



**AFTAB PUREVAL
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

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AFTAB PUREVAL
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 598500**

**MATTHEW ADAM AND ALL
OTHER SIMILARLY
SITUATED**

A 1700827

vs.

WAL-MART STORES INC

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH JURY
DEMAND**

PAGES FILED: 12

EFR200

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

MATTHEW ADAM, and all others similarly situated, 1347 Park Ridge Pl. Cincinnati, Ohio 45208	:	Case No.
	:	
	:	Judge
	:	
Plaintiff,	:	PLAINTIFF’S CLASS ACTION COMPLAINT--JURY DEMAND
	:	
vs.	:	
	:	
WAL-MART STORES, INC. c/o CT Corporation System REGISTERED AGENT 1300 East Ninth Street Cleveland, Ohio 44114	:	
	:	
Defendant.	:	

NATURE OF THE CASE

1. This is a class action case brought on behalf of all purchasers of “craft” beer (“Craft Beer”) from Wal-Mart Stores, Inc. (the “Defendant”). Through a fraudulent, unlawful, deceptive and unfair course of conduct, the Defendant, manufactured, marketed, and/or sold its “Cat’s Away IPA”, “After Party Pale Ale”, “Round Midnight Belgian White,” and “Red Flag Amber” Craft Beers to residents of Ohio and 44 other states with the false representation that the Craft Beer is in fact a “craft beer” when, in actuality, nothing about the Defendant is “small, independent and traditional” to qualify it as an American craft brewer per the Brewers Association.

PARTIES

2. Plaintiff is an individual residing in Hamilton County, Ohio, who purchased Craft Beer at a retailer in Hamilton County, Ohio.

3. Defendant is an Ohio foreign corporation that is organized and exists under the laws of Delaware.

JURISDICTION AND VENUE

4. This Court has jurisdiction in this matter because the Defendant routinely transacts business in Hamilton County, Ohio.

5. Venue in this Court because the Defendant does business in Hamilton County and Plaintiff's transaction took place in Hamilton County.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

6. Plaintiff realleges and incorporates herein by reference all of the allegations contained in this complaint as though fully set forth herein.

7. Over the past 25 years, the craft brewing industry in the United States has seen tremendous growth, with the number of craft breweries increasing from approximately 250 in 1989 to more than 5,005 in 2016.

8. Beer consumers, including the Plaintiff, are willing to pay, and do pay, a premium for high quality, small batch, craft beers. On average, a six-pack of craft beer typically costs \$2.00 to \$3.00 more than a six-pack of macrobrewed or mass produced beer.

9. The term "craft beer" is defined by Merriam-Webster Dictionary as, "a specialty beer produced in limited quantities." Similarly, Cambridge Dictionary defines "craft beer" as, "beer made using traditional methods in small independent breweries." The Oxford English Dictionary defines a "craft beer" as "a beer made in a traditional or non-mechanized way by a small brewery."

10. The Brewers Association, an organization dedicated to promoting and protecting American craft brewers, defines a craft brewer as "small, independent and traditional." In order

to qualify as a craft brewer, a brewery must: (a) produce less than 6 million barrels of beer annually; (b) be less than 25 percent owned or controlled by a non-craft brewer; and (c) make beer using only traditional or innovative brewing ingredients.

11. Defendant has been selling its own line of Craft Beer since 2016. It sells four different styles of beer in six or 12-can packs, including variety packs. The Defendant has been scaling the alcoholic offering and the beers are now available in 3,000 stores across 45 states. The Defendant operates more than 11,000 stores around the world.

12. The Defendant collaborates with a company called “Trouble Brewing” to brew its Craft Beer. The trouble is, “Trouble Brewing” doesn’t really exist. The applicant listed on filings with the Treasury Department’s Alcohol and Tobacco Tax and Trade Bureau (“TTB”) is “Winery Exchange, Inc.,” which has since turned into WX Brands.

13. WX Brands “develops exclusive brands of wine, beer and spirits for retailers around the world” according to its website. But under the “brewery address” section of the TTB filings, Genesee Brewing’s business office in Rochester, N.Y. is listed instead. Genesee is owned by another company that brews Costa Rican lager among other industrial brands. Upon information and belief, Genesee produces well over the prescribed amount that would be considered “small.”

14. Defendant’s Craft Beer has never been a “craft beer”, nor has it been produced by a craft brewery. Rather, it is a wholesale fiction created by the Defendant that was designed to deceive consumers into purchasing the Craft Beer at a higher, inflated price. In fact, the Defendant all but admits this. “We were intentional about designing a package that conveyed a look and feel you’d expect of craft beer,” said Teresa Budd, a senior buyer for the Defendant’s adult beverage team. Moreover, the Defendant stocks its Craft Beer next to other “craft beers” for sale in its stores, rather than with other mass produced beers, such as Budweiser, Miller or

Coors products. Again, by placing the Craft Beer on its shelves with other “craft beers”, Defendant is further perpetuating the myth that it’s a Craft Beer.

15. Consumers are particularly vulnerable to these kinds of false and deceptive labeling and marketing practices. Most consumers possess very limited knowledge of the likelihood that products, including the Craft Beer at issue herein, that are claimed to be Craft Beer are in fact: made by a craft brewer that is “small, independent and traditional” that produces less than 6 million barrels of beer annually, is less than 25 percent owned or controlled by a non-craft brewer, and is made using only traditional or innovative brewing ingredients. This is a material factor in many individuals’ purchasing decisions, as they believe they are purchasing a product made in small amounts that is of inherently superior quality.

16. Consumers generally believe that “Craft Beer” products are of higher quality than mass produced counterparts. Due to Defendant’s scheme to defraud the market, members of the general public were fraudulently induced to purchase Defendant’s Craft Beer at inflated prices. Ohio laws are designed to protect consumers from this type of false representation and predatory conduct. Defendant’s scheme to defraud consumers is ongoing and will victimize consumers each and every day until altered by judicial intervention.

THE PLAINTIFF’S TRANSACTION

17. Plaintiff purchased a twelve-pack of “Trouble Brewing Variety Pack” at the Defendant’s Sharonville store located in Hamilton County. The twelve-pack cost approximately \$14.00.

18. When Plaintiff, and Class Members, purchased the Craft Beer, they saw and relied upon the “Craft Beer” representations described in paragraph 10 above. This reliance on “Craft Beer” to make their purchasing decisions is typical of most Ohio consumers.

19. Plaintiff and Class Members were deceived as a result of Defendant's false and misleading labeling. Their purchasing decisions were supported by the "Craft Beer" representations made by Defendant. Plaintiff believed at the time he purchased the Craft Beer that he was in fact buying a high-quality product that was not made in large industrial vats in mass quantities, etc.

20. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as a result of Defendant's false "Craft Beer" claim set forth with the offending product. Furthermore, he suffered an "injury in fact" by paying for something he believed was genuinely "Craft Beer," when it was not. Essentially, the Craft Beer is not worth the purchase price paid. Plaintiff and Class Members are entitled to monetary damages; the specific measure of which is the subject of expert testimony. Plaintiff and Class Members were undoubtedly injured as a result of Defendant's false "Craft Beer" representations that are at issue in this litigation.

CLASS ALLEGATIONS

21. Plaintiff brings this action on behalf of himself as an individual and on behalf of all other persons similarly residing in the State of Ohio who purchased Defendant's Craft Beer (the "Class"). Specifically excluded from the Class are any persons who have a controlling interest in the Defendant, any of Defendant's parent companies, subsidiaries, and Defendant's officers, directors, managers, shareholders and members of their immediate families, and their heirs, successors and assigns. The Class also does not include any persons who previously filed suit against Defendant for similar violations of Ohio law and/or the Judge presiding over this matter and his or her judicial staff.

22. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. On information and belief, the exact number and identities of the members of the Class are ascertainable from the records in Defendant's possession or that of Defendant's retail customers.

23. There is a well-defined community of interest in the questions of law and fact involved in this case.

24. All causes of action herein have been brought and may properly be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable:

a. Numerosity: On information and belief, the Class is so numerous that the individual joinder of all members would be impracticable.

b. Common Questions Predominate: Common questions of law and fact exist as to all members of the Class, and those questions clearly predominate over any questions that might affect members individually. These common questions of law and fact include, for example, whether Defendant violated Ohio Consumer Protection Statutes by misrepresenting the "Craft Beer" nature of the Craft Beer because of the highly automated nature of the manufacturing of the Craft Beer and whether Defendant's actions in this regard constitute an unfair, unlawful, or fraudulent business practice.

c. Typicality: On information and belief, Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class sustained damages arising out of Defendant's common course of conduct complained herein.

d. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the Class because Plaintiff has no interests which are adverse to the interests of absent class members and because Plaintiff has retained counsel who possesses significant litigation experience regarding alleged violations of consumer statutes.

e. Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, since most class members' individual claims for damages are likely to be modest, the expenses and burdens of litigating individual actions would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. An important public interest will be served by addressing the matter as a class action, substantial economies to the litigants and to the judicial system will be realized and the potential for inconsistent or contradictory judgments will be avoided.

COUNT I

(Violation of the Ohio Consumer Sales Practices Act R.C. §1345.01 *et seq.*)

25. Plaintiff realleges the foregoing paragraphs of this Complaint and incorporates them by reference as if fully rewritten here.

26. Defendant have committed and continue to commit unfair and deceptive acts or practices in connection with a consumer transaction, namely manufacturing, selling, marketing, packaging and advertising Craft Beer to consumers with false and misleading statements

concerning the nature of the product, as alleged herein. These unfair and deceptive statements include, but not limited to: the Craft Beer is in fact a “Craft Beer.”

27. Defendant has unfairly and deceptively misrepresented that Craft Beer has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have.

28. Defendant has unfairly and deceptively misrepresented that Craft Beer is of a particular standard, quality, grade, style, prescription, or model that it is not.

29. Defendant has committed and continues to commit these unfair and deceptive acts while knowing that Craft Beer, among others, is not “Craft Beer” and that the Craft Beer is not produced by a small, independent brewery as defined by the Brewers Association.

30. Defendant’s unfair and deceptive practices deceived Plaintiff and the Class.

31. Defendant’s unfair and deceptive practices were material as they influenced Plaintiff’s purchasing and payment decisions.

32. Plaintiff and the Class have been damaged as a direct and proximate result of Defendant’s deceptive and unfair practices.

33. Defendant has violated the Ohio Consumer Sales Practices Act, R.C. §1345.01 *et seq.*

34. Plaintiff and the Class are entitled to recover compensatory damages, plus interest, attorneys’ fees, and costs.

35. Defendant’s conduct was intentional, willful, wanton, malicious, and egregious, entitling Plaintiff and the Class to punitive damages and attorneys’ fees in an amount to be determined at trial.

36. Defendant continue to engage in these deceptive and unfair practices, and

Plaintiff and the Class continue to be damaged by Defendant's conduct. Accordingly, Plaintiff and the Class are also entitled to injunctive relief to prohibit Defendant from continuing to perpetrate their deceptive scheme.

**COUNT III
(Unjust Enrichment)**

37. Plaintiff realleges the foregoing paragraphs of this Complaint and incorporates them by reference as if fully rewritten here.

38. Defendant has benefitted and been unjustly enriched by their wrongful conduct as alleged herein.

39. Defendant has knowledge of these benefits and has voluntarily accepted and retained these benefits.

40. The circumstances are such that it would be inequitable for Defendant to retain these gains without paying their value to Plaintiff and the Class.

41. Plaintiff and the Class are entitled to the amount of Defendant's wrongful gains, including interest, resulting from its unlawful, unjust and inequitable misconduct as described above.

**COUNT IV
(Promissory Estoppel)**

42. Plaintiff realleges the foregoing paragraphs of this Complaint and incorporates them by reference as if fully rewritten here.

43. Defendant made clear and unambiguous representations and promises concerning the Craft Beer. Defendant also concealed material facts relating to these representations and promises so as to render them deceptive and misleading.

44. As a result of Defendant's representations, promises, and deceptive practices

described herein, Defendant induced Plaintiff and the Class to purchase Craft Beer.

45. In reasonable reliance upon Defendant's representations and promises, Plaintiff and the Class purchased Craft Beer.

46. Reliance by Plaintiff and the Class upon Defendant's misrepresentations and promises was reasonably foreseeable.

47. Plaintiff and the Class relied upon Defendant's representations and promises to their detriment, and as a direct and proximate result, Plaintiff and the Class have suffered damages.

48. Plaintiff and the Class are entitled to compensatory damages, plus interest, attorneys' fees and costs.

COUNT V
(Fraud)

49. Plaintiff realleges the foregoing paragraphs of this Complaint and incorporates them by reference as if fully rewritten here.

50. Defendant falsely represented the attributes of the Craft Beer to Plaintiff. Defendant failed to disclose that Trouble Brewing did not exist and actively concealed the true nature of the Craft Beer from Plaintiff in its design and marketing of the product.

51. Defendant's statements and omissions were material to the transaction at hand, as Plaintiff would not have purchased the Craft Beer otherwise.

52. Defendant's statements and omissions were made falsely, with knowledge of their falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred.

53. Defendant intended to mislead Plaintiff into relying upon its statements concerning the Craft Beer.

54. Plaintiff justifiably relied upon the representations when he purchased the Craft Beer.

55. Plaintiff has sustained injury proximately caused by their reliance upon Defendant's misrepresentations.

56. Plaintiff is entitled to compensatory damages, plus interest, attorneys' fees and costs.

57. Defendant's conduct was intentional, willful, wanton, malicious, and egregious, entitling Plaintiff to punitive damages and attorneys' fees in an amount to be determined at trial.

COUNT VI
(Declaratory Judgment/Injunctive Relief)

58. Plaintiff realleges the foregoing paragraphs of this Complaint and incorporates them by reference as if fully rewritten here.

59. Defendant has engaged in deceptive and misleading advertising, labeling, and sale of Craft Beer as set forth above.

60. Plaintiff and the Class seek a declaration that, among others, Defendant has engaged in deceptive and misleading advertising, labeling and sale of Craft Beer, negligent misrepresentation, and has been unjustly enriched.

61. Plaintiff and the Class also seek preliminary and permanent injunctive relief to enjoin Defendant to stop its deceptive and misleading practices concerning the advertising, labeling, and sale of Craft Beer.

WHEREFORE, Plaintiff demands relief as follows:

A. That this action be certified as a class action under Ohio.R.Civ.P. 23;

B. Compensatory damages for Plaintiff and the Class in an amount to be determined at trial;

C. Injunctive relief enjoining Defendant from continuing to engage in the aforementioned false, misleading, and deceptive misconduct with regards to the advertising, packaging and labeling of Craft Beer;

D. Interest, costs and attorneys' fees;

E. A declaration that Defendant has committed the violations of law alleged herein;

F. Judgment for punitive damages;

G. Judgment for interest at the legal rate on the foregoing sums;

H. Such other relief this Court deems appropriate.

Respectfully submitted,

GILES LENOX

/s/ Brian T. Giles

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

GILES LENOX

/s/ Brian T. Giles

Brian T. Giles (0072806)