

## **Tycko & Zavareei LLP Scores Victory on Behalf of Olive Oil Consumers**

February 3, 2015—Tycko & Zavareei LLP has scored a significant victory on behalf of nationwide and California classes of purchasers of Filippo Berio brand olive oils. On February 3, 2015, Judge Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California denied a motion to dismiss in *Kumar v. Salov North America Corporation*. The decision allowed class action claims alleging violation of the California Consumer Legal Remedies Act, the California False Advertising Law, the California Unfair Competition Law, and for common law fraud, deceit and/or misrepresentation to proceed to into discovery. Judge Gonzalez Rogers dismissed additional common law claims.

In the class action complaint, an olive oil consumer—represented by Tycko & Zavareei LLP and Gutride Safier LLP—brought allegations that Salov falsely marketed certain varieties of Bertoli olive oils (1) as “extra virgin” when they were, in fact, lower quality, and (2) as “Imported from Italy” when, in fact, the olives were grown elsewhere and only passed through Italy as part of the manufacturing process.

In its opinion, the court agreed with the plaintiff in several key respects. First, the court stated that it could not, as a matter of law, hold that a reasonable consumer should not understand “Imported from Italy” to indicate that the product was comprised solely of olives grown in Italy. It also held that the plaintiff had standing to sue for injunctive relief, and that claims under California’s Unfair Competition Law could be predicated on allegations of a violation of the federal Tariff Act.

With respect to the plaintiff’s “extra virgin” allegations, the court found that it could properly consider evidence that bottles other than the one purchased by the plaintiff were not, in fact, extra virgin, as a means of evaluating the plaintiff’s claims, reasoning that “[i]f, as alleged here, the product will not meet the extra virgin standard by design, Kumar and other consumers who paid a premium for the product based upon the extra virgin representation state a cognizable injury.” The court also held that the plaintiff could assert claims for types of olive oil other than the specific variety that she purchased, finding that questions about differences between products were better considered at the class certification stage.