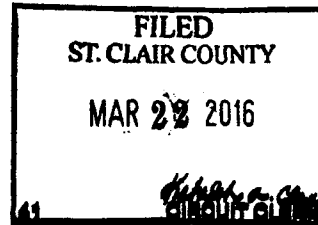


IN THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS

JUDY KREMMELE, individually and on behalf of all others similarly situated in Illinois,
Plaintiff,
v.
PACIFIC FOODS OF OREGON, INC.,
Defendant.

162156
No. ~~HOAR 243~~



CLASS ACTION COMPLAINT

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

CASE SUMMARY

1. This case arises out of Defendant Pacific Foods of Oregon, Inc.'s ("Defendant") deceptive, unfair, and false practices regarding its All Natural Hazelnut Non-Dairy Beverage and All Natural Hemp Non-Dairy Beverage (the "Products").

2. On the label of the Products, Defendant prominently represents that the Products are "all natural." The Products, however, are not "all natural" because they contain one or more of the following synthetic ingredients: Tricalcium Phosphate, Xanthan Gum, Vitamin A Palmitate, and Riboflavin (the "Synthetic Ingredients").

3. The FDA does not object to the use of the term natural to describe a food if the food does not contain any added color, artificial flavors, or synthetic substances. Likewise,

Plaintiff and reasonable consumers reasonably believe and assume that products labeled “natural” do not contain any added color, artificial flavors, or synthetic substances.

4. Because the Products contain the Synthetic Ingredients, the representation that the Products are “all natural” is unfair, false, deceptive, and misleading.

5. By claiming that the Products are “all natural,” Defendant deceives consumers into believing that the Products are only comprised of natural ingredients, when they in fact contain the Synthetic Ingredients.

6. Plaintiff brings this case to recover damages for Defendant’s false, deceptive, unfair, and misleading marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) and Illinois common law.

PARTIES

7. Plaintiff, Judy Kremmel, is a resident of St. Clair County, Illinois. On at least one occasion during the Class Period (as defined below), including in March 2016, Plaintiff purchased Pacific all natural Hazelnut Non-Dairy Beverage at Fresh Thyme Farmers Market for personal, family, or household purposes after reviewing the “all natural” label, which deceived her. If Plaintiff had known the Product was not in fact “all natural,” she would not have purchased it or would have paid less for it. The purchase price of the Product was \$2.99. Plaintiff’s claim is typical of all class members in this regard. The label of both of the Products is substantially similar in claiming that the Product is “all natural” when it is not.

8. Defendant Pacific Foods of Oregon, Inc. is an Oregon corporation with its principal place of business at 19480 SW 97th Ave., Tualatin, OR 97062.

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 her individual claims is, at most, equal to the refund of the purchase price she paid for the Product. There is therefore no diversity jurisdiction over this case.

8. Because the value of Plaintiff's claims is typical of all class members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees is far less than the five million dollar (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no CAFA jurisdiction for this case.

9. Defendant cannot plausibly allege that it had sufficient sales of the Products in Illinois during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

10. This Court has personal jurisdiction over Defendant because Defendant has had more than minimum contacts with the State of Illinois and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendant has committed affirmative tortious acts within the State of Illinois that gives rise to civil liability, including distributing the fraudulent Products for sale throughout the State of Illinois.

11. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because the transaction out of which the causes of action arose occurred in this county.

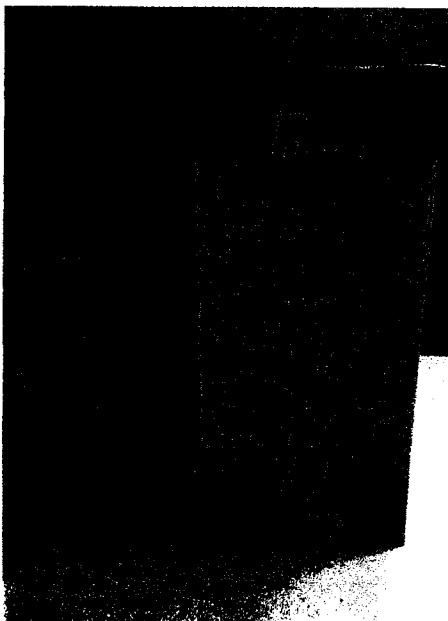
12. Plaintiff and Class Members do not seek to recover punitive damages or statutory penalties in this case.

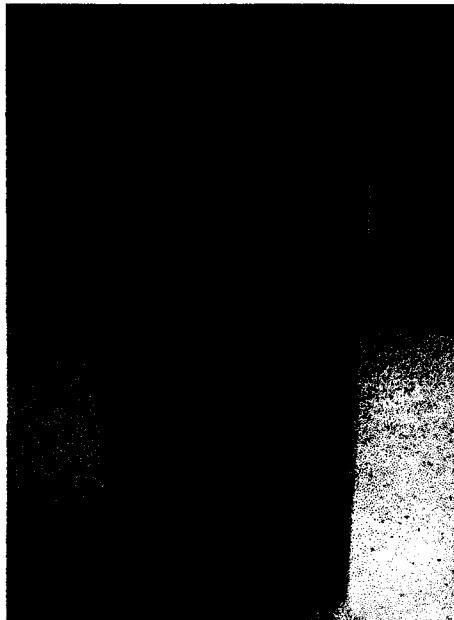
ALLEGATIONS OF FACT

13. Defendant manufactures, sells, and distributes “all natural” food and drink products, including the Products.

14. Knowing that consumers like Plaintiff are increasingly interested in purchasing healthy food products that do not contain potentially harmful artificial, synthetic ingredients, Defendant has sought to take advantage of this growing market by labeling certain products as “all natural.” By affixing such a label to the packaging of the Products, Defendant is able to entice consumers like Plaintiff to pay a premium for the Products.

15. The label of each Product is deceptive, unfair, false, and misleading in that Defendant prominently represents that the Products are “all natural”:





16. The Products, however, are not all natural because they contain the Synthetic Ingredients.

17. Tricalcium Phosphate is a synthetic calcium salt of phosphoric acid. 7 C.F.R. 205.605(b) identifies Tricalcium Phosphate as a synthetic substance.

18. Xanthan Gum is a synthetic thickener that is commercially manufactured by the likes of Cargill 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. 7 C.F.R. 205.605(b) identifies Xanthan Gum as a synthetic substance.

19. Vitamin A Palmitate is synthetic Vitamin A.

20. Riboflavin is synthetic Vitamin B2.

21. Neither Plaintiff nor any reasonable consumer would expect to find synthetic ingredients in a product labeled "all natural."

22. Neither Plaintiff nor any reasonable consumer when reviewing the label of the Products would know nor should know that Tricalcium Phosphate, Xanthan Gum, Vitamin A Palmitate, and Riboflavin are artificial, synthetic ingredients.

23. As a result of Defendant's deceitful labels, Defendant was able to charge and Plaintiff and class members paid a premium for the Products. Because they are not in fact "all natural," the Products were worth less than they were represented to be, and Plaintiff and class members paid extra for them.

24. Defendant's misrepresentation constitutes unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation within the meaning of the ICFA.

CLASS ALLEGATIONS

25. Pursuant to 735 ILCS 5/2-801 *et. seq.*, Plaintiff brings this action on her own behalf and on behalf of a proposed class of all other similarly situated persons ("Class Members" of the "Class") consisting of:

All persons in Illinois who purchased Pacific All Natural Hazelnut Non-Dairy Beverage and/or All Natural Hemp Non-Dairy Beverage for personal, household, or family purposes in the five years preceding the filing of this Petition (the "Class Period").

26. 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 Defendant has 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.

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

28. There are numerous and substantial questions of law or fact common to all of 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' labels is unfair, false, misleading, and deceptive;

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

c. Whether Defendant intended that Plaintiff and the Class Members would rely on its "all natural" representations;

d. Whether Defendant's acts constitute unfair, deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;

e. Whether Defendant was unjustly enriched; and

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

29. 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 Defendant's conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

30. 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.

31. 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 Defendant profits from and enjoys its 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 Defendant 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 Defendant.

32. 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 Defendant.

33. 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. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

Count I

Violation of the ICFA

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

31. The ICFA declares the following to be unlawful: "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact...in the conduct of any trade or commerce[.]" 815 Ill. Comp. Stat. Ann. 505/2.

32. Defendant's conduct in advertising and selling the Products as "all natural" when they in fact contain the Synthetic Ingredients constitutes the act, use and employment of deception, fraud, false pretenses, false promises, misrepresentation, and unfair practices in the conduct of Defendant's trade or commerce.

33. Defendant intended that Plaintiff and the Class Members would rely on its "all natural" representations. Defendant is aware that consumers like Plaintiff and Class Members are becoming more and more interested in purchasing natural, healthy products that do not contain synthetic, potentially harmful ingredients. Defendant intended to prey on this interest.

34. The "all natural" misrepresentation is material because it concerns the type of information upon which a reasonable consumer would be expected to rely in making a decision whether to purchase.

35. Because Defendant is in the business of selling food and beverage products, Defendant committed the unfair and deceptive acts in the conduct of its trade and commerce.

36. Defendant's practice of advertising and selling the Products as "all natural" when they in fact contain the Synthetic Ingredients is also unfair. The practice offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are increasingly interested in purchasing and using healthy, truly natural products without synthetic substances. Selling the Products as "all natural" when they are not offends the public's expectation to be told the truth about the products they are buying.

37. Defendant's conduct causes substantial injury to consumers. Not only are consumers being misled into purchasing Products that are not what they are represented to be, but exposing consumers to unwanted and potentially harmful synthetic ingredients is substantially injurious.

38. Neither Plaintiff nor any reasonable consumer would expect to find synthetic ingredients in Products labeled "all natural."

39. Neither Plaintiff nor any reasonable consumer when reviewing the Products' labels would know nor should know that the Synthetic Ingredients are not natural.

40. Because the Products are not "all natural" as they are represented to be, the Products as sold were worth less than the Products as represented, and Plaintiff and Class Members paid a premium for them. Had the truth be known, Plaintiff and Class Members would not have purchased the Products.

41. Plaintiff and Class Members were deceived by the "all natural" labels on the Products and suffered economic damages as a proximate result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the Products and the value of the Products if they had been as represented.

Count II

Unjust Enrichment

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

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

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

45. Defendant's acceptance and retention of the benefit is inequitable and unjust and violates the fundamental principles of justice, equity, and good conscience because the benefit was obtained by Defendant's fraudulent and misleading representations about the Products.

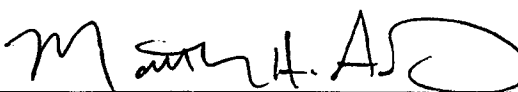
46. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiff and Class Members' expense and in violation of Illinois law, and therefore restitution and/or disgorgement of such economic enrichment is required.

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.

Respectfully submitted,

By: 

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