

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

TONYA KELLY, on behalf of herself and all others similarly situated,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
CAMERON'S COFFEE AND DISTRI- BUTION COMPANY, SERVE:)	Division No.
)	
Robert F. Waldron, CEO)	
5700 12th Avenue East)	
Shakopee, MN 55379)	
)	
Defendant.)	

CLASS ACTION PETITION

Plaintiff Tonya Kelly (“Plaintiff”), on behalf of herself and all other similarly situated consumers in the State of Missouri (defined below), for her Class Action Petition against Defendant Cameron’s Coffee and Distribution Company (“Defendant”), states and alleges as follows:

Nature of the Action

1. This lawsuit arises out of Defendant’s false and deceptive marketing of its Cameron’s Coffee BetterBrew Eco Coffee Pods (“Cameron’s Coffee Pods”), which Defendant represents as 100% compostable and environmentally friendly by generating less waste. Defendant’s representations are false, deceptive, and misleading because the product is only compostable in commercial composting facilities that are not generally available in Missouri. Most Missouri consumers who purchase the Cameron’s Coffee Pods are unable to compost the product, mean-

ing that the environmental benefits of the product are overstated and the character and quality of the product is misrepresented.

2. This uniform misrepresentation is found on all sizes and varieties of Cameron's Coffee Pods and throughout all media used to market and advertise the product, including on-product labels, web-based marketing and print advertisements.

3. Plaintiff and all Missouri consumers who purchased the falsely and deceptively represented Cameron's Coffee Pods have not received the benefit of the bargain because the products they purchased were different from the products as advertised. Each purchaser has suffered ascertainable economic injury in the transaction for Defendant's misrepresented Cameron's Coffee Pods by paying more for the product than it was worth.

4. Defendant's conduct in selling the misrepresented Cameron's Coffee Pods violates the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010 *et seq.*, which prohibits "deception, fraud, . . . false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise." Mo. Rev. Stat. § 407.020.1.

5. The MMPA authorizes Plaintiff to bring this suit as a class action because the alleged unlawful conduct has "caused similar injury to numerous other persons." Mo. Rev. Stat. § 407.025.2. In accordance with the MMPA, Plaintiff seeks certification of a class of Missouri consumers who have purchased the misrepresented Cameron's Coffee Pods at any time from January 4, 2013, to the present.

6. On behalf of herself and the class members, Plaintiff seeks actual damages, pre-judgment and post-judgment interest, and reasonable attorneys' fees and costs.

The Parties

7. Plaintiff Tonya Kelly (“Plaintiff”) is a Missouri citizen and resides in Kansas City, Missouri. She purchased Defendant’s Cameron’s Coffee Pods in Jackson County, Missouri, for personal, family and household purposes. She used the Cameron’s Coffee Pods and planned to compost the waste after use because the packaging indicated that the waste was “100% compostable.” She later discovered that Cameron’s Coffee Pods are only compostable in commercial composting facilities. Only one such facility is found in Missouri, located in Clayton. It was not reasonable or practical for Plaintiff to use the commercial facility in Clayton, Missouri (located approximately 240 miles from the Kansas City metropolitan area) to compost her used Cameron’s Coffee Pods. Due to misrepresented compost attributes, Plaintiff was unable to compost the Cameron’s Coffee Pods and generated unintended waste.

8. Defendant is a Minnesota corporation with its principal place of business and headquarters located in Shakopee, MN. Defendant is engaged in the business of marketing and selling consumer products, including Cameron’s Coffee Pods, in the State of Missouri both online and in numerous retail and grocery stores, including Target, Walmart and Menards, and advertises the products through various means, including on-product labels, web-based marketing and print advertisements.

Jurisdiction and Venue

9. At all relevant times, Defendant transacted business and committed tortious acts in the State of Missouri through its marketing and sale of the misrepresented Cameron’s Coffee Pods product to Missouri consumers. Defendant also invoked the benefits and protections of Missouri law by purposefully availing itself of the privilege of conducting activities in this state.

This Court has personal jurisdiction over Defendant pursuant to Mo. Rev. Stat § 506.500 and Mo. R. Civ. P. 54.06.

10. Venue is proper in this Court pursuant to Mo. Rev. Stat. § 407.025.1 because Plaintiff purchased the Cameron's Coffee Pods product in Jackson County, Missouri. Venue also is proper pursuant to Mo. Rev. Stat. § 508.010(4) because Defendant is not a resident of the State of Missouri.

Factual Allegations

11. Defendant Cameron's Coffee and Distribution Company is a beverage producer specializing in home-brewed coffee products. Defendant represents itself to be environmentally friendly and sustainable in its agricultural practices and coffee packaging. Its product line includes a variety of pods for single-serving coffee brewing machines, similar to the K-Cup.

12. Cameron's Coffee Pods are advertised and sold to consumers as an environmentally friendly choice in single-serving coffee brewing. Defendant represents the product as a 100% compostable alternative to plastic K-Cup packaging traditionally used for Keurig-style coffee brewers. Specifically, Defendant represents that its Coffee Pods are a good choice for consumers seeking "BETTER TASTE. LESS WASTE."

13. Defendant manufactures and markets its Cameron's Coffee Pods in several varieties available in boxes of varying quantities ranging from 12 pods to 72 pods, including the following roasts and flavors: Breakfast Blend, Chocolate Caramel Brownie, Cinnamon Sugar Cookie, Colombian Supremo, Crème Brulee Latte, Decaf Breakfast Blend, Decaf Vanilla Hazelnut, Donut Shop, French Roast, French Vanilla & Almond, Highlander Grog, Intense French, Jamaica Blue Mountain Blend, Kona Blend, Organic Breakfast Blend, Organic Colombian Supremo, Or-

ganic French Roast, Peppermint, Pumpkin Spice, Toasted Southern Pecan, Vanilla Hazelnut, and Velvet Moon. All varieties of the Cameron's Coffee Pods have been misrepresented as described herein.

14. Defendant's on-product labels for the Cameron's Coffee Pods contain numerous false, deceptive and misleading statements about the nature of the products and their environmental benefit. For instance, various faces of the box proclaim in large, bold, all-caps font set off against a brightly colored contrasting background that the Cameron's Coffee Pods are "**CERTIFIED 100% COMPOSTABLE PODS.**" The top face of the box also claims in similar typeface that the product is a good choice for "**BETTER TASTE. LESS WASTE.**" The box contains qualifiers for this representation, but the size and positioning of the qualifying language is designed to overly emphasize the "**COMPOSTABLE**" nature of the product while significantly downplaying the limitations that the product can only be composted in industrial facilities and is not certified for backyard composting. Label layout differs with different quantities of product (e.g., 12-count or 18-count boxes), but the nature of the typeface, design, and representation remains consistent. Examples of the top product label are shown in the following:



15. This product label has the tendency or capacity to mislead consumers and tends to create a false impression for consumers because it is designed and organized to draw attention to

certain representations that paint an inaccurate picture about the compostability of the Cameron's Coffee Pods. The boldest text stating that the product is "**100% COMPOSTABLE**" appears on the label offset by a band of brightly colored background. The bright background draws the eye to the text contained therein, and consumers will naturally begin reading this section of the box first. The text within the bright band suggests to consumers that the Cameron's Coffee Pods are compostable under all circumstances. The use of numerals and a percent symbol are further designed to draw and capture consumer attention because they are distinguished from the text that otherwise comprises the label. This claim that the product is "**100% COMPOSTABLE**" is the single most important representation on the label, and the presentation of this information invites consumers to not read any further because it appears to definitively answer the question whether the product is readily and easily compostable.

16. The claim that the coffee is a good choice for "**BETTER TASTE. LESS WASTE.**" is similarly represented with large, all-caps typeface that naturally draws in the consumer's attention. The "**LESS WASTE**" claim reinforces the representation that the pods are "**100% COMPOSTABLE.**" Further below on this face of the box is the supporting representation that the pods are made of "**COMPOSTABLE PAPER LID,**" "**COMPOSTABLE RING,**" and "**COMPOSTABLE FILTER.**" These representations are in a similar large, bold, all-caps typeface, with the word "**COMPOSTABLE**" emphasized in red.

17. If consumers do read further, the qualifying language is designed to convince consumers that the product is compostable while encouraging them to gloss over stated limitations. The fine print included on the label is not sufficient to meaningfully qualify the general representations of compostability because that text is too small to be noticed or reviewed in comparison to

the larger, bolder claims of compostability made on the label. The qualifying language is in a different location on different packages rather than consistently placed on all packages.

18. The qualifying language also is insufficient to alert consumers to the fact that the environmental benefits of the product are illusory because commercial composting facilities are generally unavailable. It is a gross understatement to tell consumers that commercial composting facilities “do not exist in many communities” when the truth is that such facilities do not exist in *most* communities. The qualifier about the availability of composting facilities is deceptive and misleading because it fails to inform consumers that commercial composting facilities are not available to a substantial majority of consumers or communities where Cameron’s Coffee Pods are sold in the State of Missouri. The suggestion that consumers should “check locally” for industrial composting facilities is meaningless because the qualifying language does not inform consumers about how to conduct such a search.

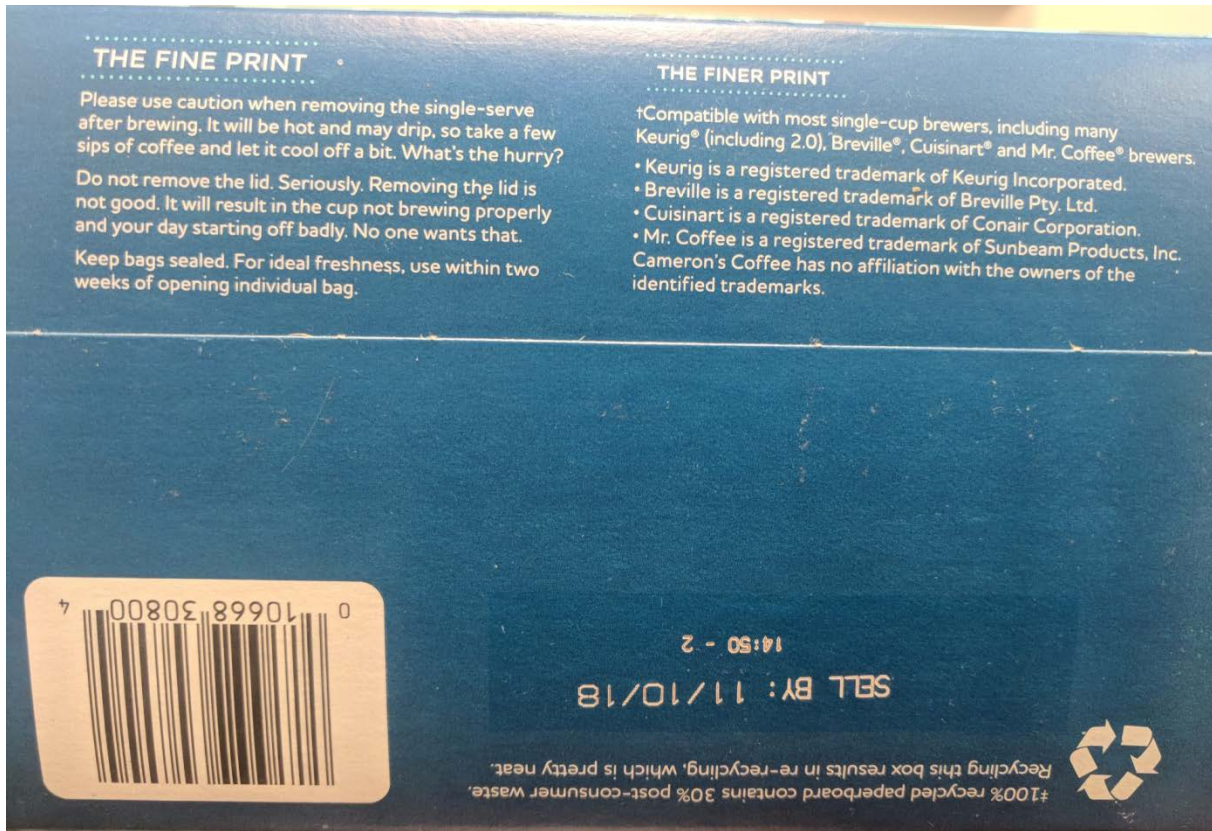
19. The front and the sides of some box sizes include the same representation in large, bold, all-caps font that Cameron’s Coffee Pods are “**100% COMPOSTABLE PODS,**” again offset by a brightly colored background. This face of the box only includes an asterisk and no qualifying language pertaining to the compostability of the pods. Qualifying language is separated from this representation, as it is on a different face of the box. The label continues to overly emphasize the “**COMPOSTABLE**” nature of the product while significantly downplaying the limitations that the product can only be composted in industrial facilities and is not certified for backyard composting. An example of the product’s side label is shown in the following:



20. These representations are false, deceptive and misleading for the same reasons outlined above. In fact, the deception is greater on the sides and front of the box because the qualifying language is absent from the box face and therefore completely separated from Defendant's primary claim that the Cameron's Coffee Pods are "**100% COMPOSTABLE.**"

21. In addition, the top of the Cameron's Coffee Pods box also contains other language misstating and creating a false impression of the environmental benefits of using the product. In particular, the back of the box insists to consumers in large, capitalized font that the product has "**BETTER TASTE. LESS WASTE.**" This purported environmental benefit is grossly exaggerated because commercial composting facilities are not generally available to most consumers, making the Cameron's Coffee Pods non-compostable as a practical matter. The pod will still become waste after use.

22. The bottom of the some boxes includes sections that are labeled "THE FINE PRINT" and "THE FINER PRINT." These sections contain disclaimers about product temperature and safety, correct use of the product in the brewing machine, freshness, and trademark information. These "fine print" sections include no disclaimers about the compostability or environmental benefit of the products. A reasonable consumer who sees a section labeled "THE FINE PRINT" will read this section expecting it to contain important information. This tends to mislead the consumer because a consumer can reasonably believe that any significant disclaimers or qualifying language will be present under a label of "THE FINE PRINT." Instead, the qualifying language about the environmental aspects of the product is not included in this section and must be found elsewhere on the packaging. An example of this disclaimer section follows:



23. Similar coffee products have been examined by the National Advertising Division (“NAD”), the investigative unit of the Advertising Self-Regulatory Council administered by the Council of Better Business Bureaus.¹ The NAD found that the product marketing was deceptive and misleading for the following reasons:

- a. The phrase “compostable in industrial facilities” contradicts the main claim that the product is “certified 100% compostable” and the message that the product is easily compostable, and is not sufficiently clear or conspicuous such that consumers will notice, read and understand it as a qualification of the main claim and message.

¹ See *NAD Recommends Kauai Coffee Modify, Discontinue Certain Environmental-Benefits Claims for Coffee Pods, Finds Certain Claims Supported*, ASRC (May 17, 2017), <http://www.asrcreviews.org/nad-recommends-kauai-coffee-modify-discontinue-certain-environmental-benefits-claims-for-coffee-pods-finds-certain-claims-supported/>.

- b. The invitation for consumers to check locally for more information about available commercial composting facilities does not cure the deceptive and misleading claims about compostability because consumers should not have to search to learn more about the limitations on an advertising claim.
- c. The product's environmental benefits are significantly overstated because commercial composting facilities are largely unavailable.

24. The NAD also found that similar product misrepresentations made on online and in print advertisements for the coffee pods similar to Cameron's Coffee Pods are also misleading. The Cameron's Coffee website, for example, emphasizes, "YOUR FAVORITE PODS - NOW 100% COMPOSTABLE!" The site has failed to advise that commercial composting facilities are not available in a majority of communities. As such, these representations overstate the environmental benefits of the product. Based on the NAD's standards and recommendations for similar representations, Defendant's online advertisements are deceptive and misleading for the same reasons.

25. Throughout the class period, Defendant has uniformly made false, deceptive and misleading claims about the compostability and environmental benefits of Cameron's Coffee Pods, which are designed to appeal to consumer preferences for "green" products. These claims result in greater product sales and allow Defendant to charge a premium price for the products because consumers who buy them are willing to pay more for products represented as environmentally friendly.

26. Defendant's false, deceptive and misleading marketing of Cameron's Coffee Pods has caused uniform economic harm to Plaintiff and the Class by depriving them of the benefit of

the bargain. By purchasing Cameron's Coffee Pods at a premium price, Plaintiff and all other Missouri consumers have suffered an ascertainable loss because the products purchased do not have the qualities and characteristics advertised and are worth less than advertised products.

Class Action Allegations

27. Plaintiff brings this class action for violation of the MMPA pursuant to Mo. R. Civ. P. 52.08 and Mo. Rev. Stat. § 407.025 on behalf of all consumers who have purchased Cameron's Coffee Pods in the State of Missouri for personal, family or household purposes at any time from January 4, 2013, to the present (the "Class"). Excluded from the Class are (1) Defendant, subsidiaries and affiliates of Defendant, directors and officers of Defendant, and members of their immediate families; (2) federal, state, and local governmental entities; and (3) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

28. Members of the Class are so numerous that their individual joinder herein is impracticable.

29. Common questions of law and fact exist for all Class members. The MMPA claims of Plaintiff and all Class members arise from a common nucleus of operative fact including questions regarding: (1) the existence of Defendant's uniform representations about the compostability and environmental benefits of the Cameron's Coffee Pods; (2) whether Defendant's representations are false, deceptive and misleading; and (3) the existence of uniform economic harm to consumers who purchased the falsely and deceptively marketed Cameron's Coffee Pods products. The MMPA claims of Plaintiff and all Class members are linked by the common questions of law regarding the legality of Defendant's conduct under the MMPA and the entitlement

of Class members to damages under the statute. These common questions of law and fact are amenable to class-wide resolution based on common evidence.

30. Plaintiff's MMPA claim is typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's unlawful conduct. Plaintiff has no interests that are antagonistic to the interests of the other members of the Class. Plaintiff and all members of the Class have sustained economic injury arising out of the unlawful conduct for which Defendant is liable.

31. Plaintiff is a fair and adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to represent. Plaintiff has retained competent and experienced counsel, who are fair and adequate representatives of the proposed Class because they will vigorously prosecute this action and do not have any conflicts of interest. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

32. Common issues predominate over individual issues in this case because the overriding issues of liability and damages under the MMPA can be determined on a class-wide basis from common evidence regarding Defendant's uniform misconduct and the uniform economic harm to class members who purchased the Cameron's Coffee Pods.

33. Class treatment is the superior method of adjudicating the class members' MMPA claims because it avoids the inefficiencies and inconsistencies of piecemeal litigation and ensures that all class members are given their day in Court. Class treatment also is expressly authorized by the MMPA. *See* Mo. Rev. Stat. § 407.025.2.

Count I
(Violation of the Missouri Merchandising Practices Act)

34. Plaintiff incorporates by reference the allegations in all paragraphs of this Petition as though fully set forth in this paragraph.

35. Plaintiff brings this MMPA claim individually and on behalf of the members of the Class, all of whom purchased Defendant's Coffee Pods for personal, family or household purposes.

36. The Cameron's Coffee Pods products are "merchandise" under Section 407.010(4) of the MMPA, which defines "merchandise" as including "any objects, wares, goods, [or] commodities." Mo Rev. Stat. § 407.010(4).

37. At all times relevant to this action, Defendant has made false, deceptive and misleading representations about the Cameron's Coffee Pods and has used deceptive means of advertising and selling the product to consumers by falsely promising compostable coffee pods and significant environmental benefits to consumers with no practical means of composting the product. This misconduct is described in detail in Paragraphs 11 through 24 above. Defendant's actions constitute unlawful practices under Section 407.020.1 of the MMPA, which prohibits the use of misrepresentation and deception in connection with the sale or advertisement of consumer goods. Mo. Rev. Stat. § 407.020.1.

38. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and the members of the Class have suffered an ascertainable loss of money under the benefit of the bargain rule by paying more for the Cameron's Coffee Pods than the product was worth had it not been falsely and deceptively represented.

Stipulation as to Amount in Controversy

39. Plaintiff hereby stipulates that the amount in controversy on her individual claim does not exceed the sum or value of \$75,000, exclusive of interest and costs, as she is not seeking, will not seek, and will not accept damages on her individual claim in excess of \$75,000.00. Plaintiff stipulates that in no event will she request or accept an award of attorneys' fees in this case that would cause the amount in controversy to exceed the sum or value of \$75,000 on her individual claim or the aggregate sum or value of \$5,000,000 on the class claims, exclusive of interest and costs. A copy of Plaintiff's affidavit and stipulation to this effect is attached hereto as **Exhibit A**.

40. The undersigned counsel hereby stipulates that in no event will his firm request or accept an award of attorneys' fees that would cause the amount in controversy in this case to exceed the sum or value of \$75,000 on Plaintiff's individual claims or the aggregate sum or value of \$5,000,000 on the class claims, exclusive of interest and costs. A copy of the undersigned counsel's affidavit and stipulation to this effect is attached hereto as **Exhibit B**.

Prayer for Relief

WHEREFORE, Plaintiff prays for judgment against Defendant Cameron's Coffee and Distribution Company, and in favor of Plaintiff and the Class for actual damages, pre-judgment and post-judgment interest, reasonable attorneys' fees and costs of suit.

Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

SHANK & MOORE, LLC

By: /s/ Christopher S. Shank

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