

Hidden in Plain Sight

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

When manufacturers wrap products in multipacks, material information on the inner boxes becomes invisible at the shelf. For cognitively disabled consumers, the workarounds everyone else uses to compensate are unavailable. Three concurrent civil rights vehicles reach this harm.

Kraft Deluxe Original Cheddar Mac & Cheese three-pack · UPC 021000057184

The outer plastic film shows brand identification and product name. Cooking instructions are printed on the inner boxes. The deluxe formulation requires no milk or butter; the original blue-box formulation does. The outer wrapper does not disclose this. The wrapper cannot be opened before purchase.

Sold at Walmart, Target, Amazon, and Kroger under the same UPC. The packaging design is the manufacturer's choice. The retailer presents the product as the manufacturer packaged it.

THE OCCLUSION STRUCTURE

Outer wrapper: brand, name, count, weight. **No cooking instructions.**

Inner boxes: full cooking instructions. **Hidden behind the wrapper until purchase.**

Consumer impact: materially consequential purchase decision cannot be made with available information.

The workarounds everyone else uses are precisely the capacities the protected class is substantially limited in.

Memory recall

Requires remembering prior encounters with both products. Memory impairment is, by definition, a substantial limitation of this capacity.

Smartphone lookup

Requires reading, formulating a query, evaluating results, and applying them under the time pressure of a grocery aisle. Each step is a recognized barrier for the protected class.

Asking a store employee

Requires initiating an unstructured conversation with a stranger. Autistic adults and others with social anxiety often experience this as a substantial barrier.

Buy and return

Requires tracking the purchase, identifying the need to return, managing the executive function burden, and using transportation twice.

Each covered disability disables a different workaround the rest of us never think about.

Memory impairment

Defeats the “I remember whether this needs milk” strategy. The recalled fact is the thing that is gone.

Intellectual & developmental disability

Can defeat the phone-lookup workaround, which assumes the literacy and device fluency to search and parse a result in the aisle.

Executive function disorders

Defeats the “just ask an employee” strategy, which requires initiating and sequencing an unplanned social task on the spot.

Neutral on its face. Unequal in its effect. That is the definition of disparate impact.

Alexander v. Choate holds that a protected class is entitled to meaningful access to the same benefit, not merely identical treatment. The wrapper treats everyone identically. It does not give everyone meaningful access.

IDENTICAL TREATMENT

Everyone faces the same occluded wrapper.

MEANINGFUL ACCESS

Only some can actually reach the information. The law measures this, not the wrapper.

THREE CONCURRENT VEHICLES

VEHICLE ONE

ADA Title III against the retailer

Effective communication and reasonable modifications obligations reach the retailer's presentation of the product at the point of sale.

VEHICLE TWO

State consumer protection law against the manufacturer

Failure to disclose material information through the multipack configuration reaches UDAP liability under state unfair and deceptive practices statutes.

VEHICLE THREE

Design defect doctrine against the manufacturer

The manufacturer's packaging design choice creates a foreseeable harm to a recognized, identifiable user category whose compensatory strategies the design forecloses.

The three vehicles produce overlapping but distinct remedial pathways that, in combination, reach both the retailer's presentation conduct and the manufacturer's design conduct.

The carveout addresses what the retailer must stock. The presentation obligation is separate, and it reaches this harm.

Title III's inventory selection carveout (28 C.F.R. §36.307) does not reach how the retailer presents what it stocks. The effective communication and reasonable modifications obligations apply regardless of what the place sells, and they reach the occlusion pattern directly.

Effective communication · 28 C.F.R. §36.303

Requires auxiliary aids and services where necessary. Shelf tags, staff assistance, and accessible format materials are compliance options.

Reasonable modifications · 28 C.F.R. §36.302

Modifying the policy of presenting multipack products without supplementary point-of-sale information is a reasonable modification that does not fundamentally alter the retailer's offerings.

STATE CONSUMER PROTECTION LAW

Against the manufacturer

Every state has enacted UDAP legislation requiring disclosure of material information at the point of sale. The multipack configuration conceals material information through its design. No specific harmed consumer must be identified for a state attorney general action; civil penalties and injunctive relief produce both deterrent and remedial effects.

DESIGN DEFECT DOCTRINE

Against the manufacturer

Cognitively disabled consumers are a recognized, identifiable user category. The Restatement (Third) of Torts: Products Liability supports liability where a design creates a foreseeable harm to a recognized user category whose compensatory strategies the design forecloses. The redesign is technically straightforward and minimally costly.

A safer alternative design is cheap and obvious. That is what makes the configuration a defect.

Foreseeable harm

The configuration predictably hides material information from a known, federally recognized population.

Risk-utility balance

The utility of the occluding wrapper is retail bundling. The risk it imposes is denial of access at the point of sale.

Cheaper alternative

Print the instructions on the wrapper, or orient the inner boxes outward. Near-zero cost; the defect is the failure to.

The FDA never required cooking instructions. It cannot preempt a field it never entered.

WHAT IS FEDERALLY MANDATED

Nutrition Facts panel, ingredient list, allergen statements. Preemption reaches these and stops.

WHAT IS NOT

Cooking instructions. A commercial choice, outside the FDA's field, so state UDAP enforcement of their disclosure survives.

01

ADA TITLE III

Against the **retailer**, for the inaccessible presentation of the product at the point of sale.

02

STATE UDAP

Against the **manufacturer**, for failing to disclose material information through the multipack configuration.

03

DESIGN DEFECT

Against the **manufacturer**, for the foreseeable harm of the configuration itself.

Title III private action Against the retailer. A successful action against one national retailer produces compliance across its national footprint.	DOJ administrative complaint Alternative for plaintiffs without litigation resources. DOJ can negotiate consent decrees producing systemic relief.	State AG enforcement Against the manufacturer directly. No specific harmed consumer required for standing. Civil penalties and injunctive relief.
FDA regulatory petition Under 21 C.F.R. Part 10. Slow but durable. Requires rulemaking to mandate outer-wrapper disclosure of certain consumer information.	Class action Under Rule 23(b)(2). State consumer protection statutes and design defect doctrine. Broad-scale design changes through settlement or judgment.	Voluntary design change Manufacturers facing reputational risk and uncertain litigation exposure have economic incentives to display cooking instructions externally. The redesign is technically straightforward and minimally costly.

The Kraft three-pack is one instance of a pattern built into how the category packages itself.

Multipack bundling for retail display recurs across the category.

Preparation information lives on the inner packaging by default.

The outer film is oriented for branding, not instruction. The three features together produce the occlusion.

CONCLUSION

The legal architecture is already established. The novelty is in the application. What is required is the will to bring the case.

The harm is documented

A specific fact pattern, an identifiable protected class, and a design choice whose consequence for that class is demonstrated by the compensatory strategy analysis.

The vehicles are available

Three concurrent civil rights vehicles reaching the retailer's presentation conduct and the manufacturer's design conduct through existing doctrinal structures.

The protected class deserves the protection

The structural commitment of federal disability policy to independent living for cognitively disabled adults is undermined by retail packaging design that treats independent shopping as a luxury for the cognitively unimpaired.

SOURCES Gilly, Hidden in Plain Sight (2026), sec. VIII.

Gilly, T. (2026). *Hidden in Plain Sight: Multipack Wrapper Occlusion as Cognitive Disability Disparate Impact under ADA Title III, State Consumer Protection Law, and Design Defect Doctrine.* Real Safety AI Foundation, working paper (v1).

CASES AND STATUTES

Alexander v. Choate, 469 U.S. 287 (1985).

Americans with Disabilities Act Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

Henrietta D. v. Bloomberg, 331 F.3d 261 (2d Cir. 2003).

Mark H. v. Hamamoto, 620 F.3d 1090 (9th Cir. 2010).

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

Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002).

42 U.S.C. §12182(a)(Title III prohibition).

28 C.F.R. §36.302 (reasonable modifications).

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

28 C.F.R. §36.307 (inventory selection carveout).

21 C.F.R. Part 10 (FDA petition procedure).

SECONDARY SOURCES

American Law Institute. (1998). *Restatement (Third) of Torts: Products Liability*.

Centers for Disease Control and Prevention. (n.d.). *Disability and health overview*. Retrieved from <https://www.cdc.gov/disability/>

U.S. Department of Justice, Civil Rights Division. (n.d.). *Title III technical assistance materials on effective communication*. Retrieved from <https://www.ada.gov/topics/effective-communication/>

U.S. Equal Employment Opportunity Commission. (n.d.). *ADAAA implementing regulations and interpretive guidance*. Retrieved from <https://www.eeoc.gov/regulations/29-cfr-part-1630-equal-employment-opportunity>