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| **Samassi v Danone US LLC** |
| 2026 NY Slip Op 32067(U) |
| June 1, 2026 |
| Supreme Court, Bronx County |
| Docket Number: Index No. 815515/2025E |
| Judge: Fidel E. Gomez |
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NEW YORK SUPREME COURT - COUNTY OF BRONX
**PART 31**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX
----------------------------------------------------------------------------X
**MAMADOU SAMASSI, individually and on behalf of all others similarly situated,**

Index No. **815515/2025E**

Plaintiff,

Hon. **FIDEL E. GOMEZ**
Justice

- against -

**DANONE US LLC,**

Defendants.
----------------------------------------------------------------------------X
The following papers numbered 1 to 1, read on this Motion noticed on 1/29/2026, and duly submitted as no. 1 on the Motion Calendar of 1/29/2026.

| | PAPERS NUMBERED | |
|---|---|---|
| Notice of Motion - Order to Show Cause – Exhibits and Affidavits Annexed | 1 | |
| Answering Affidavit and Exhibits | | |
| Replying Affidavit and Exhibits | | |
| Notice of Cross-Motion - Affidavits and Exhibits | | |
| Pleadings - Exhibit | | |
| Stipulation(s) - Referee's Report - Minutes | | |
| Filed Papers- Order Appointing Temporary Receiver | | |
| Memorandum of Law | | |

The instant motion is decided in accordance with the Decision and Order annexed hereto.

Dated:
6/1/26

Hon.________________________
**FIDEL E. GOMEZ, JSC**

1.CHECK ONE ☐ CASE DISPOSED X NON-FINAL DISPOSITION
2. MOTION/CROSS-MOTION IS ☐ GRANTED (MOTION) ☐ DENIED (MOTION)
X GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE. ☐ SETTLE ORDER ☐ FIDUCIARYAPPOINTMENT
☐ SUBMIT ORDER ☐ REFEREE APPOINTMENT
☐ DO NOT POST ☐ NEXT APPEARANCE DATE:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX
-------------------------------------------------------------------X
**MAMADOU SAMASSI, individually and on behalf of all others similarly situated,**

Plaintiffs,

-against-

**DECISION AND ORDER**

**Index No. 815515/2025E**

**DANONE US LLC,**

Defendant.
-------------------------------------------------------------------X

In the instant action, defendant moves for an Order, pursuant to CPLR § 3211(a)(3)[1] and CPLR § 3211(a)(7) , dismissing the complaint.

For the reasons set forth hereinafter, defendant's motion is granted, in part.

BACKGROUND

The complaint (complaint) alleges a single cause of action for violation of New York General Business Law (GBL) §§ 349 (deceptive business practices) and 350 (false advertising).[2] Specifically, the complaint alleges, *inter alia,* as follows: Defendant Danone US LLC (Danone) manufactures, markets and/or sells strawberry flavored yogurt, having "Zero Sugar," and "No Artificial Flavors or Sweeteners," under the Light and Fit brand (the Product). The Product is misbranded because, despite expecting the absence of synthetic, non-natural sweetening ingredients, the ingredient list on the packaging, in fine print, reveals "Reb M,[3]" the

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[1]Defendant's moving papers state that the motion is brought pursuant to CPLR § 3211(a)(2) based on lack of standing. The CPLR § 3211 provision concerning standing is (a)(3), not (a)(2).

[2]The action is brought as a putative class action, the proposed class consisting of only citizens of New York who purchased the subject "Dannon Light & Fit"product, for personal consumption and/or use, in New York, during the statutes of limitations .

[3]Photos of the Product are embedded within the complaint. The ingredients listed on the back of the container include "STEVIA LEAF REB M AND D."

steviol glycoside Rebaudioside M, which provides a sweet taste. Stevia's sweetening properties are based on its glycoside molecules. Previous generations of stevia sweeteners used "Reb A," which had a bitter or metallic taste. Reb M tastes closest to natural sugar, however, it exists at very low concentrations in the stevia plant. Scientists have developed alternative methods for producing Reb M, including fermentation, enzymatic conversion, and specialized varietals. The fermentation method does not result in a natural product because this method uses specially designed and "programmed" yeast molecules. These genetically modified yeasts are fed with a feedstock, like sugarcane or corn dextrose. The result is the production of steviol glycosides, including Reb M, which have little, if any, connection to the stevia plant. The use of genetic engineering in this fashion is not natural, nor considered natural by consumers. The enzymatic conversion method starts with more available steviol glycosides, like Reb A. Then, enzymes derived from genetically modified yeast or bacteria are used to modify them into Reb M. The specialized varietals method uses proprietary and patented stevia plants, bred to contain up to twenty percent of Reb M. However, because this Reb M is extracted using industrial processing, and chemical processing aids, it is inconsistent with what consumers expect from a natural ingredient. While genetic modifications occur naturally through traditional plant breeding over long periods, the two main Reb M production methods use non-natural, targeted modifications, in laboratory settings. These methods involve techniques like DNA editing, and/or gene splicing, not achievable through conventional breeding or found in nature.

As a result of the false and misleading representations and omissions, the Product is sold at a premium price, approximately $1.79. The price is higher than the Product would be sold for if it were represented in a non-misleading way. Plaintiffs bought the Product, with the labeling/packaging identified in the complaint, at or around the above-referenced price. Plaintiff purchased the Product between August 2022 and June 2025, at stores in New York. Plaintiff paid more for the Product than he would have had he known its sweet taste was from ingredients which were not natural, understood as existing in nature, or very close to their original state, with minimal processing, and/or without genetic engineering.

With respect to their GBL §§ 349 and 350 cause of action, the complaint alleges, *inter alia*: The packaging and labeling of the Product violated the GBL because the representations, omissions, design, markings and/or other elements, including “Light [and] Fit,” “Zero Sugar,” “Strawberry,” and “No Artificial Flavors or Sweeteners” caused purchasers to expect its sweet taste was from ingredients which were natural, understood as existing in nature, or very close to their original state, with minimal processing, and/or without genetic engineering, which was unfair and deceptive to customers. Plaintiff paid more for the Product than he otherwise would have paid based on the misleading representations and/or omissions. As a result of defendant’s misrepresentations and omissions, plaintiff was injured, and suffered economic or financial damages, by payment of a price premium for the Product, typically between five and sixty cents.

***Standard of Review***

In deciding a motion to dismiss pursuant to CPLR § 3211, a court must “accept the facts alleged in the complaint is true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez,* 84 NY2d 83, 87-88 [1994]). The pleading is to be afforded a liberal construction (*id.* at 87). Ambiguous allegations must be resolved in plaintiff’s favor (*JF Capital Advisors, LLC v Lightstone Group, LLC,* 23 NY3d 759, 764 [2015]). “The motion must be denied if from the pleadings’ four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 West 232nd Owners Corp. v Jennifer Realty Co.,* 98 NY2d 144, 152 [2002]). “Where . . . the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration” (*Ullman v Norma Kamali, Inc.,* 207 AD2d 691, 692 [1st Dept 1994]).

CPLR § 3211(a)(3) authorizes the dismissal of an action when “the party asserting a cause of action has not legal capacity to sue.” While not explicitly stated in the statute, a motion to dismiss for lack of standing is properly considered a motion to dismiss pursuant to CPLR § 3211(a)(3) (*Friedman v Town Clerk of Town of Hempstead,* 62 AD3d 699, 699 [2d Dept 2009] [Motion pursuant to CPLR § 3211(a)(3) granted when petitioners lacked standing to sue.];

*Hirschfeld v Hogan,* 60 AD3d 728 [2d Dept 2009]). On a motion to dismiss for lack of standing, it is defendant's burden to make a prima facie demonstration that plaintiff lacked standing (*DLJ Mtge. Capital v Mahadeo,* 166 AD3d 512, 513 [1st Dept 2018]). In order to defeat the motion, a plaintiff need not affirmatively establish its standing, but only to raise a triable issue of fact as to its standing (*id.*; *Deutsche Bank Trust Co. Ams. v Vitellas,* 131 AD3d 52, 59-60 [2d Dept 2015]).

It is well settled that in order to initiate suit, a party must have legal standing to bring an action. On the issue of legal standing the test was initially one focusing on the existence of a legal right, described as follows:

> The court has no inherent power to right a wrong unless thereby the civil, property, or personal rights of the plaintiff in the action or the petitioner in the proceeding are affected. The rights affected must be personal as distinguished from the rights in common with the great body of people

(*Schieffelin v Komfort,* 212 NY 520, 530 [1914]). Over time the threshold inquiry has evolved so that now the relevant inquiry is whether the proponent of an action has sustained injury in fact (*Society of Plastics Industry, Inc. v County of Suffolk*, 77 NY2d 761, 772 [1991]). Under the injury in fact analysis, standing exists when the plaintiff has sustained actual injury, meaning that s/he has an actual legal stake in the matter being litigated (*id.*). In order to establish standing, not only must a plaintiff demonstrate injury in fact, meaning actual harm, but s/he must also establish that the injury alleged falls within certain zones of interest protected by law (*Friedman* at 700 [Court dismissed individual petitioner's claim when she would not suffer direct harm from action at issue.]; *Caprer v Nussbaum*, 36 AD3d 176, 183 [2d Dept 2006]). Generally, an injury is within the requisite zone of interest if the injury sustained falls within the ambit of "concerns sought to be promoted or protected by the statutory provision or recognized common-law relationship pursuant to which a defendant has acted" (*Caprer* at 183). In other words, the injury alleged must be of the kind sought to be prevented by the law that the proponent alleges was violated. Specifically,

> a party must show that the in-fact injury of which it complains (its aggrievement, or the adverse effect upon it) falls within the 'zone

> of interests,' or concerns, sought to be promoted or protected by the statutory provision under which the agency has acted

(*Society of Plastics Indus.* at 773).

Because "[w]hether a person seeking relief is a proper party to request an adjudication is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation" (*id.* at 769), whether standing exists is a threshold matter to be resolved at the outset of any litigation (*id.*; *Caprer* at 182), and when standing is lacking the "pathway to the courthouse is blocked" (*Saratoga County Chamber of Commerce, Inc. v Pataki,* 100 NY2d 801, 812 [2003]).

When a party moves to dismiss a complaint pursuant to CPLR § 3211(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action ( *Guggenheimer v Ginzburg,* 43 NY2d 268 [1977]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus" (*EBC I, Inc. v Goldman Sachs & Co.,* 5 NY3d 11, 19 [2005]). On a motion made pursuant to CPLR § 3211(a)(7), the burden never shifts to the nonmoving party to rebut a defense asserted by the moving party (*Sokol v Leader,* 74 AD3d 1180, 1181 [2nd Dept 2010]). While "CPLR § 3211 allows a plaintiff to submit affidavits, [] it does not oblige him to do so on penalty of dismissal" (*Rovello v Orofino Realty Co.,* 40 NY2d 633, 635 [1976]). Affidavits may be received for a limited purpose only, serving normally to remedy defects in the complaint, and such affidavits are not to be examined for the purpose of determining whether there is evidentiary support for the pleading (*id.* at 636). Thus, a plaintiff "will not be penalized because he has not made an evidentiary showing in support of his complaint" (*Rovello* at 635).

However, a court may consider evidentiary material submitted by a defendant, and if it does so, the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer* at 275). Affidavits submitted by a defendant "will almost never warrant dismissal under CPLR § 3211 unless they establish conclusively that [the plaintiff] has no cause of action" (*Lawrence v Graubard Miller,* 11 NY3d 588, 595 [1976] quoting *Rovello* at 636). Indeed, a motion to dismiss pursuant to CPLR § 3211(a)(7) must be denied "unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it" ( *Guggenheimer* at 275).

Discussion

In support of the motion, defendant contends that: (1) the Product label is not misleading because a reasonable consumer would not expect that "No Artificial Sweeteners" means zero processing; (2) the complaint does not allege any facts specific to the stevia actually used in the Product; and (3) plaintiff has not alleged an actual injury.

In opposition, plaintiffs contend that: (1) based on the labeling "No Artificial Flavors or Sweeteners," consumers expect the absence of synthetic, non-natural sweetening ingredients like Reb M; and (2) plaintiffs adequately allege injury because misleading representations are a sufficient basis for economic injury.

***Violation of GBL §§ 349 and 350***

Under GBL § 349, deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in New York State are unlawful. GBL § 350 provides that false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in New York State is unlawful. Advertising is false if it is misleading in a material respect (GBL § 350-a[1]; *Karlin v IVF America, Inc.,* 93 NY2d 282, 290 [1999]). These consumer protection statutes prohibit deceptive acts and practices that misrepresent the nature or quality of products or services (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.,* 37 NY3d 169, 176 [2021]; *Teller v Bill Hayes, Ltd.,* 213 AD2d 141, 146 [2d Dept 769]). To state a cause of action under either section, a plaintiff must allege that: (1) defendant's conduct was consumer-oriented; (2) defendant's act or practice was deceptive or misleading in a material way; and (3) plaintiff suffered an injury as a result of the deception (*Plavin v Group Health Inc.,* 35 NY3d 1,10 [2020]; *Goshen v Mutual Life Ins. Co. of N.Y.,* 98 NY2d 314, 324 n1 [2002] ["The standard of recovery under General Business Law § 350, while specific to false advertising, is otherwise identical to Section 349."]; *Denenberg v Rosen,* 71 AD3d 187, 195 [1st Dept 2010] [same] ). A plaintiff claiming the benefit of GBL §§

349 and 350 must demonstrate that the acts or practices have a broader impact on consumers at large (*Plavin* at 10; *Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, N.A.,* 85 NY2d 20, 25 [1995]; *North State Autobahn, Inc. v Progressive Ins. Group Co.,* 102 AD3d 5,13 [2d Dept 2012] ). The conduct need not be repetitive or recurring but defendant's acts or practices must have a broad impact on consumers at large (*New York Univ. v Continental Ins. Co.,* 87 NY2d 308, 320 [1995]; *Oswego Laborers' Local 214 Pension Fund* at 25; *Gomez-Jiminez v New York Law School,* 103 AD3d 13, 16 [1st Dept 2012]). The threshold test is whether the alleged acts are consumer-oriented in the sense that they potentially affect similarly situated consumers (*Oswego Laborers' Local 214 Pension Fund* at 26-27). Also, whether a representation or omission is a deceptive act, practice or advertisement depends on the likelihood that it will mislead a reasonable consumer acting reasonably under the circumstances (*Oswego Laborers' Local 214 Pension Fund* at 26; *Scarola v Verizon Communications, Inc.,* 146 AD3d 692, 603 [1st Dept 2017]; *Gomez-Jiminez* at 16; *Andre Strishak & Associates, P.C. v Hewlett Packard Co.,* 300 AD2d 608, 609 [2d Dept 2002]). What is objectively reasonable depends on the facts and context of the alleged misrepresentations and may be determined as a matter of law or fact (as individual cases require)" (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP* at 178). Significantly, GBL §§ 349 and 350 are "focused on the seller's deception and its subsequent impact on consumer decision-making, not on the consumer's ultimate use of a product" (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP* at 177).

1. Standing - CPLR § 3211(a)(3)

As discussed, because "[w]hether a person seeking relief is a proper party to request an adjudication is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation" (*id.* at 769), whether standing exists is a threshold matter to be resolved at the outset of any litigation (*id.*; *Caprer* at 182), and when standing is lacking the "pathway to the courthouse is blocked" (*Saratoga County Chamber of Commerce, Inc. v Pataki,* 100 NY2d 801, 812 [2003]).

Here, plaintiff has not sufficiently alleged that he suffered any actual injury as a result of defendant's alleged deceptive and/or misleading conduct. In order for a party to have legal standing to sue, the party must have sustained injury in fact (*Society of Plastics Industry, Inc. v County of Suffolk*, 77 NY2d 761, 772 [1991]). Under the injury in fact analysis, standing exists when the plaintiff has sustained actual injury, meaning that s/he has an actual legal stake in the matter being litigated (*id.*). Plaintiff claims that he sustained an injury in fact because he paid more for the Product than he would have paid if it were represented in a non-misleading way. Plaintiff alleges that the amount of damages equals the difference between what plaintiff paid based on the misleading representations and how much the Product "would have been sold for" without the misleading representations. While the complaint alleges that this difference is typically between five and sixty cents, plaintiff proffers no basis for this conclusion. Rather, plaintiff alleges in conclusory fashion that he paid a price premium for the Product.

Based on the foregoing, plaintiff lacks standing to bring this action. Thus, defendant's motion to dismiss the complaint, pursuant to CPLR § 3211(a)(3), is granted.

Assuming *arguendo* that plaintiff has standing to sue, the complaint must still be dismissed as it fails to state a cause of action against the defendant.

2. CPLR § 3211(a)(7)

Here, defendant does not contend that the alleged conduct is not consumer-oriented. In any event, the allegations that plaintiff purchased the Product at stores in New York is sufficient to demonstrate, at the pleading stage, that defendant's conduct was consumer-oriented. However, contrary to plaintiffs' contention, the Court finds the Product's labeling/packaging is neither deceptive nor misleading. The complaint alleges that the language "Light [and] Fit," "Zero Sugar," "Strawberry," and "No Artificial Flavors or Sweeteners" on the Product's packaging/labeling is misleading because is causes purchasers to expect its sweet taste is derived from ingredients which are "natural, understood as existing in nature, or very close to their original state, with minimal processing, and/or without genetic engineering." Neither the language "Light [and] Fit," "Zero Sugar," nor "Strawberry" would cause a reasonable consumer to expect all ingredients in the Product be derived from naturally-occurring sources. With respect to the language "No Artificial Flavors or Sweeteners," the complaint alleges that because Reb M, which is a naturally-occurring sweetener in the stevia plant, is present at low concentrations, alternative methods of producing greater quantities of Reb M have been developed. Three such methods are alleged in the complaint, however, it is not alleged that any of those methods were utilized in manufacturing the Product. Indeed, the complaint is devoid of any allegations concerning how the Product was manufactured. Nor does the labeling or packaging contain any such representations. Nonetheless, a reasonable consumer would not think that a compound found in nature is artificial even if it is produced in a different way than nature produces it, if the way it is produced is that it is derived from a natural product and does not contain anything synthetic (*Karabas v TC Heartland LLC,* 770 FSupp3d 454, 466 [EDNY Mar 11, 2025]; *Valencia v Snapple Beverage Corp.,* 2024 WL 1158476, at *6 [SDNY Mar 18, 2024]). Here, there are no allegations that the Product actually contains a synthetic form of stevia leaf Reb M. Nor would a reasonable consumer conclude that a product contains artificial ingredients merely because it is produced in industrial factories using synthetic processes (*Karabas* at 467). Indeed, this is the way most consumer goods are produced.

Further, as discussed above, plaintiff has not sufficiently alleged that he suffered any actual injury as a result of defendant's alleged deceptive and/or misleading conduct.

Based on the foregoing, the complaint fails to state a cause of action for violations of either GBL § 349 or GBL § 350. Thus, plaintiff's motion to dismiss the complaint, pursuant to CPLR § 3212(a)(7), is granted.

Accordingly, it is hereby

ORDERED that the complaint be dismissed with prejudice. It is further

ORDERED that defendant shall serve a copy of this Decision and Order upon plaintiff, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court.

Dated: Bronx, New York
June 1, 2026

Hon. ______________________
FIDEL E. GOMEZ, J.S.C.