



## Provoking early-stage settlements through motions to dismiss

- Common misconception that fact-oriented motions to dismiss are not worth making
- Too many lawyers suppose that because of the fact-intensive nature of false advertising cases, motions to dismiss are a waste of time.
- Not so!!!



## Motions To Dismiss

- Standing
  - Injury in fact
  - Reliance
  - Extraterritorial application of state-law statutes
- Preemption
- Primary jurisdiction
- *Bell Atlantic Corp. v. Twombly; Ashcroft v. Iqbal*



## Motion to Dismiss: *Twombly* and *Iqbal*

- *Twombly/Iqbal* test: Accepting a Complaint's non-conclusory allegations of fact as true, does the Complaint plausibly set forth a claim for relief?
  - Documents attached to the complaint can undermine its allegations
- Pleading failures are more common in class actions than in Lanham Act cases.



## Other useful tools

- Because many state law false advertising statutes sound in fraud, the particularity requirements of Rule 9(b) are very defense-friendly.
- Ascertainable loss requirements