

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Gloria Hackman, Individually and on)	
Behalf of All Other Persons Similarly Situated,)	Civil Action No.:
)	
Plaintiff,)	CLASS ACTION
)	COMPLAINT
v.)	
)	
Kraft Heinz Food Company,)	
)	JURY TRIAL DEMANDED
Defendant.)	

PRIVATE ATTORNEY GENERAL AND CLASS ACTION COMPLAINT

COMES NOW Plaintiff Gloria Hackman, on behalf of herself, all other persons similarly situated and the general public of the District of Columbia, by and through undersigned counsel, and pursuant to the District of Columbia Consumer Protection and Procedures Act, DC Code 28-3905 *et seq.* (“D.C. CPPA”), and makes this Complaint against Defendant Kraft Heinz Food Company (“Kraft”). In support of this Complaint, Plaintiff states the following:

JURISDICTION

1. This Court has jurisdiction over Plaintiff’s D.C. CPPA claims pursuant to 28 U.S.C. § 1332(d) and the Class Action Fairness Act (“CAFA”). The parties are diverse and the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.
2. Upon information and belief, at least one member of the proposed Class is a citizen of a state different from that of Defendant, and at least one member of the proposed Class has claims which value in excess of \$75,000, including damages, statutory damages and fees and costs.
3. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because the defendant

resides in this District and its principal place of business is in this District.

4. Upon information and belief, Defendant regularly conducts business in this district.

PARTIES

5. Plaintiff Gloria Hackman is an adult resident of the District of Columbia and a consumer and member of the general public.

6. Kraft Heinz Food Company is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania and Chicago, Illinois. Kraft Heinz Food Company's Principal Executive Offices are located at One PPG Place, Pittsburgh, Pennsylvania

BACKGROUND

6. Each of the preceding paragraphs is incorporated by reference herein.

7. Defendant develops, distributes, advertises and sells numerous products across the globe under its Kraft brand.

8. Defendant has developed, distributed, advertised and sold the product at issue here – “100% Grated Parmesan Cheese” (“Parmesan Cheese”) – at retail locations nationwide, including at its retail locations in the District of Columbia.

8. These products are sold and purchased for personal use and consumption in the District of Columbia.

THE SALE OF CELLULOSE-LADEN PARMESAN CHEESE AS A DECEPTIVE PRACTICE

11. Each of the preceding paragraphs is incorporated by reference herein.

12. Packages and their labels should enable consumers to obtain accurate information as to the nature and quality of the contents and should facilitate value comparisons. When this information is misrepresented, it is deceptive and allows a person, manufacturer, or retailer to mislead consumers such as Gloria Hackman.

13. The container for Defendant's Parmesan Cheese contains a single, conspicuous marketing representation: "100% GRATED PARMESAN CHEESE":



14. This representation leads reasonable consumers to believe that the product is, in fact, 100 percent comprised of parmesan cheese and therefore does not contain substitutes or fillers.

15. Independent laboratory testing completed at the direction of Bloomberg News revealed that Kraft's Parmesan Cheese contained 3.8 percent cellulose. *See* "The Parmesan Cheese You Sprinkle on Your Penne Could Be Wood," Lydia Mulvaney, Feb. 16, 2016, BloombergBusiness, available at <http://www.bloomberg.com/news/articles/2016-02-16/the-parmesan-cheese-you-sprinkle-on-your-penne-could-be-wood>.

16. Cellulose is made from wood pulp and can be used as a filler in food products.

17. Kraft's use of 3.8 percent cellulose filler in its "100% grated parmesan" is a deceptive practice.

18. Kraft's sale of the Parmesan Cheese with 3.8 percent cellulose is deceptive to consumers, including Ms. Hackman, because there is no practical way for them to know, particularly prior to purchase, that the Parmesan Cheese contains filler.

PURCHASE

26. Each of the preceding paragraphs is incorporated by reference herein.

27. On or about March 7, 2016 Plaintiff Gloria Hackman purchased Kraft's Parmesan Cheese at the Kraft at the grocery store Harris Teeter located at 1350 Potomac Avenue SE, Washington DC 20003.

28. This product was sold in a container that contained a single, conspicuous marketing representation: "100% GRATED PARMESAN CHEESE."

29. This package was sealed and unable to be opened, inspected and tested prior to purchase.

30. Gloria Hackman purchased the product for testing and evaluation purposes on her behalf and for the general public.

31. Ms. Hackman has directed the Parmesan Cheese to be tested by an independent laboratory. She expects, based upon available information and belief including on other recent independent testing, that the results will show that the product contains filler, including an amount of cellulose that is deceptive to the consumer and directly contradicts the labeling representation that it is “100% GRATED PARMESAN CHEESE.”

32. Sale of the Parmesan Cheese is a deceptive and unlawful trade practice due to the presence of cellulose as filler, which contradicts the labeling representation that the Parmesan Cheese is “100% GRATED PARMESAN CHEESE.”

33. Upon information and belief, Kraft has sold a significant volume of the Parmesan Cheese in the District of Columbia.

34. Kraft has marketed, advertised, and sold the Parmesan Cheese directly or indirectly (through websites and Kraft stores) to the general public of the District of Columbia.

35. The packaging of the Parmesan Cheese is inherently deceptive as detailed herein and therefore also contrary to the expectations imparted by Defendant through its representations and omissions to consumers, including Gloria Hackman.

36. Plaintiff acts for the benefit of the General Public as a Private Attorney General for claims in this action arising under the DCCPPA, which expressly authorizes an individual to act “on behalf of both the individual and the general public ... seeking relief from the use of a trade practice in violation of a law of the District when that trade practice involves consumer goods or services that the individual purchased....” D.C. Code § 28-3905(k)(1)(B).

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this class action pursuant to Federal Rules of Civil Procedure Rule 23 and case law there under on behalf of herself and all others similarly situated.

38. The Class is defined as: All individuals and entities in the District of Columbia who purchased “100% Grated Parmesan Cheese.” Excluded from the Class and Subclass are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Kraft and their subsidiaries and affiliates; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

39. *Numerosity*: the Class is comprised of at least hundreds of purchasers of the Parmesan Cheese throughout the District of Columbia, making joinder impractical. Moreover, the Class is composed of an easily ascertainable, self-identifying set of individuals and entities who purchased Parmesan Cheese. The members of the Class are so numerous that joinder of all members is impracticable. The precise number of Class members can only be ascertained through discovery, which includes Defendant’s sales, testing, and complaint records. The disposition of their claims through a class action will benefit both the parties and this Court.

40. *Commonality*: The critical question of law and fact common to the Plaintiff Class that will materially advance the litigation is whether the presence of filler, including cellulose, in the Parmesan Cheese is contrary to the expectations imparted by Defendant through its representations and omissions. Furthermore, other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- a. Whether Defendant knew or should have known of the use of cellulose as filler;
- b. Whether Defendant concealed from consumers and/or failed to disclose to consumers the use of cellulose as filler;
- c. Whether Defendant breached the express warranty given to Plaintiffs and the Class;
- d. Whether Defendant breached the implied warranty of merchantability;

e. Whether Plaintiff and the Class are entitled to compensatory damages, including, among other things the failure of consideration in connection with and/or difference in value arising out of the variance between the Parmesan Cheese as warranted and the Parmesan Cheese containing the cellulose;

f. Whether Plaintiff and the Class are entitled to restitution and/or disgorgement;

g. Whether the Class would have purchased their Parmesan Cheese, or whether they would have paid a lower price for them, had they known of the use of cellulose in the Parmesan Cheese as filler.

41. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendant's conduct in developing, marketing, advertising, warranting, and selling the Parmesan Cheese and Defendant's conduct in concealing the cellulose used as filler in the Parmesan Cheese to purchasers.

42. *Adequate Representation*: Plaintiff will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff has retained counsel experienced in the prosecution of complex class actions, including but not limited to consumer class actions involving, *inter alia*, product misrepresentation, breach of warranties and defective products.

43. *Predominance*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also

creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

UNLAWFUL AND DECEPTIVE TRADE PRACTICE – DC Code § 28-3905

Count I

(Brought Individually, on Behalf of the Class and on Behalf of the General Public of the District of Columbia)

44. Each of the preceding paragraphs is incorporated by reference herein.

45. Plaintiff Gloria Hackman on behalf of herself as an individual, on behalf of all others similarly situated and on behalf of the general public files this action pursuant to D.C. Code § 28-3905(k).

46. Kraft's sale of the Parmesan Cheese with cellulose used as filler, and in direct contradiction to its representation that the Parmesan Cheese is "100% GRATED PARMESAN CHEESE," is an unlawful and deceptive trade practice pursuant to DC Code § 28-3904 in that Defendant:

a. Misrepresents a material fact regarding the product's contents that tends to mislead by stating that the product is 100% GRATED PARMESAN CHEESE;

b. Fails to state a material fact regarding the product's contents that tends to mislead by omitting that the product contains a significant amount of cellulose;

c. Uses innuendo or ambiguity as to a material fact regarding the product's contents, which has a tendency to mislead by stating that the product is 100% GRATED PARMESAN CHEESE;

d. Represents that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

e. Sells consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Official Code, or by operation or requirement of federal law;

f. Otherwise misleads.

47. These material misrepresentations affect the general public's ability to comparison shop by materially misleading about the contents and quality of the Parmesan Cheese.

48. Defendant intentionally made these misrepresentations knowing that they had the tendency to mislead consumers, such as Gloria Hackman.

49. Sale of the Parmesan Cheese with cellulose as filler, and in direct contradiction to the representation that it is 100% parmesan cheese, constitutes an unfair trade practice.

50. As a result of this unfair and deceptive trade practice, Gloria Hackman seeks actual damages, statutory damages, punitive damages, injunctive relief, and reasonable attorney's fees for herself and all others similarly situated.

BREACH OF EXPRESS WARRANTY

Count II

(Brought Individually and on Behalf of the Class)

51. Each of the preceding paragraphs is incorporated by reference herein.

52. Kraft expressly warranted that the Parmesan Cheese was 100% parmesan cheese.

53. Kraft also extended express warranting to consumers, including Plaintiff and the Class, by way of product descriptions and representations as to product qualities and characteristics

made in sales literature at Kraft retail locations, on its website, and via advertisements, among other methods.

54. The Parmesan Cheese is not 100% parmesan cheese and contains cellulose as filler.

55. At the time that Kraft made express warranties to Plaintiff and the Class, Kraft knew that the Parmesan Cheese had cellulose. Nevertheless, Kraft continued to place the defective product on the market and failed and omitted to inform its customers, including Plaintiff and class members of its defective nature.

56. Kraft's failure to remedy the defective nature of the Parmesan Cheese constitutes a breach of express warranty.

57. The foregoing breaches of express warranty at issue were substantial factors in causing damages to Plaintiff and the Class.

58. If members of the Class had known the true facts about the presence of cellulose in the Parmesan Cheese, they would have considered that information material in their decisions to purchase the Parmesan Cheese.

59. Plaintiff and members of the Class are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by the District of Columbia as well as all other applicable remedies.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (Brought Individually and on Behalf of the Class)

60. Each of the preceding paragraphs is incorporated by reference herein.

61. Defendant is a merchant who sold the Parmesan Cheese to Plaintiff and the Class for personal use.

62. The Parmesan Cheese bears a label with a promise and affirmation of fact that it is 100 percent parmesan cheese.

63. The Parmesan Cheese, however, contains cellulose as filler, breaching the implied warranty of merchantability.

64. The foregoing breach of the implied warranty at issue were substantial factors in causing damages to Plaintiff and the Class.

65. If members of the Class had known the true facts about the use of cellulose as filler in Parmesan Cheese, they would have considered that information material in their decisions to purchase the Parmesan Cheese.

66. Plaintiff and members of the Class are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by the District of Columbia as well as all other applicable remedies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Gloria Hackman, on behalf of herself, all others similarly situated and the general public of the District of Columbia, prays for a judgment against Defendant as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3);

B. Designating Plaintiff as representative of the Class and her counsel as Class counsel;

C. Entering judgment in favor of Plaintiff, the Class and the general public of the District of Columbia and against Defendant for all compensatory, individual and class damages;

D. Granting Plaintiff, the Class and the general public of the District of Columbia treble damages or statutory damages per violation, whichever is greater;

E. Granting Plaintiff its costs of prosecuting this action, including attorneys' fees, experts' fees and costs together with interest; and

F. Granting an injunction against Kraft that it be barred from producing, manufacturing, packaging and/or selling its Parmesan Cheese with cellulose as filler in the District of Columbia; and

H. Granting such further relief as the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: March 18, 2016

Respectfully submitted,

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 362 Personal Injury - Med. Malpractice
120 Marine 315 Airplane Product Liability 365 Personal Injury - Product Liability
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability
140 Negotiable Instrument 330 Federal Employers' Liability 370 Other Fraud
150 Recovery of Overpayment & Enforcement of Judgment 340 Marine 371 Truth in Lending
151 Medicare Act 345 Marine Product Liability 380 Other Personal Property Damage
152 Recovery of Defaulted Student Loans (Excl. Veterans) 350 Motor Vehicle 385 Property Damage Product Liability
153 Recovery of Overpayment of Veteran's Benefits 355 Motor Vehicle Product Liability
160 Stockholders' Suits 360 Other Personal Injury
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY CIVIL RIGHTS PRISONER PETITIONS
210 Land Condemnation 441 Voting 510 Motions to Vacate Sentence
220 Foreclosure 442 Employment 530 General
230 Rent Lease & Ejectment 443 Housing/Accommodations 535 Death Penalty
240 Torts to Land 444 Welfare 540 Mandamus & Other
245 Tort Product Liability 445 Amer. w/Disabilities - Employment 550 Civil Rights
290 All Other Real Property 446 Amer. w/Disabilities - Other 555 Prison Condition
440 Other Civil Rights

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JS 44AREVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (Erie Johnstown Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. This case is related to Number _____ . Short Caption _____
2. This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

I. CIVIL CATEGORY (Place **x** in only applicable category).

1. Antitrust and Securities Act Cases
2. Labor-Management Relations
3. Habeascorpus
4. Civil Rights
5. Patent, Copyright, and Trademark
6. Eminent Domain
7. All other federal question cases
8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. Insurance indemnity, contract and other diversity cases.
10. Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.BA. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: _____

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.