

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

Sharon K. Martin, individually and on)	
behalf of all others similarly situated in)	
Missouri,)	
)	Case No.: _____
Plaintiffs,)	
v.)	
)	
WM Wrigley Jr. Co.)	Division: _____
)	
Defendant.)	
)	
Serve: WM Wrigley Jr. Co.)	JURY TRIAL DEMANDED
410 N. Michigan Ave)	
Wrigley Building)	
Chicago, Il 60611)	

PETITION AND JURY DEMAND

1. Plaintiff, Sharon Martin, 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.

NATURE OF THE CASE

- 2. This is a slack fill case.
- 3. This case arises out of Defendant WM Wrigley Jr. Co.’s (“Defendant”) deceptive, unfair, and false merchandising practices regarding its Eclipse Gum 2-Pack (the “Gum” or the “Product”).
- 4. The Gum is packaged in an opaque container. Only after purchase, and upon opening the container, do consumers see that the Gum is packaged in sheets which contain empty tabs. This packaging deceives reasonable consumers as to the amount of gum contained in the product. The empty tabs serve no functional purpose, and so constitute unlawful slack fill.

5. Plaintiff brings this case to recover damages for Defendant's false, deceptive, and misleading marketing and advertising in violation of the Missouri Merchandising Practices Act ("MMPA") and Missouri common law.

PARTIES

6. Plaintiff Sharon Martin is a resident of Blue Springs, Missouri. On at least one occasion during the Class Period (defined below), including on March 4, 2017, Plaintiff purchased the Product at a Price Chopper grocery store located in Jackson County, Missouri, for personal, family, or household purposes and for evaluative purposes of this lawsuit. The purchase price was \$1.09. Plaintiff's claim is typical of class members in this regard.

7. Wm. Wrigley Jr. Company is a Delaware corporation with its headquarters located at 410 North Michigan Avenue, Wrigley Building, Chicago, Illinois 60611, and its agent is The Corporation Trust Center, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Defendant has not designated a registered agent in Missouri. Therefore, Defendant can be served by mail pursuant to the Missouri Rule of Civil Procedure 54.16.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. The amount in controversy, however, is less than \$75,000 per Plaintiff and Class Member individually and less than \$5,000,000 in the aggregate.

9. 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 Gum. Moreover, 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, will not exceed

\$4,999,999 and is far less than the five million dollar (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no diversity or CAFA jurisdiction for this case.

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

11. This Court has personal jurisdiction over Defendant pursuant to § 506.500, RSMo, as Defendant has had more than minimum contact with the State of Missouri and has 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 Missouri that gives rise to civil liability, including distributing the fraudulent Gum for sale throughout the State of Missouri.

12. Venue is proper in this forum pursuant to § 508.010, RSMo because Plaintiff's injury occurred in Jackson County and because Defendant is not a resident of this State.

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

14. This pleading demands unliquidated damages. Accordingly, it is intended to limit recovery to an amount less than that required for diversity or CAFA jurisdiction in federal court.

ALLEGATIONS OF FACT

15. Defendant produces, markets, and sells foodstuffs—including the Gum—throughout the United States, including Missouri.

16. As part of its packaging, labeling, and sales, Defendant packages the Gum in an opaque wrapper that contains empty, non-functional tabs. This filling deceives a reasonable consumer by inflating the apparent quantity of Gum within the packaging.



17. The empty tabs are non-functional slack fill. On the sides marked “pull here,” to remove the sheets of gum, the tabs are full. When a consumer does pull the tab, the twin packs then swing away from the pull-tab side and close on the hinged side, which is the side containing the empty tabs. That gum does not fill the package is thus not apparent until the tabs of gum are removed from the package. These empty tabs serve no functional purpose, are not apparent to purchasers, and comprise non-functional slack fill.

18. Defendant then placed the Gum with the misleading packaging into the stream of commerce, where they were purchased by Plaintiff and Class Members.

19. Defendant’s purpose in using the misleading packaging was to create the appearance of a larger amount of product than actually contained within the packaging.

20. Food manufacturers are required to comply with state and federal statutes and regulations pertaining to food containers, including the Food, Drug, and Cosmetic Act (“FDCA”), 21 USC § 343, and its regulations regarding fillings, as set forth in 21 C.F.R. § 100.100 (“Misleading Containers”).

21. Under both federal and Missouri law, Defendant lacks any lawful justification for the slack fill in the Product.

22. Defendant’s 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 in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

CLASS ALLEGATIONS

23. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, 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 Missouri who purchased an Eclipse Gum Twin-Pack in the five years preceding the filing of this Petition (the “Class Period”).

24. 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, its 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.

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

26. 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 Gum's label is false, misleading, and deceptive;
- b. Whether Defendant violated the MMPA by selling the Gum with false, misleading, and deceptive representations;
- c. Whether Defendant's acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising; and
- d. The proper measure of damages sustained by Plaintiff and Class Members.

27. 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 and there is a sufficient relationship between the damage to Plaintiff and Defendant's conduct affecting Class.

28. Members and Plaintiff have no interests adverse to the interests of other Class Members.

29. Plaintiff will fairly and adequately protect the interests of Class Members and has retained competent and experienced counsel.

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 Defendant's 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 Defendants 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 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. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of Missouri's Merchandising Practices Act

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

34. 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 in connection with the sale or advertisement of any merchandise in trade or commerce." § 407.020, RSMo.

35. The MMPA further provides for a civil action to recover damages in § 407.025.1, RSMo, as follows:

Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

36. Defendant's 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 in connection with the sale or advertisement of any merchandise in trade or commerce in that the packaging of the Gum leads consumers to believe that the Gum contain more product than they actually contain. The Product was therefore worth less than the Product as represented.

37. Plaintiff and Class Members purchased the Gum for personal, family, or household purposes and thereby suffered an ascertainable loss as a result of Defendant's 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. Defendant's unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2, RSMo.

Second Claim for Relief
Negligent Misrepresentation

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

40. Defendant has negligently represented the amount of usable product with the packaging of the Product. In fact, the Product contains far less usable product than the packaging leads consumers to believe.

41. Defendant made such representations with the intent that Plaintiff and Class Members rely on such representation in purchasing the Product.

42. As a result, Defendant has failed to take ordinary care and misrepresented a material fact to the public, including Plaintiff and Class Members, about the Product.

43. Defendant knew or should have known that these omissions and affirmative statements would materially affect Plaintiff and Class Members' decisions to purchase the Products.

44. Reasonable consumers reasonably relied on Defendant's representations set forth herein, and, in reliance thereon, purchased the Product.

45. Reliance was reasonable and justified in that Defendant appeared to be, and represented itself to be, a reputable business.

46. Plaintiff and Class Members suffered an economic loss by paying a price premium for the Product than they would not have paid absent Defendant's misrepresentations.

47. As a direct and proximate result of these misrepresentations, Plaintiff and Class Members were induced to purchase and consume the Product, and have suffered damages to be determined at trial, in that, among other things, they have been deprived of the benefit of their bargain in that they bought Product that was not what they were represented to be, and they have spent money on a Product that had less value than was reflected in the price they paid for the Product.

Third Claim for Relief
Unjust Enrichment

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

49. Plaintiff and the Class Members conferred a benefit on Defendant in that they purchased the Gum that were manufactured, distributed, and sold by the Defendant.

50. Defendant appreciated the benefit because, were consumers not to purchase the Gum, Defendant would have no sales and would make no money from the Gum.

51. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations about the Gum.

52. Equity cannot in good conscience permit Defendant 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

53. 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 in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or, alternatively, require Defendant to disgorge or pay restitution in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and
- f. For all such other and further relief as may be just and proper.

Dated this 6th day of June 2017.

Sharon Martin, Individually, and on Behalf of a
Class of Similarly Situated Individuals, Plaintiff

Submitted By:

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