

Hidden in Plain Sight:
Multipack Wrapper Occlusion as Cognitive Disability Disparate Impact under ADA Title III,
State Consumer Protection Law, and Design Defect Doctrine

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ABSTRACT

Federal food labeling regulations require certain information to appear on consumer packaging. When manufacturers sell their products in multipack configurations, the outer wrapper sometimes occludes commercially material information that exists on the inner packaging, including cooking instructions and preparation requirements. Consumers without disabilities work around the occlusion through memory, phone lookup, or in-store assistance. Consumers with cognitive disabilities recognized under the Americans with Disabilities Act Amendments Act of 2008, including memory impairment, intellectual and developmental disability, and executive function disorders, cannot reliably do so. The result is that material information is functionally inaccessible to cognitively disabled consumers at the point of sale, producing disparate impact on a federally protected class. This Article uses the Kraft Deluxe Original Cheddar Macaroni and Cheese three-pack (Universal Product Code 021000057184) as the lead documented fact pattern and shows that three concurrent civil rights vehicles reach the harm: Title III of the Americans with Disabilities Act against the retailer for the inaccessible presentation of the product at the point of sale, state consumer protection statutes against the manufacturer for the failure to disclose material information through the multipack configuration, and design defect doctrine against the manufacturer for the foreseeable harm to cognitively disabled consumers. The Article identifies the structural features that make the multipack occlusion pattern widespread across the food retail category, demonstrates that the lead case is one instance of an industrywide pattern, and proposes both litigation and regulatory paths to remediation. The contribution is the application of settled disability rights doctrine to an unrecognized category of harm.

Keywords: Americans with Disabilities Act Title III; cognitive disability; intellectual and developmental disability; disparate impact; *Alexander v. Choate*; meaningful access; auxiliary aids and services; consumer protection; state UDAP; design defect; food labeling; multipack packaging; point-of-sale information access

I. INTRODUCTION

A consumer walks into a Walmart, picks up a three-pack of Kraft Deluxe Original Cheddar Macaroni and Cheese, and tries to determine whether the product can be prepared with the ingredients in the consumer's pantry. The three inner

boxes are wrapped in an outer plastic film that holds them together for retail display. The film bears the Kraft brand identification and basic product information. It does not display the cooking instructions. The cooking instructions appear on the inner boxes, oriented inward, where they cannot be read through the outer wrapper at the shelf.

For a consumer without cognitive disability, this is a minor friction. The consumer may remember whether Kraft Deluxe Mac and Cheese requires milk and butter (it does not in the deluxe formulation, which uses a liquid cheese sauce, in contrast to the original blue-box formulation that does). If the consumer does not remember, the consumer can use a smartphone to look up the product. The consumer can ask a store employee. The consumer can buy the product, take it home, open the wrapper to read the instructions, and return the product if the ingredients turn out to be unavailable.

For a consumer with cognitive disability, including memory impairment, intellectual and developmental disability, fetal alcohol spectrum disorder, traumatic brain injury, or executive function disorder, none of these compensatory strategies is reliably available. Memory does not retain the formulation difference between Kraft Deluxe and Kraft Original. Smartphone lookup requires reading skills and search behavior that some cognitively disabled consumers cannot perform unassisted. Asking a store employee requires the consumer to identify the question, formulate it, and approach a stranger, all of which are barriers for some cognitively disabled consumers. Buying the product and returning it requires the consumer to use transportation services twice, occupies time, and creates the executive function burden of tracking the return.

The cooking instructions are present on the product. They are required by no federal regulation as such (cooking instructions, unlike Nutrition Facts and allergen statements, are not federally mandated), but they are commercially material to the purchase decision: the consumer cannot determine whether to buy the product without knowing whether the necessary ingredients are at home. The information is legally permitted to exist on the inner boxes alone. The multipack configuration takes information that is necessary for an informed purchase decision and renders it functionally inaccessible at the point of sale.

This is a disparate impact on a federally protected class. The class is large: people with intellectual and developmental disabilities number approximately seven million adults in the United States,¹ workers placed through state vocational rehabilitation agency programs number in the additional hundreds of thousands, and the cognitively disabled population including memory impairment, executive function disorder, and learning disability is substantially larger. The harm is concrete: a consumer who cannot determine ingredient requirements at the shelf cannot shop independently. The structural commitment of federal disability policy to enabling independent living for cognitively disabled adults, instantiated in the Olmstead integration mandate and in federal funding of vocational rehabilitation employment programs, is undermined by retail packaging design that makes independent grocery shopping unreliable.

This Article argues that the multipack wrapper occlusion pattern produces civil rights liability under three concurrent vehicles, each of which reaches the harm independently and each of which produces overlapping but distinct remedial pathways.

The first vehicle is Title III of the Americans with Disabilities Act. Title III prohibits discrimination on the basis of disability by places of public accommodation in the goods, services, facilities, privileges, advantages, or accommodations they offer.² The retailer's presentation of the multipack at the shelf is a service the retailer offers, and a presentation that withholds material consumer information from a cognitively disabled customer fails to provide effective communication of the kind Title III's auxiliary aids and services obligations require.³

¹ Estimates of adult intellectual and developmental disability prevalence vary. The Administration for Community Living and the National Council on Disability have reported figures in the range of 6.5 to 7.4 million adults. The figure used here is conservative.

² 42 U.S.C. §12182(a).

³ 28 C.F.R. §36.303 (auxiliary aids and services).

The second vehicle is state consumer protection law. State Unfair and Deceptive Acts and Practices statutes generally require disclosure of material information at the point of sale and treat the failure to disclose material information as a deceptive practice. Cooking instructions are commercially material to the purchase decision for a shelf-stable food product. The multipack configuration's concealment of material information through the outer wrapper is a failure to disclose at the point of sale.

The third vehicle is design defect doctrine. The manufacturer's design of the multipack packaging, with the outer wrapper occluding the cooking instructions, creates a foreseeable harm to consumers who cannot reliably work around the occlusion. The cognitively disabled population is a foreseeable user category under product liability doctrine, and the design choice of multipack configuration over single-package presentation is subject to risk-utility analysis that may find the design unreasonable in light of the foreseeable harm.

Part II of this Article establishes the protected class and the disparate impact, drawing on the Americans with Disabilities Act Amendments Act of 2008 and the implementing regulations of the Equal Employment Opportunity Commission. Part III develops the Title III analysis, distinguishing the inventory selection carveout in 28 C.F.R. §36.307 from the broader obligation to present inventory accessibly at the point of sale. Part IV develops the state consumer protection analysis, using Illinois as the lead jurisdiction. Part V develops the design defect analysis under the Restatement (Third) of Torts: Products Liability. Part VI shows that the lead case is one instance of a broader industrywide pattern that affects cereal multipacks, snack variety packs, frozen meal multipacks, and other product categories. Part VII proposes remediation paths through litigation, federal administrative complaints, and manufacturer voluntary design change. A brief Conclusion situates the argument within the longer arc of disability rights enforcement at the point of sale.

The contribution is the application of settled disability rights doctrine to an unrecognized category of harm. The doctrinal architecture is already established. The fact pattern is documented and replicable. The remediation is operationally available. What is needed is recognition that the harm is a civil rights harm and not merely a consumer annoyance.

II. THE PROTECTED CLASS AND THE DISPARATE IMPACT

This Part establishes two propositions on which the remainder of the Article depends. The first is that cognitively disabled consumers as defined under the Americans with Disabilities Act Amendments Act of 2008 constitute a federally protected class for purposes of disability rights doctrine. The second is that the multipack wrapper occlusion pattern produces disparate impact on that class because the compensatory strategies that consumers without cognitive disability use to work around the occlusion are unavailable or unreliable for cognitively disabled consumers.

A. Cognitive Disability Coverage Under the ADAAA

The Americans with Disabilities Act Amendments Act of 2008⁴ expanded the definition of disability to address the Supreme Court's narrowing of ADA coverage in *Sutton v. United Air Lines*⁵ and *Toyota Motor Manufacturing v. Williams*.⁶ The ADAAA's Findings and Purposes section identified the prior Court decisions as having improperly narrowed coverage and directed that the broad coverage Congress had intended be restored.⁷

⁴Pub. L. No. 110-325, 122 Stat. 3553 (2008).

⁵*Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

⁶*Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).

⁷ADAAA §2(b), 122 Stat. at 3554. The statutory findings explicitly named the Supreme Court decisions Congress sought to override.

The expanded definition of disability includes a substantial limitation in one or more major life activities.⁸ The ADAAA expanded the major life activities list to include, among others, learning, reading, concentrating, thinking, communicating, and working.⁹ The Equal Employment Opportunity Commission's implementing regulations confirm that cognitive functions including memory, executive function, and the ability to perform manual tasks are within the major life activities the statute reaches.¹⁰

Intellectual and developmental disability is the paradigmatic case of substantial limitation in cognitive major life activities. The Centers for Disease Control and the Administration for Community Living recognize intellectual and developmental disability as a category of disability that affects approximately three percent of the United States population, of whom adults of independent shopping age constitute a substantial subset. Memory impairment from traumatic brain injury, post-stroke conditions, early-onset dementia, and other neurological etiologies is recognized as substantial limitation of the major life activity of remembering. Executive function disorder, recognized in attention-deficit hyperactivity disorder and autism spectrum conditions as well as in fetal alcohol spectrum disorder and traumatic brain injury sequelae, is a recognized substantial limitation under the ADAAA's expanded coverage.

The class is large, federally protected, and identifiable through diagnostic criteria the disability community and the federal government already use in administering disability benefits, vocational rehabilitation services, and special education programs.

B. The Multipack Occlusion Fact Pattern

The Kraft Deluxe Original Cheddar Macaroni and Cheese three-pack, sold under Universal Product Code 021000057184, consists of three fourteen-ounce inner boxes wrapped in an outer plastic film. The film holds the boxes together for retail display, bears Kraft brand identification and basic product imagery, and includes the product name, count, and net weight on the outer face. The cooking instructions are printed on the inner boxes.

The cooking instructions for Kraft Deluxe Original Cheddar differ materially from the cooking instructions for Kraft Original Macaroni and Cheese, the older blue-box product with which consumers often confuse the deluxe variant. The deluxe formulation includes a liquid cheese sauce pouch and does not require additional milk or butter; the consumer adds the cheese sauce to the cooked pasta. The original blue-box formulation requires the consumer to supply milk and butter, mixing them with the pasta and the dry cheese powder. A consumer who confuses the two formulations may purchase the deluxe variant believing it requires milk that the consumer does not have at home, or, more commonly, may purchase the original variant assuming it has the deluxe formulation and discover at home that the necessary ingredients are unavailable.

The outer wrapper of the deluxe three-pack does not disclose the cooking instructions and does not disclose the absence of a milk-and-butter requirement. The information necessary for an informed purchase decision is present on the inner boxes but cannot be read at the shelf without opening the wrapper, which is not permitted before purchase.

The product is sold at Walmart, Target, Amazon, and Kroger under the same Universal Product Code, indicating that the three-pack is a general retail configuration manufactured by Kraft Heinz and distributed across major retail channels. The packaging design is the manufacturer's choice. The retailer presents the product on the shelf as the manufacturer packaged it.

⁸42 U.S.C. §12102(1)(A).

⁹42 U.S.C. §12102(2)(A).

¹⁰29 C.F.R. §1630.2(i) (definition of major life activities including thinking, concentrating, communicating, learning, reading, and working). The implementing regulation for Title III at 28 C.F.R. pt. 36 incorporates the same general definitional approach to disability.

C. Compensatory Strategies and Their Disability Disparate Impact

A consumer without cognitive disability presented with the three-pack at the shelf has multiple compensatory strategies available. The consumer may remember the formulation distinction between Kraft Deluxe and Kraft Original. The consumer may consult a smartphone to look up the product's cooking instructions through the manufacturer's website, retailer listings, or recipe aggregator sites. The consumer may approach a store employee and ask for the cooking instructions. The consumer may purchase the product and return it if the ingredients prove unavailable at home.

Each of these strategies depends on cognitive capacities that are substantially limited in the cognitively disabled population.

Memory of the formulation distinction depends on having encountered both products previously and retained the distinguishing detail. Memory impairment is, by definition, a substantial limitation of this capacity. The consumer with traumatic brain injury, early-onset dementia, or post-stroke memory impairment cannot rely on memory to compensate for the occluded instructions.

Smartphone lookup depends on the consumer's ability to read product names, formulate search queries, evaluate returned results for accuracy and relevance, and apply the results to the purchase decision. Reading is a major life activity recognized in the ADAAA as one in which substantial limitation produces disability status. Learning is similarly recognized. Consumers with intellectual and developmental disability whose reading is below independent-shopping competence cannot reliably perform the lookup. Consumers with executive function disorder may be able to read but may not reliably initiate the search behavior, evaluate the results, and apply them to the immediate purchase decision under the time pressure of a grocery aisle.

Asking a store employee depends on the consumer's ability to identify the question, formulate it in a way the employee can answer, approach a stranger and initiate the conversation, and process the employee's response. Each of these is a recognized barrier for various cognitively disabled populations. People on the autism spectrum often experience substantial difficulty initiating unstructured conversations with strangers. People with social anxiety, particularly in combination with autism or intellectual disability, may find the store employee interaction sufficiently aversive that they avoid it even when it would resolve the question.

Buying and returning the product depends on the consumer's ability to track the purchase, identify the return need, manage the executive function burden of the return process, and use transportation services twice. The executive function disorder population, the intellectual and developmental disability population, and the memory impairment population each experience substantial limitation in one or more of these required capacities.

The cumulative effect is that the multipack wrapper occlusion pattern, which presents minor friction to consumers without cognitive disability, presents a barrier to independent grocery shopping for cognitively disabled consumers. The compensatory strategies the design assumes are available are precisely the capacities the protected class is substantially limited in.

D. Disparate Impact as a Civil Rights Concept

Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act reach disparate impact through the meaningful access framing announced in *Alexander v. Choate*.¹¹ *Choate*'s meaningful access doctrine has been carried forward in subsequent Section 504 and Title II jurisprudence as the operative standard for disparate impact

¹¹*Alexander v. Choate*, 469 U.S. 287 (1985). The Court held that Section 504 reaches not only intentional discrimination but also practices and policies that operate to deny meaningful access to the benefits of federally assisted programs.

analysis under those statutes.¹² The meaningful access standard does not require proof of discriminatory intent. It requires showing that a policy, practice, or design operates to deny disabled persons meaningful access to a benefit or program available to nondisabled persons.

Title III of the Americans with Disabilities Act reaches disparate impact through parallel doctrinal structures, including the auxiliary aids and services obligation at 28 C.F.R. §36.303 and the reasonable modifications obligation at 28 C.F.R. §36.302. The disparate impact analysis under Title III does not require proof of discriminatory intent any more than it does under Section 504. It requires showing that the place of public accommodation's offering, as designed and presented, fails to provide effective communication or denies meaningful access on the basis of disability.

The multipack wrapper occlusion pattern, applied to the cognitively disabled consumer population, satisfies the meaningful access standard. The information necessary for an informed purchase decision is meaningfully accessible to consumers without cognitive disability through the compensatory strategies the design assumes. The information is not meaningfully accessible to consumers with cognitive disability because the compensatory strategies the design assumes are precisely the capacities the protected class is substantially limited in. The architecture is not facially discriminatory: the wrapper occludes information from all consumers equally. The disparate impact arises because the workarounds are differentially available.

III. ADA TITLE III REACHES THE HARM

This Part develops the Title III analysis. Title III prohibits discrimination on the basis of disability by places of public accommodation in the goods, services, facilities, privileges, advantages, or accommodations they offer.¹³ Retail establishments are places of public accommodation within Title III's coverage.¹⁴ The question this Part addresses is whether Title III reaches the multipack wrapper occlusion pattern when the goods are sold by a covered retailer.

A. The Inventory Selection Carveout

Title III's implementing regulations include a carveout at 28 C.F.R. §36.307 stating that public accommodations are not required to alter their inventory to include accessible or special goods.¹⁵ A retailer is not, under this carveout, obligated to stock products specifically designed for disabled consumers if the retailer would not otherwise carry such products. The carveout is narrow but real, and it has been used by defendants to resist claims that effectively require the retailer to change what is offered for sale.

The inventory selection carveout does not, however, reach all questions about the presentation of inventory at the point of sale. The carveout addresses what the retailer must stock. It does not address how the retailer must present what it has chosen to stock. The distinction is captured in the regulation's adjacent provisions on effective communication, reasonable modifications, and auxiliary aids and services, each of which addresses how a place of public accommodation must operate with respect to disabled customers regardless of what the place sells.

A retailer that stocks Kraft Deluxe Macaroni and Cheese is not required by Title III to stock a hypothetical alternative product specifically designed for cognitively disabled consumers. The retailer is required by Title III to make the product the retailer has chosen to stock meaningfully accessible to disabled consumers in the manner the retailer

¹²See, e.g., *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273 (2d Cir. 2003) (applying *Choate* meaningful access to disparate impact claims); *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097–98 (9th Cir. 2010) (same).

¹³42 U.S.C. §12182(a).

¹⁴42 U.S.C. §12181(7)(E) (defining places of public accommodation to include grocery stores and shopping centers).

¹⁵28 C.F.R. §36.307(a) ("This part does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities.").

presents it. The two obligations are distinct. The first is addressed by the carveout. The second is not.

The argument this Part advances is that the multipack wrapper occlusion is a presentation issue, not an inventory issue, and that Title III's effective communication and reasonable modifications obligations reach the presentation regardless of the carveout.

B. Effective Communication and Auxiliary Aids

The Title III implementing regulations at 28 C.F.R. §36.303 require places of public accommodation to provide auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. The auxiliary aids and services obligation extends to the communication of information about the goods and services offered, including price, availability, ingredients, and use.

Auxiliary aids and services include qualified readers, taped texts, large print materials, accessible electronic and information technology, and other effective methods of making aurally and visually delivered materials available to individuals with disabilities.¹⁶ The obligation applies to public accommodations and is enforceable through Title III's private right of action and through DOJ administrative enforcement.

The application to cognitively disabled consumers requires recognizing that effective communication encompasses not only the technical accessibility of communication for sensory disability (Braille, sign language interpretation, captioning) but also the cognitive accessibility of communication for cognitively disabled audiences. The DOJ has acknowledged this in technical assistance materials, recognizing that cognitive accessibility requires plain language, predictable layout, sufficient time for processing, and the availability of staff assistance for users who need help interpreting information.

For the multipack wrapper occlusion pattern, the auxiliary aids and services obligation supports a remedy in which the retailer ensures that the cooking instructions are accessible to cognitively disabled customers at the point of sale. The retailer can satisfy the obligation in multiple ways: by ensuring that the cooking instructions are displayed on shelf tags or signage, by training staff to provide the information on request in a manner accessible to cognitively disabled customers, by providing alternative-format access (large print sheets, picture-based instructions, or staff-assisted lookup), or by negotiating with the manufacturer to redesign the multipack packaging to display the instructions externally.

The retailer's choice among these compliance options is the retailer's, subject to Title III's effectiveness requirement. The point is that the obligation exists and that it reaches the harm.

C. Reasonable Modifications

The Title III implementing regulations at 28 C.F.R. §36.302 require places of public accommodation to make reasonable modifications in policies, practices, or procedures when necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.¹⁷

The retailer's policy of presenting the multipack as packaged by the manufacturer, without supplementary point-of-sale information, is a policy subject to the reasonable modifications obligation. The modification of providing point-of-sale cooking information for cognitively disabled customers, on request, is reasonable. The modification does not fundamentally alter the retailer's offerings; the retailer still sells the same products. The modification supplies an accessibility accommodation that the cognitively disabled customer requires to use the offering in the way nondisabled

¹⁶28 C.F.R. §36.303(b). The regulation's list is illustrative rather than exhaustive.

¹⁷28 C.F.R. §36.302(a).

customers use it.

The reasonable modifications obligation, like the auxiliary aids and services obligation, is independent of the inventory selection carveout. The retailer is not being required to stock a different product. The retailer is being required to modify its presentation practices to ensure meaningful access by cognitively disabled customers.

D. Meaningful Access Under Choate's Construction

The Title III analysis is reinforced by the Section 504 meaningful access doctrine announced in *Choate*. Although Title III rests on Commerce Clause and Section 5 authority rather than the Spending Clause, the meaningful access concept has been read across the disability rights statutes as the operative standard for whether a person with disability has been afforded substantial equivalency in access to a covered benefit.¹⁸

For the multipack wrapper occlusion pattern, meaningful access requires that the cognitively disabled customer have access to the cooking instructions in a manner equivalent to the access nondisabled customers have. The current architecture does not provide that. The Title III remedy of effective communication and reasonable modifications would provide it.

E. Concurrent Manufacturer and Retailer Liability

The Title III obligation falls on the place of public accommodation. The retailer is the place of public accommodation; the manufacturer is not. The Title III analysis therefore reaches the retailer's presentation of the product but does not reach the manufacturer's design of the packaging directly.

This is the constraint that motivates the multiple-vehicle structure of this Article. Title III addresses the retailer's obligation to present accessibly. State consumer protection law (Part IV) addresses the manufacturer's obligation to disclose material information. Design defect doctrine (Part V) addresses the manufacturer's design choice. The three vehicles together produce overlapping but distinct remedial pathways that, in combination, reach both the retailer's presentation conduct and the manufacturer's design conduct.

IV. STATE CONSUMER PROTECTION LAW REACHES THE MANUFACTURER

This Part develops the state consumer protection analysis. Every state has enacted Unfair and Deceptive Acts and Practices legislation prohibiting deceptive practices in the sale of consumer goods. The statutes vary in scope and remedy, but the common core includes obligations to disclose material information at the point of sale and treats the failure to disclose material information as a deceptive practice. The lead jurisdiction for this Article is Illinois, which has a robust consumer protection statute with both private and Attorney General enforcement.

A. The Illinois Consumer Fraud and Deceptive Business Practices Act

The Illinois Consumer Fraud and Deceptive Business Practices Act¹⁹ prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. The statute defines unfair or deceptive

¹⁸See *Choate*, 469 U.S. at 301 (“[T]he 504 regulations are not limited to the elimination of intentional discrimination. They are also designed to ensure meaningful access to the benefit being offered.”). Subsequent courts have applied *Choate*'s meaningful access framing to Title III as well as Section 504 claims.

¹⁹815 ILCS 505/1 et seq.

acts or practices broadly to include the use or employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact.²⁰

The concealment, suppression, or omission of material fact is the relevant prong for the multipack wrapper occlusion analysis. The statute does not require proof that the omission was intentional. The statute does not require proof of consumer reliance or actual damages for purposes of injunctive relief. The Attorney General has authority to bring enforcement actions for civil penalties and injunctive relief without proof of individual consumer harm.

Private plaintiffs have a private right of action under 815 ILCS 505/10a, but the private action requires showing that the plaintiff suffered actual damages as a result of the deceptive practice. The private action provides for actual damages, attorneys' fees, and equitable relief.

Cooking instructions on a shelf-stable food product are material to the consumer's purchase decision. A consumer who cannot determine whether the product can be prepared with the ingredients at home cannot make an informed purchase decision. The materiality of the information is established by common experience and by the manufacturer's own choice to provide the information on the inner packaging.

B. Materiality and the Reasonable Consumer Standard

State consumer protection statutes generally apply a reasonable consumer standard to materiality and deception analysis. The reasonable consumer is the consumer who would be reasonably likely to be deceived by the practice or omission. The standard is objective and applied across the consuming population, not specific to any individual consumer.

The reasonable consumer standard interacts with the disability disparate impact analysis developed in Part II. A practice that is not deceptive to consumers without cognitive disability may still be deceptive to consumers with cognitive disability, because the protected class's compensatory strategies are not available. State consumer protection statutes have not, to date, broadly recognized disability-specific reasonable consumer standards. The reasonable consumer is usually conceived as a general population reasonable consumer.

This Article argues that the disability-specific reasonable consumer is the right standard for analyzing practices that have disparate impact on cognitively disabled consumers. The argument is doctrinally available without amendment to the statutes. The reasonable consumer standard is intended to capture the consumer who is reasonably likely to be deceived; consumers with cognitive disability are members of the consuming public who are reasonably likely to be deceived by the multipack wrapper occlusion pattern. Recognizing the disability-specific reasonable consumer is an interpretive move within the existing statute, not a statutory amendment.

If the courts decline to recognize the disability-specific reasonable consumer, the general population reasonable consumer standard still supports liability where the materiality of the information is established. Cooking instructions are material under any reasonable interpretation of the standard. The concealment of material information through multipack wrapper occlusion is a deceptive practice under the statute regardless of whether the disability-specific reasonable consumer is recognized.

C. Federal Preemption Analysis

The Federal Food, Drug, and Cosmetic Act²¹ and the FDA's implementing regulations at 21 C.F.R. pt. 101 establish federal labeling requirements for consumer food products. The requirements include the Nutrition Facts panel, ingredient lists, allergen statements, and certain other mandatory disclosures. The FDA's preemption authority for these labeling

²⁰815 ILCS 505/2.

²¹21 U.S.C. §343 et seq.

requirements has been the subject of substantial litigation, but the preemption is generally limited to the specific requirements the FDA has imposed.

Cooking instructions are not federally mandated for food products. The FDA does not require manufacturers to provide cooking instructions on consumer packaging. Cooking instructions are provided by manufacturers as a commercial choice. The federal labeling requirements do not occupy the field of cooking instruction disclosure.

State consumer protection enforcement of cooking instruction disclosure at the point of sale is not preempted by the FDCA or the FDA's implementing regulations. A state UDAP action alleging that a manufacturer's multipack configuration constitutes a deceptive omission of material information at the point of sale does not require the state to impose any federally regulated labeling requirement. The state action regulates the presentation of optional manufacturer-provided information through the packaging configuration.

D. Attorney General Enforcement and Private Action

The Illinois Attorney General has authority to bring enforcement actions under the Consumer Fraud Act for injunctive relief and civil penalties. A pattern of multipack wrapper occlusion across a manufacturer's product line is the kind of fact pattern that supports Attorney General enforcement, both for the specific products at issue and as a deterrent against the broader industrywide pattern. Civil penalties under the statute can reach \$50,000 per violation for repeated violations, providing substantial enforcement leverage.

Private action by individual consumers, supported by disability rights organizations, can also reach the harm. The private action requires actual damages, which can be established by the consumer's purchase of the product based on incomplete information at the point of sale and the consequent inability to use the product as intended. Class action treatment is available where the class of affected consumers is sufficiently large and the manufacturer's conduct is sufficiently common across the class.

The combination of Attorney General enforcement authority and private class action capability provides a robust set of remedial pathways under state consumer protection law.

V. DESIGN DEFECT DOCTRINE REACHES THE MANUFACTURER

This Part develops the design defect analysis under the Restatement (Third) of Torts: Products Liability. Design defect doctrine reaches the manufacturer's choice of packaging configuration as a design element that produces foreseeable harm to a category of consumers. The analysis is independent of the Title III and state consumer protection analyses and supplies an additional remedial pathway, particularly for individual consumers who have suffered concrete harm from the multipack wrapper occlusion.

A. The Warning Defect Framework

The Restatement (Third) of Torts: Products Liability §2(c) recognizes warning defects as a category of design defect.²² A product is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller, and the omission of the instructions or warnings renders the product not reasonably safe.

The doctrinal application to multipack wrapper occlusion proceeds as follows. The manufacturer provides cooking instructions on the inner packaging. The instructions exist. The multipack wrapper configuration prevents

²²Restatement (Third) of Torts: Products Liability §2(c) (1998).

the instructions from being accessible at the point of sale to consumers who need them for purchase decision-making. The omission of accessible point-of-sale instructions is the design defect. The remedy is the provision of accessible point-of-sale instructions, achievable through redesign of the outer wrapper to display the instructions externally, through supplementary labeling on the outer wrapper, or through other means within the manufacturer's design discretion.

B. Foreseeable User Category

The product liability analysis requires that the harm be foreseeable to the manufacturer. Foreseeability is established through the categorical foreseeability of the affected user population. Cognitively disabled consumers, as a category, are foreseeable users of food products sold in major retail channels. The disability prevalence in the consuming population, the federal investment in independent-living and vocational rehabilitation programs that enable cognitively disabled adults to shop independently, and the manufacturer's own knowledge of consumer demographics through market research all support the categorical foreseeability of cognitively disabled consumers as a user category.

The foreseeable user category for this analysis includes:

People with intellectual and developmental disability who shop independently or with periodic supervisory support.

People with memory impairment from traumatic brain injury, post-stroke conditions, early-onset dementia, or other neurological etiologies who maintain independent living.

People with executive function disorder, including attention-deficit hyperactivity disorder, autism spectrum conditions, and fetal alcohol spectrum disorders.

People with learning disabilities affecting reading and information processing.

People aging into cognitive decline who continue to live independently and shop for themselves.

People in vocational rehabilitation programs whose employment placements depend on independent living skills including grocery shopping.

The categorical foreseeability of the user population establishes the manufacturer's duty to design with that population in mind.

C. Risk-Utility Analysis

The Restatement (Third) of Torts: Products Liability §2(b) applies a risk-utility test to design defect analysis. The test asks whether the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design, and the omission of the alternative design renders the product not reasonably safe.²³

The risk-utility analysis for the multipack wrapper occlusion pattern proceeds as follows. The risk is the foreseeable harm to cognitively disabled consumers who cannot access cooking instructions at the point of sale. The harm includes purchases of products the consumer cannot use, the consequent waste of disability benefits or limited income on unusable products, the failure of independent shopping as a life skill, and the cascade of effects on the disabled consumer's independence and well-being. The utility of the current design is the manufacturer's marketing preference for outer wrapper imagery and the marginal cost savings from not displaying cooking instructions externally.

A reasonable alternative design is the display of cooking instructions on the outer wrapper. The cost of the alternative design is the printing cost of the additional information on the wrapper, which is minimal in the context of mass-produced packaging. The benefit of the alternative design is the accessibility of cooking instructions to cognitively disabled consumers and the consequent ability of those consumers to shop independently.

²³Restatement (Third) of Torts: Products Liability §2(b) (1998).

The risk-utility analysis supports the conclusion that the current multipack wrapper configuration is not reasonably safe with respect to cognitively disabled consumers, and that the reasonable alternative design of displaying cooking instructions externally would have reduced the foreseeable harm at minimal cost.

D. Individual and Class Action Treatment

Design defect litigation typically proceeds through individual actions by consumers who have suffered concrete harm. The concrete harm in the multipack wrapper occlusion pattern is the purchase of a product the consumer could not use, the consequent financial loss, and any consequential harms (missed meals, lost time, the disability-related stress of unsuccessful independent shopping). The harms are individually modest but cumulatively substantial across the affected population.

Class action treatment is available under Federal Rule of Civil Procedure 23 where the class of affected consumers is sufficiently large and the manufacturer's conduct is sufficiently common across the class. A class of cognitively disabled consumers who have purchased Kraft Deluxe three-packs at retail and who could not access cooking instructions at the point of sale would be certifiable under appropriate facts. The class would seek injunctive relief requiring redesign of the multipack packaging to display cooking instructions externally, plus monetary relief for individual class members' concrete harm.

The Rule 23(b)(2) injunctive class is particularly well suited to this fact pattern. The (b)(2) class does not require the proof of common damages that a (b)(3) class requires. The class members' shared interest in the injunctive relief of redesigned packaging suffices. The (b)(2) class is the vehicle used for most major design defect class actions seeking injunctive relief in addition to or instead of individual damages.

VI. THE INDUSTRYWIDE PATTERN

This Part shows that the Kraft Mac multipack is one instance of an industrywide pattern that affects multiple product categories. The recognition of the pattern matters for two reasons. First, remediation strategies that target only the lead product address the symptom without addressing the structural cause. Second, the industrywide pattern is what makes the case study generalize: courts and regulators that address the lead case set precedent that will reach the broader category.

A. Cereal Multipacks

Cereal multipacks, including variety packs and mini-box collections, frequently use outer wrapping that displays the brand identity, product images, and basic information but conceals the inner-box nutrition panels, ingredient lists, and allergen statements. A consumer with food allergies who needs to verify the absence of a particular allergen across the variety pack's contents cannot do so at the shelf. A consumer with diabetes or other dietary management needs cannot verify carbohydrate content. The same disparate impact analysis applies: the protected populations who depend on point-of-sale access to packaging information are precisely the populations whose disabilities preclude the workaround strategies the design assumes.

B. Frozen Meal Multipacks

Frozen meal multipacks often contain multiple entrees with different preparation requirements, different nutritional profiles, and different allergen contents. The outer wrapper displays the brand identity and a summary, while the individual entree packaging contains the specific preparation, nutritional, and allergen information. A consumer who

needs to verify the absence of a particular allergen in any of the included entrees cannot do so at the shelf. A consumer who needs to verify cooking method compatibility with the consumer's microwave or oven cannot do so at the shelf.

C. Snack Variety Packs

Snack variety packs combine multiple products with different ingredient lists and allergen content. The outer wrapper provides aggregate information but not per-snack detail. A consumer who needs to verify the contents of the variety pack against dietary restrictions or allergen avoidance requirements cannot do so at the shelf.

D. Other Categories

Beverage multipacks (juice boxes, milk substitute cartons, single-serve coffee), shelf-stable meal kits, baby food variety packs, and protein bar multipacks exhibit the same pattern. The outer wrapper provides aggregated information; the inner packaging carries the per-unit details that the consumer needs at the point of sale.

E. The Structural Cause

The structural cause of the multipack wrapper occlusion pattern is the economic incentive to display outer wrapper space prominently for brand imagery and marketing messaging. The cooking instructions, nutrition panels, and allergen statements are required by federal labeling regulations to appear on consumer packaging, but the multipack configuration permits the manufacturer to satisfy the federal requirement by placing the information on the inner packaging while using the outer wrapper for marketing. The manufacturer captures the marketing benefit while the federal regulatory requirement is satisfied without exposing the marketing-relevant outer wrapper to information density.

The pattern is rational from the manufacturer's profit-maximization perspective and irrational from the consumer accessibility perspective. The structural cause is the same across product categories.

VII. REMEDIATION

This Part identifies operationally available remediation paths through litigation, federal administrative complaints, federal regulatory action, and manufacturer voluntary design change.

A. Title III Litigation

A Title III private action under 42 U.S.C. §12188 against the retailer can produce injunctive relief requiring the retailer to provide effective communication of cooking instructions to cognitively disabled customers at the point of sale. The plaintiff is the cognitively disabled customer or a disability rights organization with associational standing. The defendant is the retailer (Walmart, Target, Kroger, or another covered place of public accommodation). The remedy sought is injunctive: the retailer is required to ensure accessible point-of-sale information through one or more of the compliance options identified in Part III.B above.

Title III actions are limited in remedy to injunctive relief and attorneys' fees. The injunctive remedy reaches the conduct at scale. A successful action against a single retailer with national operations produces compliance across the retailer's national footprint, addressing the harm for the cognitively disabled customer population that shops at the retailer.

B. Department of Justice Administrative Complaint

DOJ administrative complaints under Title III provide an alternative to private litigation, particularly for plaintiffs who lack the resources for civil action. DOJ has investigatory and enforcement authority under Title III and can negotiate consent decrees that produce systemic relief. The administrative pathway is well suited to cases that involve broadly applicable design patterns and that benefit from federal-level coordination across multiple retailers.

C. State Attorney General Enforcement

State Attorney General enforcement under state consumer protection statutes provides a parallel pathway that does not require private plaintiff standing. The Illinois Attorney General, for example, can bring an enforcement action against Kraft Heinz for the multipack configuration's concealment of material information without identifying a specific harmed consumer. Civil penalties and injunctive relief produce both deterrent and remedial effects.

D. FDA Regulatory Petition

A petition to the Food and Drug Administration under 21 C.F.R. pt. 10 could request rulemaking to require multipack outer wrappers to display certain consumer information that is otherwise required on the inner packaging. The petition pathway is slow but produces durable remedies that survive administration changes more reliably than agency policy changes alone. A petition supported by disability rights organizations, public health organizations, and consumer advocates would have the institutional support necessary to advance through the FDA rulemaking process.

E. Class Action Litigation

Rule 23(b)(2) class action litigation under state consumer protection statutes and design defect doctrine produces injunctive relief and individual damages for cognitively disabled consumers who have purchased products through the multipack configuration. Class actions provide aggregation efficiencies that individual actions do not, and can produce broad-scale design changes through settlement or judgment.

F. Manufacturer Voluntary Design Change

The publication of this Article, in combination with advocacy by disability rights organizations and consumer protection organizations, may produce manufacturer voluntary design change that obviates the need for litigation or enforcement. Manufacturers facing reputational risk and uncertain litigation exposure from the disparate impact analysis developed here have economic incentives to redesign multipack packaging to display cooking instructions externally. The redesign is technically straightforward and minimally costly.

Voluntary design change is the most efficient remediation pathway in the sense that it produces the result without the friction of litigation. It is also the least durable in the sense that it depends on the manufacturer's continued willingness, which can change as commercial circumstances change.

G. Combined Strategy

The most effective remediation strategy combines multiple pathways. Initial advocacy and publication pressure may produce voluntary design change for some manufacturers. Litigation against manufacturers who do not voluntarily change produces both individual relief and precedential effect that pressures the broader industry. Attorney General enforcement and FDA regulatory action produce durable structural change that survives across administrations and commercial cycles.

VIII. CONCLUSION

The multipack wrapper occlusion pattern is a category of disability disparate impact that has not been recognized in the published literature on cognitive disability rights, consumer protection, or product liability. The pattern is widespread, the protected class is large and identifiable, and the remediation pathways are operationally available within existing doctrine.

The contribution of this Article is the recognition and the framing. The legal architecture is already established. Title III's effective communication and reasonable modifications obligations reach the retailer's presentation of multipack products at the point of sale. State consumer protection statutes reach the manufacturer's concealment of material information through the multipack configuration. Design defect doctrine reaches the manufacturer's design choice as a foreseeable harm to a recognized user category. None of the doctrinal moves required for this argument is novel. The novelty is in the application.

The cognitively disabled consumer who walks into a grocery store carrying a state-supplied transportation voucher and a vocational rehabilitation income supplement is the consumer the federal disability rights regime exists to protect. The structural commitment of federal disability policy to the independent living of cognitively disabled adults is undermined by retail packaging design that treats independent shopping as a luxury for the cognitively unimpaired. Recognizing the harm as a civil rights harm, rather than a consumer annoyance, is the first step toward addressing it.

The pathways are available. The doctrine is settled. The fact pattern is documented. What is required is the will to bring the case.

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