

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

MICHAEL HENSEL, individually and on)
behalf of all others similarly situated in)
Missouri,)
)
Plaintiff,)
)
v.)
)
ANDREA’S FINE FOODS, INC. and)
ANDREA’S GLUTEN FREE, LLC,)
)
Defendants.)

No. _____

JURY TRIAL DEMAND

Serve by Mail to:

ANDREA’S FINE FOODS, INC.
Andrea Kosinski RAGT
14254 Fingerlake Dr.
Chesterfield MO 63017

ANDREA’S GLUTEN FREE, LLC
Andrea Mary Kosinski
14254 Fingerlake Dr.
Chesterfield MO 63017

CLASS ACTION PETITION AND JURY DEMAND

Plaintiff, Michael Hensel, individually and on behalf of all others similarly situated in Missouri, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

CASE SUMMARY

1. This case arises out of Defendants Andrea’s Find Foods, Inc. and Andrea’s Gluten Free, LLC’s (combined, “Andrea’s” or “Defendants”) deceptive, unfair, and false merchandising practices regarding its “All Natural” Pumpkin Pie and “All Natural” Pie Crust (the “Products”).

2. On the label of the Products, Defendants represent that the Products are “All Natural,” which leads Missouri consumers to believe that the Products only consist of natural ingredients.

3. The Products, however, contain Xanthan Gum (the “Synthetic Ingredient”), which is a synthetic, unnatural substance.

4. Because the Products contain the Synthetic Ingredient, the representation that the Products are “All Natural” is false, deceptive, and misleading.

5. In addition, by claiming the Products are “All Natural,” the label of the Products creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Products are solely comprised of ingredients which are natural, when in fact the Products contain a synthetic ingredient. Moreover, the overall format and appearance of the label of the Products has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Products are only comprised of natural ingredients.

6. Plaintiff brings this case to recover damages for Defendants’ false, deceptive, and misleading marketing and advertising in violation of the Missouri Merchandising Practices Act (“MMPA”) and Missouri common law.

PARTIES

7. Plaintiff, Michael, is a Missouri citizen and resident of St. Louis, Missouri. On at least one occasion during the Class Period (as defined below), including in February 2017, Plaintiff purchased Defendants’ “All Natural” Pumpkin Pie at Dierbergs for personal, family, or household purposes. The purchase price of the Product (the Pumpkin Pie) was \$15.99. Plaintiff’s claim is typical of all class members in this regard.

8. The labels of each of the Products—including that Plaintiff has not purchased—are substantially similar in that each claims the Product is “All Natural” and lists the Synthetic Ingredient. Accordingly, Plaintiff has standing to pursue claims relating to Product (the Pie Crust) he did not actually purchase.

9. Defendant Andrea’s Fine Foods, Inc. is a Missouri corporation with its principal place of business in Chesterfield, Missouri.

10. Defendant Andrea’s Gluten Free, LLC is a Missouri limited liability company with its principal place of business in Chesterfield, Missouri.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

7. Plaintiff believes and alleges that the total value of Plaintiff’s individual claims is, at most, equal to the refund of the purchase price paid for the Product, or \$15.99.

8. This Court has personal jurisdiction over Defendants pursuant to Missouri Code § 506.500, as Defendants are citizens of the State of Missouri.

9. Venue is proper in this forum pursuant to Missouri Code § 508.010 because Plaintiff is a resident of the City of St. Louis and his injury occurred in St. Louis.

10. Plaintiff and Class Members do not seek to recover punitive damages or statutory penalties in this case.

ALLEGATIONS OF FACT

11. Defendants manufacture, sell, and distribute the Products.

12. Knowing that consumers like Plaintiff are increasingly interested in purchasing Products that do not contain potentially harmful synthetic ingredients, Defendants sought to take advantage of this growing market by labeling certain Products as “All Natural.”

13. By affixing such a label to the packaging of the Products, Defendants can entice consumers like Plaintiff to pay a premium for the Products or pay more for it than they otherwise would have had the truth be known.

14. The label of the Products is deceptive, false, and misleading in that Defendant prominently represents that the Products are “All Natural” when they are not.

15. The Products are not “All Natural” because they contain Xanthan Gum.

16. Xanthan Gum is a synthetic thickener that is commercially manufactured by Cargill and others by fermenting bacteria with a carbohydrate (often GMO corn syrup), which is then sterilized and dried with isopropyl alcohol or ethanol before being pressed and ground for distribution.

17. 7 C.F.R. 205.605(b) identifies Xanthan Gum as a synthetic substance.

18. Consistent with FDA guidance, Plaintiff and reasonable consumers reasonably believe and assume that Products labeled “All Natural” do not contain any synthetic ingredients.

19. Neither Plaintiff nor any reasonable consumer would expect to find synthetic ingredients in Products labeled “All Natural.”

20. Neither Plaintiff nor any reasonable consumer would know nor should know that the Synthetic Ingredient is not natural when reviewing the product label.

21. Because of Defendants’ deceitful label, Defendants could charge, and Plaintiff paid, a premium for the Products.

22. The Products, moreover, were worth less than they were represented to be, and Plaintiff and Class Members paid extra for them due to the “All Natural” label.

23. Defendants’ misrepresentations violate the MMPA’s prohibition of the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact about the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

CLASS ALLEGATIONS

24. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on his own behalf and on behalf of a proposed class of (“Class Members” of the “Class”):

All citizens of Missouri who purchased Andrea’s “All Natural” Pumpkin Pie and/or “All Natural” Pie Crust in the five years preceding the filing of this Petition up through the present date (the “Class Period”).

25. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendants have a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

26. Upon information and belief, the Class consists of hundreds of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

27. There are numerous and substantial questions of law or fact common to all the members of the Class and which predominate over any individual issues. Included within the common question of law or fact are:

a. Whether the “All Natural” claim on the Products’ label is false, misleading, and deceptive;

b. Whether Defendants violated the MMPA by selling the Products with false, misleading, and deceptive representations;

c. Whether Defendants’ acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising;

d. Whether the label of the Products creates false impressions and has the tendency and capacity to mislead consumers;

e. Whether Defendants were unjustly enriched; and

f. The proper measure of damages sustained by Plaintiff and Class Members.

28. The claims of the Plaintiff are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiff and Defendants’ conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

29. Plaintiff will fairly and adequately protect the interests of Class Members and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

30. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other

group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claim presented in this case predominates over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoy their ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendants has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendants.

31. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendants.

32. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. Therefore, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

COUNT I

Violation of Missouri's Merchandising Practices Act

30. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

31. Missouri's Merchandising Practices Act (the "MMPA") prohibits the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact about the sale or advertisement of any merchandise in trade or commerce § 407.020, RSMo.

32. Defendants' conduct constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts about the sale or advertisement of any merchandise in trade or commerce because Defendants misrepresent that the Products are "All Natural" when they in fact contains the Synthetic Ingredient.

33. In addition, by claiming the Products are "All Natural," the label of the Products creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Products are solely comprised of ingredients which are natural, when in fact the Products contain a Synthetic Ingredient. Moreover, the overall format

and appearance of the label of the Products has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Products are only comprised of natural ingredients.

34. The Products were therefore worth less than the Products as represented, and Plaintiff and Class Members paid extra or a premium for them.

35. Neither Plaintiff nor any reasonable consumer would expect the Synthetic Ingredient to be in Products labeled “All Natural.”

36. Neither Plaintiff nor any reasonable consumer would know nor should know that the Synthetic Ingredient are not natural.

37. Plaintiff and Class Members purchased the Products for personal, family, or household purposes and thereby suffered an ascertainable loss because of Defendants’ unlawful conduct as alleged herein, including the difference between the actual value of the product and the value of the product if it had been as represented.

38. Defendants’ unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2.

COUNT II

Unjust Enrichment

39. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

40. By purchasing the Products, Plaintiff and the class members conferred a benefit on Defendants in the form of the purchase price of the fraudulent Products.

41. Defendants appreciated the benefit because, were consumers not to purchase the Products, Defendants would have no sales and make no money.

42. Defendants' acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendants' fraudulent and misleading representations about the Products.

43. Equity cannot in good conscience permit Defendants to be economically enriched for such actions at Plaintiff and Class Members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays the Court:

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class, or, alternatively, require Defendant to disgorge or pay restitution of its ill-gotten gains;
- d. Award pre- and post-judgment interest;
- e. Award reasonable and necessary attorneys' fees and costs; and
- g. For all such other and further relief as may be just and proper.

Dated: May 26, 2017

Respectfully submitted,

By: /s/ Matthew H. Armstrong
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