & MUEHLBERGER, *supra* note 17, at 8–10.

252. *Id.* at 17–18.

253. *Id.* at 19–21 (discussing difficulties defining "natural" and lawsuits arising from this term).

254. *See id.*

255. *See supra* Section II.C (discussing the development of a reasonable consumer standard).

256. *See supra* Section II.D (providing examples of cases that handle deceptive labeling lawsuits in differing manners).

257. *See* Williams v. Gerber Prods. Co., 552 F.3d 934, 939–40 (9th Cir. 2008); Mantikas v. Kellogg Co., 910 F.3d 633, 636–37 (2d Cir. 2018).

258. *See* Zahora v. Orgain LLC, No. 21 C 705, 2021 WL 5140504, at *3 (N.D. Ill. Nov. 4, 2021); Moore v. Trader Joe's Co., 4 F.4th 874, 882 (9th Cir. 2021).

underscore the lack of uniformity and clarity in determining what a reasonable consumer truly believes in the context of labeling claims.[259]

The current reliance on state consumer protection laws and class action lawsuits has led to a patchwork of standards that frustrates consumers' efforts to seek relief from deceptive practices and leaves producers uncertain about their compliance obligations.[260] The problem is further compounded by federal limitations under the FDCA, which prohibit private rights of action, leaving consumers to rely solely on state laws to address deceptive labeling issues.[261] This inconsistent framework not only complicates litigation but also undermines consumer trust and hampers the ability of courts to apply a clear, predictable standard.[262] When consumers in one state receive protections against certain misleading labels while those in another state do not, it weakens the overall regulatory structure meant to protect them.[263]

The Supreme Court urgently needs to clearly define the reasonable consumer in the context of deceptive labeling to bring consistency and transparency to these rulings.[264] A clear test would promote uniformity across jurisdictions, ensuring that courts have a clear, objective standard to apply, thereby reducing ambiguity and increasing fairness.[265] For consumers, this clarity would enable them to make more informed purchasing decisions and would empower them to challenge genuinely misleading practices effectively.[266] For producers, a uniform standard would provide a clear framework for compliance, enabling them to align labeling practices with transparent and predictable legal expectations.[267] Ultimately, if the Supreme Court clearly defines the reasonable consumer and provides a test for evaluating deceptive labeling claims, it will protect consumers, stabilize the legal landscape, and foster fair competition by holding producers to an understandable and consistently applied standard. If the proposed solution is not adopted, this Comment provides alternatives that courts across the country can adopt immediately.[268]

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259. *See Williams*, 552 F.3d at 939–40; *Mantikas*, 910 F.3d at 638–39; *Zahora*, 2021 WL 5140504, at *4; *Moore*, 4 F.4th at 882–85.

260. *See supra* Sections II.C–D (discussing current frustrations with the current reasonable consumer standard).

261. *See* POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102, 107 (2014).

262. *See* Hoffman, *supra* note 243.

263. *See supra* Section II.B (analyzing different state statutes that protect consumers and their differences).

264. *See supra* Section III.C (arguing that one of the proposed solution's benefits is to provide consistency).

265. *See, e.g.*, Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 585, 593–95 (1993) (providing a uniform standard for the admissibility of expert evidence).

266. *See* Beyranevand, *supra* note 241, at 545.

267. *See supra* Section III.C (arguing that this proposed solution best promotes uniformity, which better serves producers and consumers).

268. *See supra* Section III.B.1 (discussing alternatives that could substitute for the Supreme Court addressing the issue, and the authority for each alternative).