

Katten Securities Litigation Team Scores a Precedent-Setting Victory in the Second Circuit

October 7, 2022

In a significant case for federal securities laws, the Katten team, led by Securities Litigation Chair Bruce Vanyo with Litigation partners Jonathan Rotenberg and Eric T. Werlinger, secured a far-reaching appellate victory in a securities class action for the former executives of Israeli company Frutarom Ltd. The plaintiffs — stockholders of multi-billion-dollar New York-based International Flavors & Fragrances, Inc. (IFF) — alleged that, in the lead-up to the merger between IFF and Frutarom, our clients made false and misleading statements concerning an ongoing bribery scheme at Frutarom's Russian and Ukrainian businesses which, when revealed, caused IFF's stock price to drop significantly.

The US District Court for the Southern District of New York had granted Katten's motion and dismissed with prejudice on the grounds that the shareholders lacked the standing to sue Frutarom based on alleged misstatements it made about itself because they had never bought or sold shares of Frutarom.

Following an appeal, the US Court of Appeals for the Second Circuit agreed with the lower court. A September 30 opinion written by Judge Michael H. Park stated, "The fact that the case involved a merger, rather than the sale of a business unit and that IFF incorporated some of Frutarom's misstatements in its SEC filings and investor presentations does not change the analysis here. Plaintiffs did not purchase securities of the issuer about which misstatements were made, so they did not have standing to sue [under the Securities Exchange Act of 1934]."

With expected far-reaching effects, the Second Circuit's decision here curtails future plaintiff efforts to sue a second company for statements it made about itself if the second company had a sufficiently direct relationship to the first company. It also shuts the door on any further attempt to base standing in the securities context on the "direct relationship" theory or the claim that standing should be based upon price impact. This bright-line rule likely provides the clearest articulation of the standing doctrine in the securities context to date from any appellate court in the country.

Read the Second Circuit's opinion.

"Fragrance Producer Beats Acquiring Company Shareholders' Suit," *Bloomberg Law*, September 30, 2022

"2nd Cir. Affirms Dismissal of Securities Suit Against International Flavors & Fragrances Over Purchase of Israeli Firm," *Law Street*, October 6, 2022

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