

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

GENERAL MILLS, INC., a Delaware)	Civil No. _____
corporation,)	
)	
Plaintiff,)	
)	
)	
v.)	
)	
CHOBANI, LLC, a Delaware limited)	
liability company,)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff General Mills, Inc. (“General Mills”) for its Complaint against Chobani, LLC (“Chobani”) alleges as follows:

INTRODUCTION

1. This is a civil action for false advertising under the Lanham Act, 15 U.S.C. §1125(a), violation of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, and for common law unfair competition. General Mills seeks preliminary and permanent injunctive relief as well as a determination that Chobani’s conduct constitutes deliberate, willful and/or bad faith conduct such that this should be declared an exceptional case under 15 U.S.C. § 1117(a).

2. Chobani has launched a multichannel national advertising campaign that repeatedly and falsely attacks General Mills’ Yoplait Greek 100® brand of Greek yogurt (hereinafter “Chobani Attack Campaign”), including false claims that Yoplait Greek 100

is laced with a pesticide that is “used to kill bugs.” In fact, the television commercial that leads the Chobani Attack Campaign goes so far as to convey that, because Yoplait Greek 100 is laced with a pesticide, it is so dangerous and unfit to eat that consumers should discard it as garbage. This television commercial is available for viewing on Chobani’s YouTube channel at: https://www.youtube.com/watch?v=wcsP_MhhTQs.

3. These statements and the message unambiguously communicated by the Chobani Attack Campaign are false.

4. The Chobani Attack Campaign is extensive and has multiple elements. Among those elements are: (a) a 30-second television advertisement attacking Yoplait Greek 100 (“Simply 100 TV Ad”); (b) a print advertisement attacking Yoplait Greek 100 (“Simply 100 Print Ad”); and (c) a dedicated website for Chobani Simply 100 available at <http://www.thelighthatsright.com/> (“Simply 100 Website”), and (d) distribution of the aforementioned ads through associated digital and social media channels.¹

5. The unifying theme and consistent falsehood that make up the Chobani Attack Campaign are that Yoplait Greek 100 is toxic and akin to bug spray because it contains the ingredient potassium sorbate. Contrary to what is portrayed in the Chobani Attack Campaign, potassium sorbate (used as a preservative in Yoplait Greek 100) is considered by multiple federal agencies to be a safe and non-harmful food ingredient.

6. The Chobani Attack Campaign nonetheless purports to gravely warn consumers that the potassium sorbate in Yoplait Greek 100 is used to “kill bugs” and

¹ The Simply 100 TV Ad is available for immediate and repeated viewing via broadcast on Chobani’s dedicated YouTube channel. See https://www.youtube.com/watch?v=wcsP_MhhTQs (last visited January 10, 2016). The Simply 100 Print Ad is available at Chobani’s dedicated website for Chobani Simply 100. See <http://www.thelighthatsright.com/> (last visited January 10, 2016).

therefore Yoplait Greek 100 is “bad stuff” that is not “healthy,” and that consumers should treat it as garbage. This is untrue.

7. The offending ads are therefore both literally false by necessary implication and highly misleading. Unless Chobani is immediately enjoined, the Chobani Attack Campaign will irreparably harm General Mills and the goodwill it has developed over several years with millions of dollars to build and protect the Yoplait Greek 100 brand and the Yoplait line of yogurts.

8. By making false and misleading statements concerning General Mills’ Yoplait Greek 100 product, Chobani has violated and continues to violate the Lanham Act and various state laws. General Mills therefore seeks immediate injunctive relief in this action.

THE PARTIES

9. General Mills is a Delaware corporation with its principal place of business located in Minneapolis, Minnesota.

10. Defendant Chobani is a Delaware limited liability company that does business on the Internet and in Minnesota, and has its principal place of business located in Norwich, New York.

JURISDICTION

11. This Court has subject matter jurisdiction over General Mills’ claims for False Advertising under the Lanham Act and common law unfair competition pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §1367, respectively.

12. This Court has supplemental jurisdiction over General Mills' claims arising under the laws of Minnesota pursuant to 28 U.S.C. § 1367(a) because these claims are so related to General Mills' claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

13. Chobani is registered to do business in Minnesota and has continuous and systematic contacts with Minnesota; therefore, this Court has personal jurisdiction over Chobani. The Court also has personal jurisdiction over Chobani because it sells its products to consumers within the State and this judicial district; has disseminated the advertisements at issue in the State and this judicial district; and otherwise conducts business in Minnesota and in this judicial district.

VENUE

14. Venue over this action is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (c). Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2). Defendant Chobani has solicited and made sales of the products that are the subject of General Mills' false advertising and unfair competition claims in this judicial district. The advertisements comprising the Chobani Attack Campaign are also portrayed in multiple places on the internet, broadcast on national networks, and published in print sources with nationwide distribution, all of which are accessible and used by residents of this judicial district.

FACTUAL BACKGROUND

General Mills' Yoplait Greek 100

15. General Mills is one of the world's leading food companies with some of the most recognizable brands including Cheerios, Wheaties, Nature Valley, Bisquick, Betty Crocker, Pillsbury, Go-Gurt, and Yoplait. General Mills invests substantial resources each year promoting, developing and protecting its brands.

16. Among yogurt products, General Mills' largest and most recognizable brand is Yoplait. There is enormous consumer recognition and goodwill associated with the Yoplait brand acquired through massive investment in the development of that brand. For example, in the last five years alone, General Mills has spent in excess of \$900 million in the marketing and advertising of Yoplait products. This includes advertising for Yoplait branded products on television, radio, in newspapers, in nationally-circulated print magazines, and through dedicated Internet and social media channels (e.g., Facebook, Instagram, Twitter, and YouTube).

17. As a result of this enormous effort, there is substantial goodwill and national consumer recognition associated with the Yoplait brand. Yoplait yogurt products are the United States' leading and most-recognized yogurts, with annual revenues in excess of \$1 billion.

18. Among the ways in which General Mills has invested in the Yoplait brand is the development and marketing of new and innovative yogurt products. One such product is Yoplait Greek 100. Yoplait Greek 100 is a Greek yogurt, which contains higher levels of protein than traditional yogurt. Single-serve cups of Yoplait Greek 100

are packaged in 100-calorie containers (hence the “100” in the name). Yoplait Greek 100 comes in over twenty different flavor varieties.

19. General Mills launched its Yoplait Greek 100 brand in 2012. Since that time, General Mills has invested substantially in the product’s marketing and advertising, including nationwide television and print campaigns, as well as marketing through digital channels as described in paragraph 16, above.

20. The market for Greek yogurt—and in particular reduced-calorie Greek yogurt—is driven heavily by consumers for whom the product’s health benefits are very important. This is particularly true of the Yoplait Greek 100 brand, which is marketed in large part on a message that the product is healthy and nutritious (because it is, in fact, healthy and nutritious).

21. In addition, General Mills holds exclusive rights to use United States Trademark Registration No. 4,416,948 for “Yoplait Greek 100” in connection with dairy products, including yogurt.

22. As a result of these substantial efforts, Yoplait Greek 100 yogurt has net annual sales of approximately \$200 million since launch.

23. The market for Greek yogurt is highly competitive, and as a result brand loyalty and brand trust are important to consumers of this product. Brand development and associated brand goodwill are immensely valuable to General Mills for its Yoplait Greek 100 products.

Chobani's Attack Campaign

24. Chobani is a principal and direct competitor of General Mills in the Greek yogurt category. Chobani manufactures and markets a product called "Chobani Simply 100," which is sold nationwide and competes directly with Yoplait Greek 100. Like Yoplait Greek 100, Chobani Simply 100 is a Greek yogurt packaged in a 100-calorie serving size. And, like Yoplait Greek 100, Chobani markets Chobani Simply 100 largely on health and nutrition. Chobani Simply 100 launched in late 2013.

25. On January 6, 2016, General Mills learned of a new and disparaging national advertising campaign by Chobani directed at Yoplait Greek 100. That day AdvertisingAge ("Ad Age"), a magazine that delivers news, analysis, and data on marketing and media, published an online article entitled, "*Chobani Takes Aim At Other Light Greek Yogurts.*"² The article describes Chobani's Attack Campaign saying it "pits Chobani Simply 100 against certain light Greek yogurts from Yoplait and Dannon." Chobani's Chief Marketing Officer is quoted as saying, "Chobani will invest more in Simply 100 than it ever has." The article explains that a twelve-week marketing push by Chobani had commenced immediately and includes "everything from TV commercials and print advertising to coupons and a promotional push at Life Time Fitness gyms."

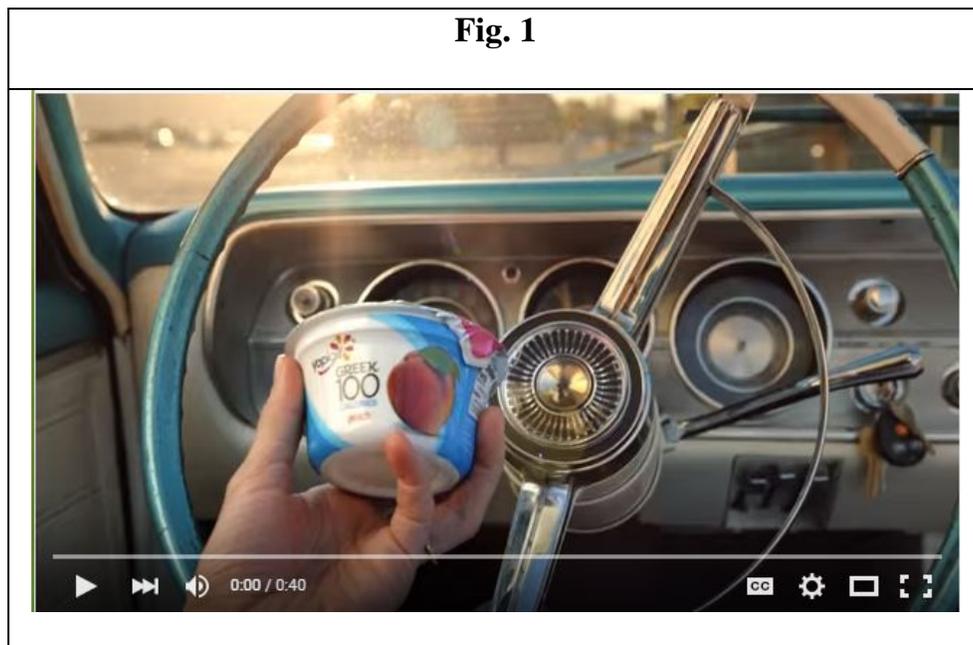
26. The AdAge article also contains links to the ads that Chobani had already started running, directed at General Mills' Yoplait Greek 100. The article starts with a video link to a TV commercial entitled "Chobani 100 - Fruit Stand" (the "Simply 100 TV Ad"). The article also imbeds a copy of a Chobani print ad directed at Yoplait Greek 100

² The full text of the article may be found online at: <http://adage.com/article/cmo-strategy/chobani-campaign-takes-aim-light-greek-yogurts/302008/>.

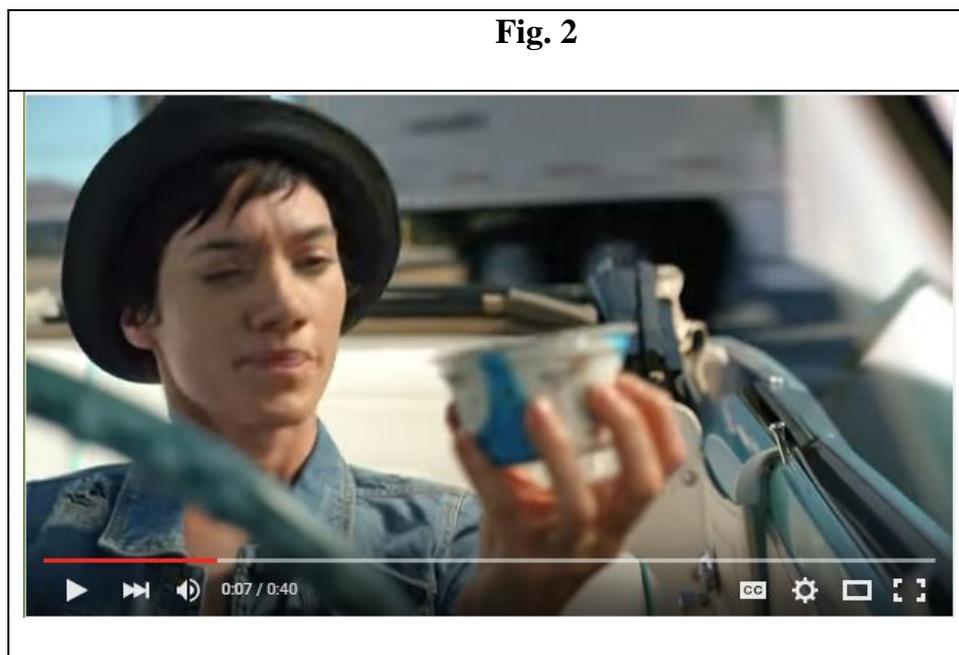
(the “Simply 100 Print Ad”) and includes a link to a website dedicate to the new ad campaign, www.therightthatslight.com, that has a web ad directed at Yoplait Greek 100 (the “Simply 100 Website”). The advertisements communicate an unambiguously false message that Yoplait Greek 100 contains a toxic pesticide “used to kill bugs,” and that as a result the Yoplait Greek 100 product is not fit or safe to eat, and should be thrown away by consumers.

Chobani’s Simply 100 TV Ad

27. The lead element of the Chobani Attack Campaign is the Simply 100 TV Ad. The Simply 100 TV Ad opens with a young woman holding and then examining a container of peach Yoplait Greek 100 yogurt. General Mills’ Yoplait Greek 100 is featured prominently on the screen, as reflected in the screen capture from the Simply 100 TV Ad depicted below in Figure 1:



28. The young woman's examination of the package is accompanied by voiceover narration that states, "Yoplait Greek 100 actually uses preservatives like potassium sorbate." The narration then intones, "Really?! That stuff is used to kill bugs!" Just as this "kill bugs!" narration takes place, the young woman's face is pinched in a look of disgust as she further examines the Yoplait Greek 100 container, as reflected in the screen capture from the Simply 100 TV Ad depicted below in Figure 2:



29. Next, the young woman flings the container of Yoplait Greek 100 into the air, discarding it as garbage. The Simply 100 TV Ad then cuts to a shot of the container of Yoplait Greek 100 flying through the air and landing in crates that have been left in a dirty patch of roadside, depicted in the ad as trash bins. This is reflected in the screen capture from the Simply 100 TV Ad depicted below in Figure 3:

Fig. 3



30. Finally, the Simply 100 TV Ad has voiceover narration that says, “Now there is Chobani Simply 100. It’s the only 100-calorie light Greek Yogurt with zero preservatives.” The ad then concludes with the same young woman examining a container of peach Chobani Simply 100, and opening and eating the yogurt with a look of contentment. At the end of the Simply 100 TV Ad, the term #NOBADSTUFF appears prominently on the screen.

31. The Simply 100 TV Ad is available on the internet via Chobani’s dedicated channel on YouTube, available at: https://www.youtube.com/watch?v=wcsP_MhhTQs. Chobani is also running a 15 second version of the Simply 100 TV Ad that omits the offending comparison to Yoplait Greek 100, and may be viewed at the dedicated Chobani website for Chobani Simply 100 available at: <http://www.thelightthat'sright.com/>.

32. Publicly available news sources indicate that Chobani intends to run television spots associated with the Chobani Attack Campaign for Chobani Simply 100

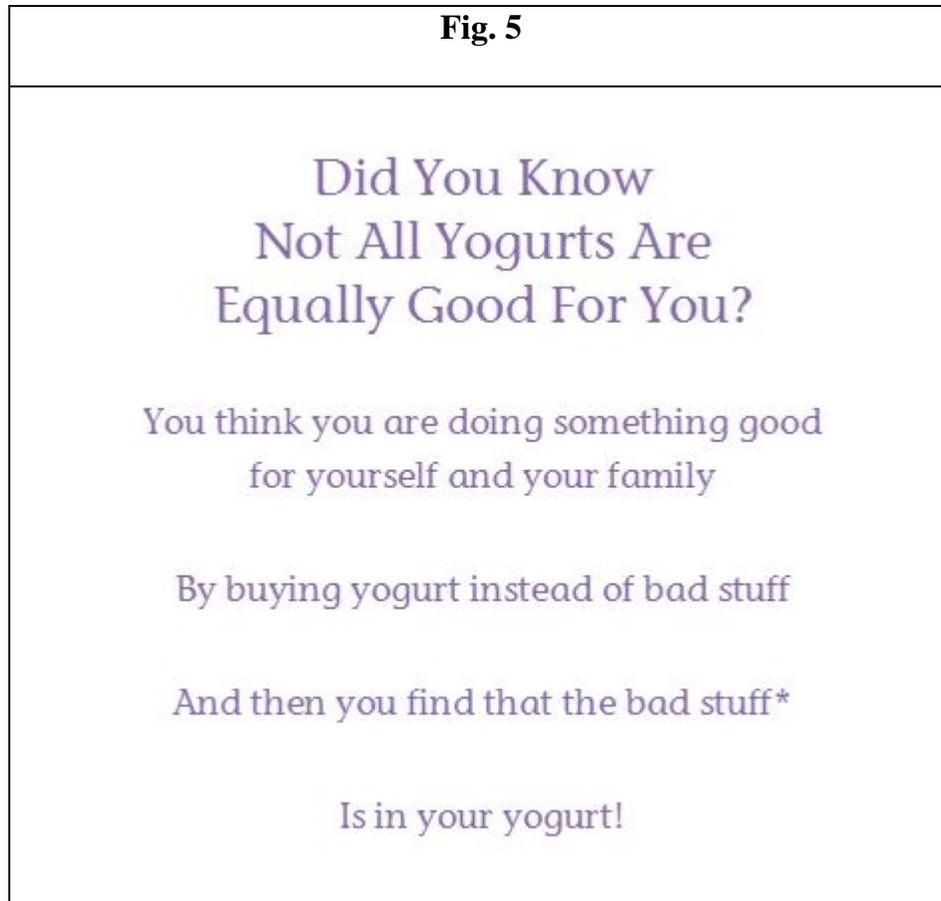
on media outlets nationwide for at least the next twelve weeks. On information and belief, the networks where Chobani intends to air the Simply 100 TV Ad include NBC, the Cooking Channel, the Food Network, HLN, Lifetime, TLC, the ID Network, Bravo, E!, and the USA Network.

33. On further information and belief, the Simply 100 TV Ad attacking Yoplait Greek 100 has already aired on the nationally-broadcast NBC network during primetime programming.

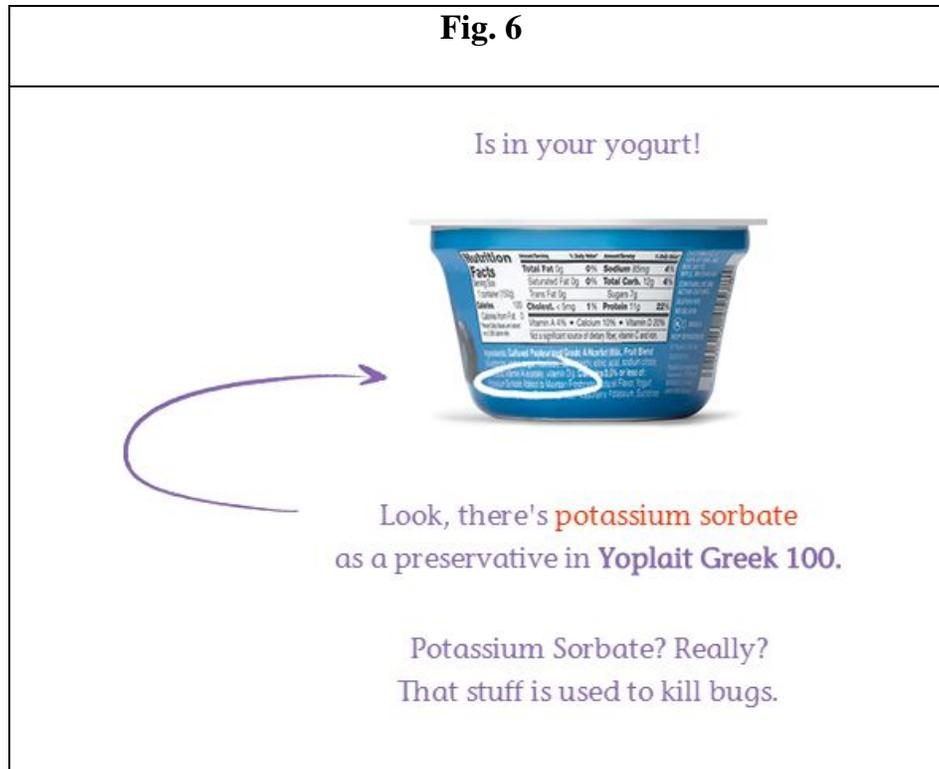
Chobani's Simply 100 Print Ad

34. The second element of the Chobani Attack Campaign is the Simply 100 Print Ad. The Simply 100 Print Ad likewise prominently depicts and attacks General Mills' Yoplait Greek 100 product with false assertions that Yoplait Greek 100 is "bad" because of the presence of potassium sorbate, which is "used to kill bugs."

35. The Simply 100 Print Ad opens with the question "Did You Know Not All Yogurts Are Equally Good for You?" It then goes on to state, "You think you are doing something good for yourself and your family...By buying yogurt instead of bad stuff...And then you find that the bad stuff*...Is in your yogurt!" The asterisk next to the second use of the "bad stuff" language leads to a small print disclaimer at the bottom of the ad, approximately one-eighth the size of the other text in the ad, that states "Artificial Ingredients." These elements of the Simply 100 Print Ad are excerpted and depicted below in Figure 5 below:



36. Next, the Simply 100 Print Ad depicts the back panel of a container of Yoplait Greek 100 with the ingredient list circled, immediately followed by the text “Look, there’s potassium sorbate as a preservative in Yoplait Greek 100. Potassium Sorbate? Really? That stuff is used to kill bugs.” These elements of the Simply 100 Print Ad are excerpted and depicted below in Figure 6:



37. The Simply 100 Print Ad then has intervening text attacking the ingredients of another competitor of Chobani's, Dannon Light & Fit Greek, and concludes with the statement "If you want to do healthy things, know what's in your cup."

38. The AdAge article states the Simply 100 Print Ad is set to appear in a publications with nationwide circulation, including People magazine. The Simply 100 Print Ad has already appeared in the Sunday, January, 10, 2016, edition of the New York Times (which has national distribution) and in the Sunday, January, 10, 2016, edition of the Minneapolis Star-Tribune.

39. In addition the Simply 100 Print Ad may be viewed at the dedicated Chobani website for Chobani Simply 100 available at:

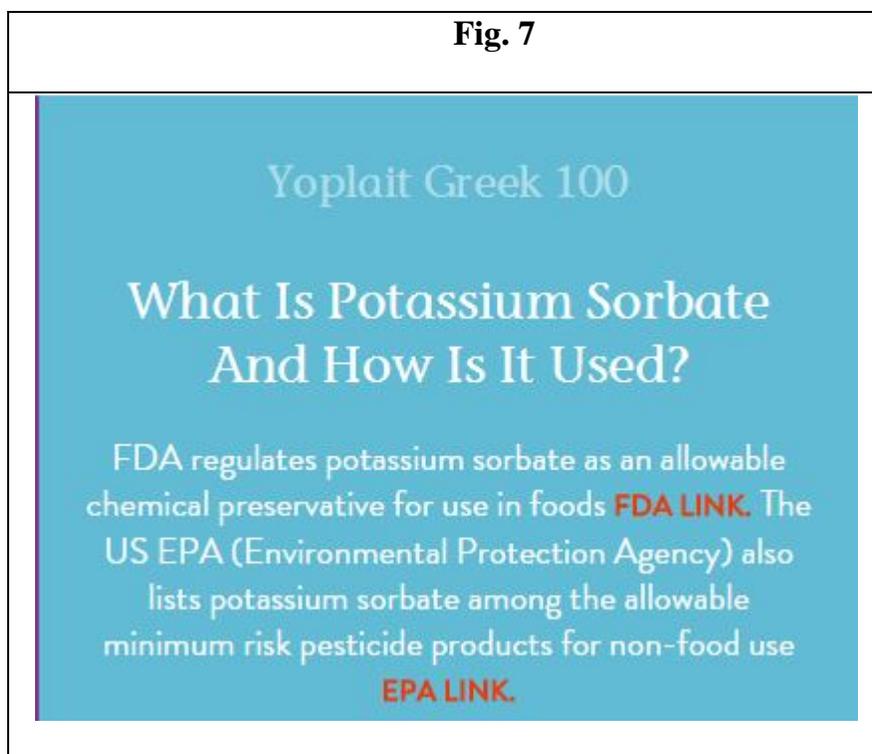
<http://www.thelightthat'sright.com/>.

Chobani's Simply 100 Website

40. A third element of the Chobani Attack Campaign is the Simply 100 Website, which is dedicated exclusively to Chobani Simply 100 (and is entirely separate from the broader Chobani.com website), and can be accessed at the web address: www.thelightthat'sright.com. The Simply 100 Website also incorporates a link that displays the false Simply 100 Print Ad described in ¶¶ 34-39, above.

41. The Simply 100 Website contains a series of interactive links that invites and allows visitors to the website to “Compare Ingredients” between Chobani Simply 100 and Yoplait Greek 100. The Simply 100 Website depicts an image of blueberry Yoplait Greek 100, and once again points to the presence of potassium sorbate.

42. Directly beneath the picture of the Yoplait Greek 100 container is warning language regarding potassium sorbate that describes it as a “pesticide product” and contains a link to an EPA website entitled, “Active Ingredients for Minimum Risk Pesticide Products.” This element of the Simply 100 Website is depicted below in Figure 7:



43. The Simply 100 Website thus falsely communicates that the potassium sorbate should be considered a “pesticide” by consumers as used in Yoplait Greek 100. Specifically, the Simply 100 Website immediately juxtaposes the Yoplait Greek 100 product name with the question “What is Potassium Sorbate And How Is It Used?” The Simply 100 Website then follows that juxtaposition with the reference to potassium sorbate’s use as a “pesticide product.” The message communicated by these juxtapositions on the Simply 100 Website is that the potassium sorbate in Yoplait Greek 100 is equivalent to pesticide.

Potassium Sorbate’s Safety and the Falsity of the Chobani Attack Campaign

44. Contrary to what is falsely communicated by the Chobani Attack Campaign, potassium sorbate has been safely used in food for decades and is widely used

in cheese, dips, wine, dried fruit, and many other food products. The FDA concluded years ago that potassium sorbate is a food additive that is Generally Recognized As Safe (“GRAS”). In 1975, potassium sorbate was confirmed as GRAS by the Select Committee on GRAS Substances (SCOGS) appointed by FDA. Accordingly, the Food & Drug Administration (“FDA”) expressly recognizes, via a duly issued federal regulation, that potassium sorbate is safe for use in food products and human consumption. 21 C.F.R. § 582.3640.

45. Other federal agencies concur in the FDA’s assessment. A report published by the Agricultural Marketing Service arm of the USDA states, “few substances have had the kind of extensive, rigorous, long- term testing that sorbic acid and its salts [such as potassium sorbate] have had. *It has been found to be non-toxic even when taken in large quantities, and breaks down in the body into water and carbon dioxide...*”³ (emphases added).

46. Potassium sorbate is used in food because it works as a fungicide to prevent yeast and mold and thereby preserves the food. Because fungi are also a “pest” for crops, it is used on crops for the same purpose—to control the fungi. General Mills is informed and believes that there is no scientific evidence that potassium sorbate is effective against insects.

47. Along with potassium sorbate, the EPA website page “Active Ingredients Eligible for Minimum Risk Pesticide Products” (linked to Chobani’s Simply 100 Website

³ The full USDA report is available here:
<http://www.ams.usda.gov/sites/default/files/media/P%20Sor%20technical%20advisory%20panel%20report.pdf>.

Ad) lists salt, garlic, cinnamon, corn oil, peppermint, rosemary, sesame, thyme, and many other herbs, spices and oils. Such ingredients, like potassium sorbate are used safely in both food and pesticide products.⁴

FIRST CLAIM FOR RELIEF

(False Advertising Under 15 U.S.C. §1125(a))

48. General Mills alleges and incorporates by reference the allegations in the paragraphs above.

49. Chobani has in the Chobani Attack Campaign made and distributed in interstate commerce and in this judicial district advertisements that contain false and misleading statements of fact regarding General Mills' products. These advertisements contain actual misstatements and/or misleading statements or failures to disclose. Specifically:

(a) Chobani's statement that Yoplait Greek 100 is laced with a pesticide that "is used to kill bugs" is literally false and highly misleading;

(b) Chobani's statement in its Simply 100 TV Ad and Simply 100 Print Ad that potassium sorbate "is used to kills bugs" is literally false and highly misleading;

(c) Chobani's unambiguous assertion in its TV Ad and Print Ad that Yoplait Greek 100 is unhealthy, unsafe, and unfit for human consumption because it contains potassium sorbate which "is used to kills bugs" is false by implication and highly misleading;

⁴ The full list is available here: <http://www.epa.gov/sites/production/files/2015-12/documents/minrisk-active-ingredients-tolerances-2015-12-15.pdf>.

(d) Chobani's unambiguous assertion in its Simply 100 Website that Yoplait Greek 100 is unhealthy, unsafe, and unfit for human consumption because it contains potassium sorbate which is listed as a pesticide by the EPA is false by implication and highly misleading;

(e) Chobani's unambiguous assertion in the Simply 100 TV Ad that Chobani Simply 100 is healthier or safer than Yoplait Greek 100 due to the presence of potassium sorbate, is literally false and highly misleading.

50. These statements actually deceive, or have a tendency to deceive, a substantial segment of General Mills' customers and potential customers. This deception is material in that it concerns an inherent quality or characteristic of General Mills' product and is likely to influence the purchasing decisions of General Mills' customers and potential customers.

51. Chobani's false and misleading advertising statements and omissions injure both consumers and General Mills.

52. Chobani's false and misleading advertising statements and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

53. Chobani has caused, and will continue to cause, immediate and irreparable injury to Plaintiff General Mills, including injury to General Mills' business, reputation and goodwill, for which there is no adequate remedy at law. General Mills is therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Chobani, its agents, employees, representatives and all persons acting in concert with Chobani from engaging

in future acts of false advertising and ordering removal of all of Chobani's false advertisements.

54. Pursuant to 15 U.S.C. § 1117, General Mills is further entitled to recover from Chobani the damages sustained by General Mills as a result of Chobani's acts in violation of 15 U.S.C. § 1125(a). General Mills is at present unable to ascertain the full extent of the monetary damages it has sustained by reason of Chobani's acts.

55. Pursuant to 15 U.S.C. § 1117, General Mills is further entitled to recover from Chobani the gains, profits and advantages that Chobani has obtained as a result of its acts in violation of 15 U.S.C. § 1125(a). General Mills is at present unable to ascertain the full extent of the gains, profits and advantages Chobani has obtained by reason of its acts.

56. Pursuant to 15 U.S.C. § 1117, General Mills is further entitled to recover the costs of this action. Moreover, General Mills is informed and believes, and on that basis alleges, that Chobani's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling General Mills to recover additional damages and reasonable attorneys' fees.

57. Pursuant to 15 U.S.C. § 1116, General Mills is further entitled to an injunction order requiring Chobani to correct any erroneous impression persons may have derived concerning the safety, nature, characteristics, or qualities of General Mills' Yoplait Greek 100 yogurt, including without limitation the placement of corrective advertising and providing written notice to the public.

SECOND CLAIM FOR RELIEF

(Violation of the Minnesota Deceptive Trade Practices Act

Under Minn. Stat. § 325D.44)

58. General Mills alleges and incorporates by reference the allegations in the paragraphs above.

59. Chobani's actions constitute a violation of the Minnesota Deceptive Trade Practices Act in that, among other actions, its statements have and will continue to disparage the goods and business of General Mills by false and misleading representations of fact, as prohibited by Minnesota Statutes, section 325D.44.

60. As a result of Chobani's deceptive trade practices, General Mills is entitled to injunctive relief, as allowed by Minnesota Statutes, section 325D.45, subd. 1.

61. In addition to injunctive relief, General Mills is entitled to its costs and attorneys' fees of this action, pursuant to Minnesota Statutes, section 325D.45, subd. 2.

THIRD CLAIM FOR RELIEF

(Violation of Minnesota Common Law Unfair Competition Law – Product

Disparagement)

62. General Mills alleges and incorporates by reference the allegations in the paragraphs above.

63. The acts and conduct of Chobani as alleged above in this Complaint constitute product disparagement and unfair competition pursuant to the common law of the State of Minnesota.

64. Chobani's acts and conduct as alleged above have damaged and will continue to damage General Mills, including in the form of pecuniary loss and general decline in business, and have resulted in an illicit gain of profit to Chobani in an amount that is unknown at the present time.

PRAYER FOR RELIEF

WHEREFORE, General Mills respectfully requests judgment as follows:

1. For temporary, preliminary and permanent injunctive relief prohibiting Chobani, its agents, or anyone working for, in concert with or on behalf of Chobani from engaging in false or misleading advertising with respect to its Chobani Simply 100 yogurt and General Mills' Yoplait Greek 100 yogurt, and/or violating Section 43(a) of the Lanham Act and/or the Minnesota Deceptive Trade Practices Act, which relief includes but is not limited to removal of all false or misleading advertisements and corrective advertising to remedy the effects of Chobani's false advertising;

2. For an order requiring Chobani to correct any erroneous impression persons may have derived concerning the safety, nature, characteristics, or qualities of General Mills' Yoplait Greek 100 yogurt, including without limitation the placement of corrective advertising and providing written notice to the public;

3. That Chobani be adjudged to have violated 15 U.S.C. § 1125(a) by unfairly competing against General Mills by using false, deceptive or misleading statements of fact that misrepresent the safety, nature, quality, and characteristics of General Mills' Yoplait Greek 100 yogurt;

4. That Chobani be adjudged to have violated the Minnesota Deceptive Trade Practices Act, pursuant to Minn. Stat. § 325D.44 by engaging in deceptive trade practices and injuring General Mills by using deceptive representations in connection with its goods or services;

5. That Chobani be adjudged to have engaged in unfair competition in violation of Minnesota common law;

6. That General Mills be awarded damages General Mills has sustained as a consequence of Chobani's conduct;

7. That General Mills be awarded Chobani's profits obtained by Chobani as a consequence of Chobani's conduct;

8. That General Mills recover its costs and attorneys' fees;

9. That all of Chobani's misleading and deceptive materials be removed and destroyed pursuant to 15 U.S.C. § 1118;

10. That General Mills be granted prejudgment and post-judgment interest; and

11. That the Court grant to General Mills such other and further relief as the Court deems just and proper.

DATED: January 10, 2016

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