

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Charles Strow, individually and on behalf of all  
others similarly situated,

Plaintiff,

– against –

B&G Foods, Inc.,

Defendant.

Case No.: 1:21-cv-05104

Judge Steven C. Seeger

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT B&G FOODS, INC.'S**

**MOTION TO DISMISS**

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Defendant B&G Foods, Inc. (“B&G Foods”) respectfully submits its Motion to Dismiss.

### **INTRODUCTION**

Plaintiff claims that he was injured because he thought that Crisco® brand Butter No-Stick Spray contained butter. (First Amended Complaint (“FAC”). ¶¶ 1-3.) Plaintiff does not explain how he could actually believe that butter—a solid—could fit through the tiny aperture of the spray nozzle on an aerosol can, or why he would believe the product was made from butter when the label he purported to read and rely on says “Buttery Flavor For Your Food **Without The Butter**” (emphasis added), and the words “Natural & Artificial Flavor” appear next to the word “Butter.” The No-Stick Spray is not stored in the refrigerator section, like butter, and the very words on the package Plaintiff claims misled him compare the fat and calorie content of the No-Stick spray against the fat and calorie content of butter.

The allegations in the FAC do not state a claim. *Twombly* and *Iqbal* enable the Court to use its common sense when evaluating such pleadings, and it is implausible—indeed, impossible—that Plaintiff was misled. Such cases have no business clogging up the federal courts. Plaintiff’s claims do not address social wrongs; they are fictional harms churned up by a lawyer. This action should be dismissed with prejudice under Rule 12(b)(6).

### **BACKGROUND**

#### **A. The Parties**

B&G Foods, including its subsidiaries and predecessor companies, is a 130-year-old American food company that makes a variety of high quality, shelf-stable and frozen packaged foods. B&G Foods owns the Crisco® brand, which created the first shortening product made of plant-based oils. Plant-based oils offer many advantages to butter and other animal fats that consumers desire, including being shelf stable, tolerant of high heat, and resistant to rancidity.

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