

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.

JOHN SCHOTT, Individually and on
Behalf of All Others Similarly Situated,

CLASS REPRESENTATION

Plaintiff,

vs.

BLK. BRANDS LLC; and BLK.
ENTERPRISES LLC,

Defendants.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff JOHN SCHOTT (“Plaintiff”) alleges the following based upon personal knowledge as to himself and his own acts, and upon information and belief and the investigation by Plaintiff’s counsel, which included, among other things, a review of public documents, marketing materials, and announcements made by BLK BRANDS LLC and BLK ENTERPRISES LLC (collectively, “Defendants”) as to all other matters. Plaintiff believes that substantial additional evidentiary support exists for the allegations set forth herein and will be available after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

1. This is an action for damages that exceed \$15,000.00, exclusive of interest, court costs, and attorneys’ fees.
2. Venue is proper in this County, where the Plaintiff resides and where the cause of action accrued.

NATURE OF THE ACTION AND ALLEGATIONS OF FACT

3. This action seeks to remedy the unfair, deceptive, and unlawful business practices of Defendants with respect to the marketing, advertising, labeling, and sales of Blk. Premium Alkaline Water (the “Product” or “blk.”).

4. Defendants bottle, distribute, advertise, and sell blk. to members of the public as “Premium Alkaline Water.” Unlike typical bottled water products, blk. is colored black. As stated on the bottle, the coloring is due to the presence of fulvic trace minerals, which are added to the water before bottling. The label urges consumers, “Don’t let the color scare you, this stuff is black for a reason. The naturally black trace minerals react with the pure water which gives blk its black color.” An image of the Product is pictured below.



5. Fulvic acid is a type of humic acid, which in turn is a principal component of humic substances, the major organic constituents of soil, peat, coal, and certain bodies of water. It is a byproduct of the biodegradation of dead organic matter. When present in treated drinking water, fulvic acid can react with the chemicals used in the chlorination process to form disinfection byproducts that are toxic to humans.¹

6. On the bottle, Defendants claim that blk. provides “pure premium hydration.” The label directs consumers to a website, getblk.com, which invites readers to “[d]iscover the power of Fulvic minerals.” According to the website, blk. provides a host of natural benefits – these include “life-giving” fulvic acid, electrolytes which allow users of the product to stay “properly hydrated,” and a pH balance that enables the body to obtain a “proper” alkaline pH balance.

7. Through their website, television advertising, and product packaging, Defendants create the distinct impression that the consumption of blk. will provide substantial health benefits which cannot be obtained from conventional bottled water products not treated with fulvic trace minerals.

8. However, Defendants’ labeling, advertising, and marketing campaign is false and misleading because: (1) drinking water does not affect blood pH, so blk. cannot promote a “proper” alkaline pH balance; (2) there are no demonstrable benefits to human beings from ingesting fulvic acid; and (3) there is no evidence that blk. is any more “hydrating” than conventional bottled water products.

9. When purchasing blk., Plaintiff relied on Defendants’ misrepresentations that blk. is premium bottled water product providing health benefits including increased hydration and

¹ See http://en.wikipedia.org/wiki/Humic_acid (last visited Apr. 16, 2015).

promoting a proper alkaline pH balance. Plaintiff would not have purchased blk. had he known the truth. Plaintiff suffered an injury by purchasing the Product at inflated prices. Instead of receiving a premium and health-promoting bottled water product, Plaintiff received ordinary bottled water distinguished only by its black coloring.

10. Defendants' conduct of falsely marketing, advertising, labeling, and selling blk. as a premium and health-promoting bottled water constitutes unfair, unlawful, and fraudulent conduct; is likely to deceive members of the public; and is unethical, oppressive, unscrupulous, and/or substantially injurious to consumers, because, among other things, it misrepresents the characteristics of goods and services. As such, Plaintiff seeks relief in this action individually and as a class action on behalf of all purchasers in Florida of Defendants' blk. (the "Class").

PARTIES

11. Plaintiff is a citizen of Florida and an individual consumer. During the Class Period, Plaintiff purchased blk. multiple times, with his last purchase occurring on or about February 2015 at Whole Foods, 299 SE 33d Avenue, Miami, Florida. Prior to purchasing the Product, Plaintiff read and relied upon false and misleading statements that were prepared by and/or approved by Defendants and their agents and disseminated through the Product packaging.

12. Defendants BLK. Brands LLC and BLK. Enterprises LLC are both privately held New York corporations, headquartered in New Jersey. Defendants distribute, market, advertise, and sell blk. in Florida and throughout the rest of the United States.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action individually and as a class action pursuant to Florida Rule of Civil Procedure 1.220 on behalf of himself and the Class defined as follows:

All persons in Florida who purchased the Product from its introduction in 2011 until the date notice is disseminated for personal or household use, and not for resale or distribution purposes. Specifically excluded from this Class are Defendants; the officers, directors, or employees of Defendants; any entity in which Defendants have a controlling interest; and any affiliate, legal representative, heir, or assign of Defendants. Also excluded are those who assert claims for personal injury as well as any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

14. The Class is sufficiently numerous, as each includes thousands of persons who have purchased the Product. Thus, joinder of such persons in a single action or bringing all members of the Class before the Court is impracticable. The question is one of a general or common interest of many persons and it is impractical to bring them all before the Court. The disposition of the claims of the members of the Class in this class action will substantially benefit both the parties and the Court.

15. There are questions of law and fact common to each Class member, including whether Defendants' advertising, labels and packaging include uniform misrepresentations. The members of each Class were and are similarly affected by having purchased the Product for its intended and foreseeable purpose as promoted, marketed, advertised, packaged, and labeled by Defendants as set forth in detail herein, and the relief sought herein is for the benefit of Plaintiff and other members of the Class. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

16. Plaintiff asserts claims that are typical of the claims of each respective Class member. Plaintiff and all members of the Class have been subjected to the same wrongful conduct. Plaintiff paid a premium for the Product based on Defendants' misrepresentations. Plaintiff and the members of the Class have thus all overpaid for the Product.

17. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel experienced in litigation of this nature to represent him. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

18. Class certification is appropriate because Defendants have acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. Defendants utilize an integrated, nationwide messaging campaign that includes uniform misrepresentations that misled Plaintiff and the other members of the Class.

19. Class certification is appropriate because common questions of law and fact substantially predominate over any questions that may affect only individual members of the Class. Among these common questions of law and fact are:

- a. whether Defendants misrepresented or omitted material facts in connection with the promotion, marketing, advertising, packaging, labeling, and sale of the Product;
- b. whether Defendants' labeling of the Product is likely to deceive the members of the Class;
- c. whether Defendants' conduct is unethical, oppressive, unscrupulous, and/or substantially injurious to consumers;
- d. whether Defendants represented that the Product has characteristics, benefits, uses, or qualities that it does not have;

e. whether Defendants' acts and practices in connection with the promotion, marketing, advertising, packaging, labeling, distribution, and sale of the Product violated the laws alleged herein;

f. whether Plaintiff and members of the Class are entitled to injunctive and other equitable relief; and

g. whether Defendants were unjustly enriched by their conduct.

20. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by the members of the Class. Similar or identical statutory and common law violations and deceptive business practices are involved. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

21. The injuries sustained by Plaintiff and the members of the Class flow, in each instance, from a common nucleus of operative facts – Defendants' misconduct.

22. Plaintiff and the members of the Class have been damaged by Defendants' misconduct. The members of the Class have paid for a product that would not have been purchased in the absence of Defendants' deceptive scheme, or, alternatively, would have been purchased at a lesser price.

23. Proceeding as a class action provides substantial benefits to both the parties and the Court because this is the most efficient method for the fair and efficient adjudication of the controversy. Members of the Class have suffered and will suffer irreparable harm and damages as a result of Defendants' wrongful conduct. Because of the nature of the individual claims of the members of the Class, few, if any, could or would otherwise afford to seek legal redress against Defendants for the wrongs complained of herein, and a representative class action is therefore the appropriate, superior method of proceeding and essential to the interests of justice

insofar as the resolution of claims of the members of the Class is concerned. Absent a representative class action, members of the Class would continue to suffer losses for which they would have no remedy, and Defendants would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought by individual members of the Class, the resulting multiplicity of lawsuits would cause undue hardship, burden, and expense for the Court and the litigants, as well as create a risk of inconsistent rulings, which might be dispositive of the interests of the other members of the Class who are not parties to the adjudications and/or may substantially impede their ability to protect their interests.

CAUSE OF ACTION

(Unjust Enrichment)

24. Plaintiff re-alleges each and every allegation contained in Paragraphs 1-23 as if fully set forth herein.

25. Plaintiff brings this claim individually, as well as on behalf of members of the Class.

26. At all times relevant hereto, Defendants deceptively labeled, marketed, advertised, and sold blk. to Plaintiff and the Class.

27. Plaintiff and members of the Class conferred upon Defendants non-gratuitous payments for blk. that they would not have due to Defendants' deceptive labeling, advertising, and marketing. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and members of the Class, with full knowledge and awareness that, as a result of Defendant's deception, Plaintiff and members of the Class were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendants and reasonable consumers would have expected.

28. Defendants have been unjustly enriched in retaining the revenues derived from purchases of blk. by Plaintiff and members of the Class, which retention under these circumstances is unjust and inequitable because Defendants misrepresented that blk. is a premium bottled water product providing health benefits including increased hydration and promoting a proper alkaline pH balance, when in fact it is not, which caused injuries to Plaintiff and members of the Class because they paid a price premium due to the mislabeling of blk.

29. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiff and members of the Class under these circumstances made Defendants' retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendants must pay restitution to Plaintiff and members of the Class for its unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

A. that the Court certify the Class under Rule 1.220 of the Florida Rules of Civil Procedure and appoint Plaintiff as Class Representative and his attorneys as Class Counsel to represent the members of the Class;

B. that the Court declare that Defendants' conduct violates the law referenced herein;

C. that the Court preliminarily and permanently enjoin Defendants from conducting their business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and misleading labeling and marketing and other violations of law described in this Complaint;

D. that the Court order Defendants to conduct a corrective advertising and information campaign advising consumers that the Product does not have the characteristics, uses, benefits, and quality Defendants have claimed;

E. that the Court order Defendants to implement whatever measures are necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;

F. that the Court order Defendants to notify each and every individual and/or business who purchased the Product of the pendency of the claims in this action in order to give such individuals and businesses an opportunity to obtain restitution from Defendants;

G. that the Court order Defendants to pay restitution to restore to all affected persons all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or a fraudulent business act or practice, untrue or misleading labeling, advertising, and marketing, plus pre- and post-judgment interest thereon;

H. that the Court order Defendants to disgorge all monies wrongfully obtained and all revenues and profits derived by Defendants as a result of its acts or practices as alleged in this Complaint;

I. that the Court award damages to Plaintiff and the Class;

J. that the Court award Plaintiff and the Class their attorneys' fees and costs pursuant to statute, the common fund doctrine, and/or any other appropriate legal theory; and

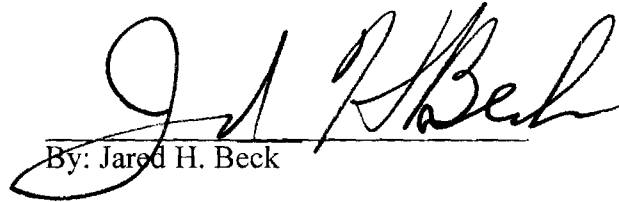
K. that the Court grant such other and further relief as may be just and proper.

JURY DEMAND

30. Plaintiff demands a trial by jury on all causes of action so triable.

~signature page follows~

DATED: September 17, 2015



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