

absence of a reliable showing of their frequency or cause, the Court declines to hold that these incidents indicate a material difference between the goods sold by plaintiff and defendants that consumers would consider in making their purchases.

Turning to plaintiff's arguments that packaging and labeling distinctions between its goods and defendants' create a material difference, it is not clear that a reasonable consumer would deem these relevant or likely be confused by them. The Court reaches the same conclusion with plaintiff's claims about tracking codes. As to both, a jury could reasonably come out either way.

SO ORDERED.

U.S.D.J.

Dated: Brooklyn, New York
June 20, 2018