

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

CATHERINE GRINDEL, individually and)
on behalf of all other similarly situated)
Missouri citizens,)
)
Plaintiff,)
)
v.)
)
LARMAR FOODS, INC.,)
)
Defendant.)

No. _____

Div. 1

JURY TRIAL DEMAND

Serve: LARMAR FOODS, INC.
Paul E. Croy RAGT
204 Farnsworth Rd
Waterville OH 43566

PETITION AND JURY DEMAND

Plaintiff, Catherine Grindel, individually and on behalf of all similarly situated Missouri citizens, allege the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

CASE SUMMARY

1. This case arises out of Defendant LarMar Foods, Inc.’s (“LarMar” or “Defendant”) deceptive, unfair, and false merchandising practices regarding its Garlic Expressions brand “All Natural” Classic Vinaigrette Salad Dressing & Marinade (the “Dressing”).

2. On the label of the Dressing, LarMar prominently represents that the Dressing is “All Natural” which leads Missouri citizens to believe that the Dressing only consists of natural ingredients.

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

4. Because the Dressing contains the Synthetic Ingredient, the representation that the Dressing is “All Natural” is false, deceptive, and misleading.

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

6. 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

7. Plaintiff, Catherine Grindel, is a Missouri citizen residing in the City of St. Louis, Missouri. On at least one occasion during the Class Period (as defined below), including in September or October 2017, Plaintiff purchased Defendant’s “All Natural” Dressing from Straub’s Markets for personal, family, or household purposes. The purchase price of the Dressing was \$4.59. Plaintiff’s claim is typical of all class members in this regard.

8. Defendant LarMar Foods, Inc. is an Ohio corporation with its principal place of business in Perrysburg, Ohio.

JURISDICTION AND VENUE

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

10. Plaintiff believes and alleges that the total value of Plaintiff's individual claim is, at most, equal to the refund of the purchase price paid for the Dressing.

11. Because the value of Plaintiff's claims are 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 dollars (\$5,000,000) minimum threshold to create federal court jurisdiction.

12. There is therefore no diversity or CAFA jurisdiction for this case.

13. LarMar cannot plausibly allege that it has sufficient sales of the Dressing in Missouri during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

14. This Court has personal jurisdiction over Defendant pursuant to Missouri Code § 506.500, as Defendant has more than minimum contacts with the State of Missouri and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendant committed affirmative tortious acts within the State of Missouri that gives rise to civil liability, including distributing the fraudulent Dressing for sale throughout the State of Missouri.

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

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

ALLEGATIONS OF FACT

17. LarMar manufactures, sells, and distributes the Dressing.

18. Knowing that consumers like Plaintiff are increasingly interested in purchasing products that do not contain potentially harmful synthetic ingredients, LarMar sought to take advantage of this growing market by labeling the Dressing as “All Natural.”

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

20. The label of the Dressing is deceptive, false, and misleading in that LarMar prominently represents that the Dressing is “All Natural,” when it is not.

21. The Dressing is not “All Natural” because it contains Xanthan Gum.

22. Xanthan Gum is a synthetic thickener which is commercially-manufactured by Cargill and others by fermenting bacteria with a carbohydrate (often GMO corn Dressing), which is then sterilized and dried with isopropyl alcohol or ethanol before being pressed and ground for distribution. Xanthan Gum is used as a thickening agent.

23. 7 C.F.R. 205.605(b) identifies Xanthan Gum as a synthetic substance.

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

25. Neither Plaintiff nor any reasonable consumer would expect to find the Synthetic Ingredient in Dressing labeled “All Natural.”

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

27. Because of Defendant's deceitful labels, Defendant could charge, and Plaintiff and Class Members paid, a premium for the Dressing.

28. The Dressing, moreover, was worth less than it was represented to be, and Plaintiff and Class Members paid extra for it due to the "All Natural" label.

29. 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 about the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

CLASS ALLEGATIONS

30. 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 ("Class Members" of the "Class"):

All Missouri citizens who purchased Garlic Expressions All Natural Classic Vinaigrette Salad Dressing & Marinade in the five years preceding the filing of this Petition (the "Class Period").

31. 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.

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

33. 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 Dressing’s label is false, misleading, and deceptive;
- b. Whether Defendant violated the MMPA by selling the Dressing 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;
- d. Whether the label of the Dressing creates false impressions and has the tendency and capacity to mislead consumers;
- e. Whether Defendant was unjustly enriched; and
- f. The proper measure of damages sustained by Plaintiff and Class Members.

34. 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 sand Defendant’s conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

35. 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.

36. 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 enjoy 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 Class Members can seek redress for the harm caused to them by Defendant.

37. 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.

38. 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

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

40. 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.

41. 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 about the sale or advertisement of any merchandise in trade or commerce because LarMar misrepresents that the Dressing is "All Natural" when it in fact contains the Synthetic Ingredient.

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

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

43. The Dressing was therefore worth less than the Dressing as represented, and Plaintiff and Class Members paid extra or a premium for it.

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

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

46. Plaintiff and Class Members purchased the Dressing for personal, family, or household purposes and thereby suffered an ascertainable loss because 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.

47. Defendant’s unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2.

COUNT II

Unjust Enrichment

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

49. By purchasing the Dressing, Plaintiff and the Class Members conferred a benefit on Defendant in the form of the purchase price of the fraudulent Dressing.

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

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 Dressing.

52. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiff's 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: June 20, 2018

Respectfully submitted,

By: /s/ Matthew H. Armstrong
Matthew H. Armstrong (MoBar 42803)
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

Stuart L. Cochran (MoBar 68659)
STECKLER GRESHAM COCHRAN PLLC
12720 Hillcrest Rd., Ste. 1045

Dallas TX 75230
Tel: 972-387-4040
Email: stuart@stecklerlaw.com

Attorneys for Plaintiff and the Putative Class