

# Diet Coke Causes Weight Gain, Consumers Tell 9th Circ.

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Law360 (September 26, 2018, 6:07 PM EDT) -- A proposed class of consumers urged the Ninth Circuit to reverse the dismissal of their false advertising suit alleging that Diet Coke causes weight gain, saying a lower court erred in saying that a reasonable consumer wouldn't expect the soft drink to assist in weight loss.

Lead plaintiff Shana Becerra, who says she has struggled with obesity since she was a child, told the panel the lower court erred in saying a reasonable consumer wouldn't assume that drinking Diet Coke, absent any other lifestyle changes, would cause him or her to lose weight. Becerra said in a Sept. 24 brief that because of the word "diet" is in the soft drink's name, consumers assume it will help them lose weight, or at least keep at a healthy weight by not causing weight gain.

"Common sense and experience tell us that many people drink diet soda to avoid the weight gain that comes with drinking their sugar- and calorie-laden 'regular' counterparts," Becerra said. "Consumers have come to believe that because it lacks calories due to its artificial sweeteners, 'diet' soda is, like water, innocuous as to weight gain or other detrimental metabolic effects."

But scientific studies show the aspartame in Diet Coke and other diet sodas can interfere with the body's metabolism and can cause weight gain and increased risk of chronic disease, so millions of consumers have been fooled, Becerra said.

U.S. District Judge William Alsup [tossed the suit](#) in February, saying the 13 studies offered by Becerra may show a strong correlation between artificial sweeteners and weight gain, but don't show that Diet Coke causes weight gain.

Judge Alsup also said that how weight is lost is a matter of settled common knowledge and a reasonable consumer would not expect that the drink would help.

"Reasonable consumers would understand that Diet Coke merely deletes the calories usually present in regular Coke, and that the caloric reduction will lead to weight loss only as part of an overall sensible diet and exercise regimen dependent on individual metabolism," Judge Alsup said.

Nor would a reasonable consumer be deceived by Diet Coke advertisements showing fit people, Judge Alsup said, because he or she would "understand that advertising will feature healthy and attractive consumers enjoying the subject products and will not star the unhealthy and unfit."

Becerra said at this stage in the litigation, the judge shouldn't have weighed the scientific evidence presented in her complaint, nor should he have held her to an exacting standard of

definitive proof of causation.

According to the October 2017 suit, the sweetener aspartame interferes with the body's ability to properly metabolize calories. Becerra claims Diet Coke is advertised as more being healthful than regular Coke, but can paradoxically cause weight gain and increase the risk of metabolic and heart disease.

Becerra also alleges that reasonable consumers are also misled into believing that drinking diet coke will not increase their risk of diabetes, since sugar consumption and weight gain are known risk factors for the disease.

Counsel for Becerra declined to comment on Wednesday. Counsel for Coca-Cola didn't immediately respond to request for comment.

Becerra is represented by Jack Fitzgerald, Trevor M. Flynn and Melanie Persinger of [The Law Office of Jack Fitzgerald PC](#), and Andrew Sacks and John Weston of [Sacks Weston Diamond LLC](#).

Coca-Cola is represented by Steven Zalesin, Jane Metcalf and Catherine A. Williams of [Patterson Belknap Webb & Tyler LLP](#), and Tammy Beth Webb of [Shook Hardy & Bacon LLP](#).

The case is Shana Becerra v. [The Coca-Cola Co.](#), case number [18-15365](#), in the U.S. Court of Appeals for the Ninth Circuit.

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