UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

In re Target Corporation BPO Sales and Marketing Litigation

In re Target BPO Sales & Mktg. Litig. · No. No. 24-cv-1323 (ECT/JFD) · Decided January 20, 2026

SUMMARY

The United States District Court for the District of Minnesota addresses Target's motion to dismiss a putative class action involving benzoyl peroxide acne products allegedly containing or degrading into benzene. The court holds that plaintiffs plausibly alleged Article III standing, CAFA jurisdiction, and several state-law claims, while concluding that they lacked standing to seek prospective injunctive or declaratory relief. The court also rejects FDCA preemption and primary-jurisdiction arguments but dismisses or rejects certain theories and claims, including the current-good-manufacturing-practices theory, negligent misrepresentation, and unjust enrichment.

CASE DETAILS

COURT	United States District Court for the District of Minnesota
WRITING FOR THE COURT	Eric C. Tostrud
JURISDICTION	United States District Court for the District of Minnesota
DECIDED	January 20, 2026
DOCKET	No. 24-cv-1323 (ECT/JFD)
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to dismiss the consolidated amended class action complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) and, alternatively, for failure to state a claim under Rule 12(b)(6), including challenges based on FDCA preemption, the primary-jurisdiction doctrine, economic-loss rules, unjust enrichment, and Rule 9(b).
STANDARD OF REVIEW	For a facial Rule 12(b)(1) challenge, the court accepts the complaint’s jurisdictional allegations as true and applies protections equivalent to Rule 12(b)(6). Under Rule 12(b)(6), the court accepts well-pleaded factual allegations as true, draws reasonable inferences for the plaintiff, and asks whether the complaint plausibly states a claim. Rule 9(b) requires fraud allegations to plead the circumstances of fraud with particularity.
PRECEDENTIAL VALUE	unpublished district court opinion; persuasive authority only

PARTIES	Target Corporation, Target Brands, Inc. v. Bria Miller, Jordan Judt, Lucinda O’Dea, Grace Navarro

TOPICS

consumer protection · standing · motions to dismiss · class actions · civil procedure

PRACTICE AREAS

consumer protection · food and drug law · products liability · class actions · civil procedure · federal jurisdiction · preemption

QUESTIONS PRESENTED

1. Whether plaintiffs plausibly alleged Article III injury in fact by alleging that the Up&Up products they purchased manifested the alleged benzene defect.
2. Whether plaintiffs had standing to seek prospective injunctive and declaratory relief.
3. Whether the complaint plausibly alleged the Class Action Fairness Act's jurisdictional prerequisites.
4. Whether the FDCA expressly or impliedly preempted plaintiffs' state-law misbranding theory.
5. Whether plaintiffs plausibly pleaded adulteration based on benzene contamination.
6. Whether plaintiffs plausibly pleaded adulteration based on violations of current good manufacturing practices.
7. Whether the primary-jurisdiction doctrine required dismissal or a stay.
8. Whether the economic-loss rules of California, Illinois, and Nebraska barred the negligent-misrepresentation and negligent-omission claims.
9. Whether plaintiffs plausibly pleaded unjust enrichment as an alternative remedy.
10. Whether the complaint satisfied Federal Rule of Civil Procedure 9(b).

HOLDINGS

1. Plaintiffs plausibly alleged Article III injury because the Up&Up products they purchased manifested the alleged benzene defect. The complaint alleged that every tested Up&Up product contained benzene at day zero and that Target manufactured its Up&Up products in the same manner, permitting a plausible inference that the purchased products also contained benzene.
2. Plaintiffs lacked standing to seek forward-looking injunctive or declaratory relief because they alleged no plausible prospect of future interactions with Target, including future purchases.
3. Plaintiffs plausibly alleged the Class Action Fairness Act's jurisdictional prerequisites, including minimal diversity, a proposed class exceeding 100 members, and an amount in controversy exceeding $5 million.
4. The FDCA did not preempt plaintiffs' state-law theory that Target's Up&Up products were misbranded because their labels failed to disclose the presence of benzene.

5. Plaintiffs' adulteration theory survived dismissal because the complaint plausibly alleged that the Up&Up products they purchased contained benzene.
6. Plaintiffs' current-good-manufacturing-practices theory failed because the complaint alleged only legal conclusions and did not plead facts showing how Target violated particular cGMP requirements.
7. The primary-jurisdiction doctrine did not warrant dismissal or a stay because FDA action on Valisure's Citizen Petition was unlikely to resolve the legal or factual issues in plaintiffs' damages claims, and the issues were not beyond the court's conventional experience.
8. The economic-loss rules of California, Illinois, and Nebraska barred plaintiffs' negligent-misrepresentation and negligent-omission claims because plaintiffs alleged only economic losses from purchasing allegedly defective products and did not seek damages for personal injury or damage to other property.
9. Plaintiffs' unjust-enrichment claim did not survive because they failed to plausibly allege that they might lack an adequate remedy at law.
10. The complaint satisfied Rule 9(b) because it identified the who, what, where, when, and how of the alleged misrepresentations and omissions.

KEY QUOTATIONS

> *"The law is clear in the Eighth Circuit that purchasers of an allegedly defective product lack an Article III injury—and therefore standing—if the product has not "actually exhibited the alleged defect.""* (Part II.B.1)

> *"The plaintiff must be suing for conduct that violates the FDCA (or else his claim is expressly preempted by § [379r(a)]), but the plaintiff must not be suing because the conduct violates the FDCA (such a claim would be impliedly preempted under Buckman)."* (Part III.A)

> *"The claim must identify who, what, where, when, and how."* (Part IV.F)

FACTUAL BACKGROUND

Plaintiffs purchased Target's Up&Up topical acne-treatment products containing benzoyl peroxide. They alleged that the products contained benzene or degraded to form benzene, a carcinogen, and that they would not have purchased the products or would have paid less had they known of the alleged defect. Valisure tested three Up&Up products and reported native benzene at day zero and increased benzene levels after incubation at elevated temperatures. Plaintiffs sought economic damages and equitable relief, but not damages for personal injury.

PROCEDURAL HISTORY

Plaintiffs filed a putative nationwide and state-subclass class action concerning benzoyl-peroxide acne-treatment products sold under Target's Up&Up brand. After filing a consolidated amended complaint, Target moved to dismiss. The court held that most jurisdictional and merits challenges failed, but dismissed without prejudice the negligent-misrepresentation and negligent-omission claims, unjust-enrichment claim, requests for declaratory and injunctive relief, and claims based on the current-good-manufacturing-practices theory.

DISPOSITION

other

CASES CITED

- Branson Label, Inc. v. City of Branson, 793 F.3d 910, 914–15 (8th Cir. 2015)
- Titus v. Sullivan, 4 F.3d 590, 593 (8th Cir. 1993)
- Osborn v. United States, 918 F.2d 724, 729 n.6 (8th Cir. 1990)
- Gorog v. Best Buy Co., 760 F.3d 787, 792 (8th Cir. 2014)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009)
- Zean v. Fairview Health Servs., 858 F.3d 520, 526 (8th Cir. 2017)
- Whitmore v. Arkansas, 495 U.S. 149, 155 (1990)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61, 564 n.2 (1992)
- Ariz. Christian Sch. Tuition Org. v. Winn, 563 U.S. 125, 146 (2011)
- In re Zurn Pex Plumbing Prods. Liab. Litig., 644 F.3d 604, 616 (8th Cir. 2011)
- O'Neil v. Simplicity, Inc., 574 F.3d 501, 502–03 (8th Cir. 2009)
- Wallace v. ConAgra Foods, Inc., 747 F.3d 1025, 1030 (8th Cir. 2014)
- Briehl v. General Motors Corp., 172 F.3d 623, 628 (8th Cir. 1999)
- In re Polaris Mktg., Sales Pracs., and Prods. Liab. Litig., 9 F.4th 793, 797 (8th Cir. 2021)
- Johannessohn v. Polaris Indus. Inc., 9 F.4th 981, 987–88 (8th Cir. 2021)
- Park v. Forest Serv. of U.S., 205 F.3d 1034, 1037 (8th Cir. 2000)
- City of Los Angeles v. Lyons, 461 U.S. 95, 101–05, 107 n.8 (1983)
- In re SuperValu, Inc., 870 F.3d 763, 769 (8th Cir. 2017)
- O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974)
- Murthy v. Missouri, 603 U.S. 43, 59 (2024)
- Barclay v. ICON Health & Fitness, Inc., No. 19-cv-2970 (ECT/DTS), 2020 WL 6083704, at *5 (D. Minn. Oct. 15, 2020)
- Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006)
- Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81, 84–85 (2014)
- Standard Fire Ins. Co. v. Knowles, 568 U.S. 588, 592 (2013)
- Faltermeier v. FCA US LLC, 899 F.3d 617, 621 (8th Cir. 2018)
- Pirozzi v. Massage Envy Franchising, LLC, 938 F.3d 981, 984 (8th Cir. 2019)
- WinRed, Inc. v. Ellison, 59 F.4th 934, 941 (8th Cir. 2023)
- Weber v. Heaney, 995 F.2d 872, 875 (8th Cir. 1993)
- Stursberg v. Morrison Sund PLLC, 648 F. Supp. 3d 1075, 1086 (D. Minn. 2023), aff'd, 112 F.4th 556 (8th Cir. 2024)

- Stephens v. Target Corp., 694 F. Supp. 3d 1136, 1141–42 (D. Minn. 2023)
- Cipollone v. Liggett Grp., Inc., 505 U.S. 504, 521 (1992)
- Merrell Dow Pharms., Inc. v. Thompson, 478 U.S. 804, 810 (1986)
- Buckman Co. v. Plaintiffs' Legal Comm., 531 U.S. 341, 353 (2001)
- Glover v. Bausch & Lomb Inc., 6 F.4th 229, 237 (2d Cir. 2021), certified question answered, 275 A.3d 168 (Conn. 2022)
- Riley v. Cordis Corp., 625 F. Supp. 2d 769, 777 (D. Minn. 2009)
- In re Medtronic, Inc., Sprint Fidelis Leads Prods. Liab. Litig., 623 F.3d 1200, 1204 (8th Cir. 2010)
- Nat. Res. Def. Council, Inc. v. FDA, 710 F.3d 71, 75 (2d Cir. 2013), as amended (Mar. 21, 2013)
- Clinger v. Edgewell Pers. Care Brands, LLC, No. 3:21-cv-1040 (JAM), 2023 WL 2477499, at *10 (D. Conn. Mar. 13, 2023)
- Access Telecomms. v. Sw. Bell Tel. Co., 137 F.3d 605, 608 (8th Cir. 1998)
- Red Lake Band of Chippewa Indians v. Barlow, 846 F.2d 474, 476–77 (8th Cir. 1988)
- Chlorine Inst., Inc. v. Soo Line R.R., 792 F.3d 903, 909 (8th Cir. 2015)
- Alpharma, Inc. v. Pennfield Oil Co., 411 F.3d 934, 938 (8th Cir. 2005)
- Ladore v. Sony Comput. Ent. Am., LLC, 75 F. Supp. 3d 1065, 1075 (N.D. Cal. 2014)
- N. Am. Chem. Co. v. Superior Ct., 69 Cal. Rptr. 2d 466, 474–75 (Cal. Ct. App. 1997)
- Prmconnect, Inc. v. Drumm, No. 15-cv-417, 2016 WL 3014814, at *5 (N.D. Ill. May 26, 2016)
- Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547, 567 (7th Cir. 2012)
- Lesiak v. Cent. Valley Ag Coop., Inc., 808 N.W.2d 67, 81 (Neb. 2012)
- United States ex rel. Joshi v. St. Luke's Hosp., Inc., 441 F.3d 552, 556 (8th Cir. 2006)
- United States ex rel. Costner v. United States, 317 F.3d 883, 888 (8th Cir. 2003)
- Moua v. Jani-King of Minn., Inc., 613 F. Supp. 2d 1103, 1110 (D. Minn. 2009)
- E-Shops Corp. v. U.S. Bank Nat'l Ass'n, 678 F.3d 659, 663 (8th Cir. 2012)
- Payne v. United States, 247 F.2d 481, 486 (8th Cir. 1957)