

1 **THE LAW OFFICE OF**  
 2 **JACK FITZGERALD, PC**  
 3 JACK FITZGERALD (SBN 257370)  
 4 *jack@jackfitzgeraldlaw.com*  
 5 TREVOR M. FLYNN (SBN 253362)  
 6 *trevor@jackfitzgeraldlaw.com*  
 7 MELANIE PERSINGER (SBN 275423)  
 8 *melanie@jackfitzgeraldlaw.com*  
 9 Hillcrest Professional Building  
 10 3636 Fourth Avenue, Suite 202  
 11 San Diego, California 92103  
 12 Phone: (619) 692-3840  
 13 Fax: (619) 362-9555

14 **NATHAN & ASSOCIATES, APC**  
 15 Reuben D. Nathan, Esq. (SBN 208436)  
 16 *rnathan@nathanlawpractice.com*  
 17 2901 West Pacific Coast Hwy, Suite 350  
 18 Newport Beach, CA 92663  
 19 Tel:(949) 263-5992  
 20 Facsimile:(949) 209-1948

21 **Ross Cornell, Esq., APC** (SBN 210413)  
 22 *ross.law@me.com*  
 23 111 W. Ocean Blvd., Suite 400  
 24 Long Beach, CA 90802  
 25 Phone: (562) 612-1708  
 26 Facsimile: (562) 394-9556

27 *Attorneys for Plaintiffs*

28 **UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

ANGERLIA MARTIN and CHRISTOPHER  
 RHINESMITH, on behalf of themselves, all  
 others similarly situated, and the general  
 public,

Plaintiffs,

v.

TRADEWINDS BEVERAGE COMPANY,

Defendant.

Case No: 2:16-cv-09249

CLASS ACTION

**SECOND AMENDED  
 CONSOLIDATED CLASS ACTION  
 COMPLAINT**

**Consolidated with Civil Action No.  
 2:17-cv-00408**

DEMAND FOR JURY TRIAL

1 Having been given leave by the Court on January 4, 2018 to so file, plaintiffs Angerlia  
2 Martin and Christopher Rhinesmith, on behalf of themselves, all others similarly situated,  
3 and the general public, by and through their undersigned counsel, hereby brings this Second  
4 Amended Consolidated Complaint against defendant Tradewinds Beverage Company, and  
5 allege the following upon their own knowledge, or where they lack personal knowledge, upon  
6 information and belief, including the investigation of their counsel.

7 **INTRODUCTION**

8 1. Tradewinds falsely advertises and markets various iced tea products as “100%  
9 natural,” containing “100% natural ingredients,” or being made “with all natural ingredients.”  
10 However, many flavors contain the artificial coloring, caramel color, which is not a natural  
11 ingredient, rendering these statements false.

12 2. Plaintiffs bring this action seeking injunctive and monetary relief on behalf of  
13 themselves, all other similarly-situated California consumers, and the general public, alleging  
14 violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*,  
15 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and False Advertising  
16 Law, *id.* §§ 17500 *et seq.*, as well as Tradewinds’ breach of express warranties.

17 **THE PARTIES**

18 3. Plaintiff Angerlia Martin is a resident of Los Angeles County, California.

19 4. Plaintiff Christopher Rhinesmith is a resident of Los Angeles County,  
20 California.

21 5. Defendant Tradewinds is an Ohio corporation with its principal place of business  
22 in Carlisle, Ohio.

23 **JURISDICTION AND VENUE**

24 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §  
25 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the  
26 sum or value of \$5,000,000 exclusive of interest and costs, at least one member of the class  
27 of plaintiffs is a citizen of a state different from defendant. In addition, more than two-thirds  
28 of the members of the class reside in states other than the state in which defendant is a citizen

1 and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. §  
2 1332(d) do not apply.

3 7. The Court has personal jurisdiction over Tradewinds pursuant to Cal. Code Civ.  
4 P. § 410.10, as a result of its substantial, continuous and systematic contacts with the state,  
5 and because Tradewinds has purposely availed itself of the benefits and privileges of  
6 conducting business activities within the state.

7 8. Venue is proper in the Central District of California pursuant to 28 U.S.C. §  
8 1391(b) because defendant is subject to personal jurisdiction in this district, and a substantial  
9 part of the events or omissions giving rise to the claims occurred in this district.

10 **FACTS**

11 9. Tradewinds markets and sells various flavors of sweetened and unsweetened  
12 iced teas, in both single bottles, and multi-bottle packs. The challenged products are as  
13 follows (hereafter the “Iced Tea Products”):

- 14 a. *Sweet Tea*
- 15 b. *Extra Sweet Tea*
- 16 c. *Lemon Tea*
- 17 d. *Raspberry Tea*
- 18 e. *Unsweet Tea*
- 19 f. *Unsweet Tea with Hint of Lemon*
- 20 g. *Unsweet Tea with Hint of Raspberry*
- 21 h. *Unsweet Tea with Hint of Peach*

22 10. Tradewinds claims on the label of each Iced Tea Product that it is “100%  
23 Natural,” contains “100% Natural Ingredients,” or is made “With All Natural Ingredients”  
24 (the “All Natural Claims”). Tradewinds made substantially similar claims on its Website  
25 through at least January 2017.

26 11. Exemplars of the Iced Tea Products’ packaging, including their All Natural  
27 Claims, are depicted below.

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12. Contrary to Tradewinds' All Natural Claims, each of the Iced Tea Products contains the artificial coloring, caramel color, which is an artificial ingredient.

1 13. The Food and Drug Administration (“FDA”) states that the term “natural” means  
2 that nothing artificial or synthetic is present in the food product. According to FDA, “all color  
3 additives regardless of source” are artificial or synthetic.<sup>1</sup> By the defendant’s own admissions,  
4 the Iced Tea Products are artificially colored with caramel color.

5 14. Thus, the Iced Tea Products are not “100% Natural,” do not contain “100%  
6 Natural Ingredients,” and are not made “With All Natural Ingredients” and therefore  
7 Tradewinds’ All Natural Claims are untrue.

8 15. Even if Tradewinds changed the labels of the Iced Tea Products at some point  
9 during the Class Period, defendant failed to notify plaintiffs and class members that the  
10 removal of the All Natural Claims was because the Iced Tea Products, by virtue of containing  
11 artificial color, were not all natural, not 100% natural and/or did not contain 100% natural  
12 ingredients. Tradewinds also failed to make a public dissemination that the Iced Tea Products  
13 were in fact not “all natural,” thereby continuing to mislead consumers who had previously  
14 read and relied on the All Natural Claims.

15 16. Moreover, Tradewinds continued to propagate and reinforce its false and  
16 misleading advertising in that it maintained the All Natural Claims for its Iced Tea Products  
17 on its website through at least January 2017.

18 17. Tradewinds’ misrepresentations were material. A December 2015 nationally-  
19 representative Consumer Reports survey of 1,005 adults found that more than half of  
20 consumers usually seek out products with a “natural” food label.<sup>2</sup> Moreover, consumers  
21 equate “natural” claims with healthier foods, and are generally willing to pay more for  
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25 \_\_\_\_\_  
26 <sup>1</sup> 21 CFR Part 101 [Docket No. FDA–2014–N–1207]: Use of the Term “Natural” in the  
27 Labeling of Human Food Products

28 <sup>2</sup> [http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer\\_Reports\\_Natural\\_Food\\_Labels\\_Survey\\_2015.pdf](http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf)

1 healthier foods. For instance, Nielsen’s 2015 Global Health & Wellness Survey found that  
2 “88% of those polled are willing to pay more for healthier foods.”<sup>3</sup>

3 18. Tradewinds is aware of consumer preference for healthier, “natural” products,  
4 and therefore employs and has employed a strategic marketing campaign intended to  
5 convince consumers that its Iced Tea Products are all natural, even though they contain  
6 artificial caramel color.

7 **PLAINTIFFS’ PURCHASE AND RELIANCE**

8 19. Beginning in 2014, and during the past several years, plaintiff Angerlia Martin  
9 has purchased the Sweet Tea, Lemon Tea, and Raspberry Tea varieties of Tradewinds’ Iced  
10 Tea. In initially deciding to purchase these three Iced Tea Products, Ms. Martin relied on  
11 Tradewinds’ All Natural Claims. Ms. Martin thereafter purchased these Iced Tea Products  
12 approximately once per week, continuing to rely on the All Natural Claims, both because  
13 these Iced Tea Products continued to make the All Natural Claims through their labeling, and  
14 because nothing on the labeling disclaimed any previous All Natural Claims. Ms. Martin  
15 typically purchased these Iced Tea Products at the Ralphs located at 2270 North Lake  
16 Avenue, in Altadena, California 91001; the Vons located at 655 North Fair Oaks Avenue, in  
17 Pasadena, CA 91103; or the Smart and Final located at 401 North Fair Oaks Avenue, in  
18 Pasadena, CA 91103.

19 20. When purchasing these three Iced Tea Products, Ms. Martin was seeking an all-  
20 natural product, and relied on these Iced Tea Products’ All Natural Claims to believe that  
21 what she was purchasing was all natural.

22 21. If assured that Tradewinds’ labeling and advertising was truthful and not  
23 misleading, plaintiff Martin would consider purchasing Tradewinds’ iced tea in the future if  
24 it was truthfully labeled, or advertised, as all-natural. Because the Tradewinds’ Iced Tea  
25 Products were once marred by false advertising, plaintiff Martin could only be assured of the  
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27 \_\_\_\_\_  
28 <sup>3</sup> Nancy Gagliardi, Forbes, Consumers Want Healthy Foods--And Will Pay More For Them (Feb. 18, 2015) (citing Neilson, 2015 Global Health & Wellness Survey, at 11 (Jan. 2015)).

1 truthfulness of Tradewinds’ advertising or labeling if Tradewinds were enjoined by the Court  
2 from making false or misleading statements about the Iced Tea Products in the future. Absent  
3 an Order enjoining Tradewinds from using any “all-natural” claims on the labels or in  
4 advertising of the Iced Tea Products, when those products contain any artificial or synthetic  
5 ingredients, she will be unable to rely in the future on any claim that the Tradewinds Iced Tea  
6 Products or other beverage, is in fact all natural.

7 22. Plaintiff Christopher Rhinesmith has purchased each of the Iced Tea Products  
8 identified herein, at one time or another, since approximately the Fall of 2013 from various  
9 locations throughout Los Angeles and Orange counties.

10 23. When purchasing the Iced Tea Products, Mr. Rhinesmith was seeking an all-  
11 natural product, and relied on the Iced Tea Products’ All Natural Claims to believe that what  
12 he was purchasing was all natural. Mr. Rhinesmith thereafter continued to purchase the Iced  
13 Tea Products, continuing to rely on the All Natural Claims, both because the Iced Tea  
14 Products continued to make the All Natural Claims through their labeling, because  
15 Tradewinds continued to make the All Natural claims on its website, and because nothing on  
16 the labeling disclaimed any previous All Natural Claims. Mr. Rhinesmith relied on the All  
17 Natural Claims he viewed on Tradewinds’ website as late as December 2016, which  
18 supported the false impression that the Iced Tea Products were all natural, and caused him to  
19 continue purchasing them.

20 24. If assured that Tradewinds’ labeling and advertising was truthful and not  
21 misleading, plaintiff Rhinesmith would consider purchasing Tradewinds’ iced tea in the  
22 future if it was truthfully labeled, or advertised, as all-natural. Because the Tradewinds’ Iced  
23 Tea Products were once marred by false advertising, plaintiff Rhinesmith could only be  
24 assured of the truthfulness of Tradewinds’ advertising or labeling if Tradewinds were  
25 enjoined by the Court from making false or misleading statements about the Iced Tea  
26 Products in the future. Absent an Order enjoining Tradewinds from using any “all-natural”  
27 claims on the labels or in advertising of the Iced Tea Products, when those products contain  
28



1 any artificial or synthetic ingredients, he will be unable to rely in the future on any claim that  
2 the Tradewinds Iced Tea Products or other beverage, is in fact all natural.

3 25. The labeling of the Iced Tea Products, however, was misleading, and had the  
4 capacity, tendency, and likelihood to confuse or confound plaintiffs and other consumers  
5 acting reasonably (including the putative class), as described in detail herein.

6 26. Plaintiffs acted reasonably in relying on Tradewinds' All Natural Claims, which  
7 Tradewinds intentionally placed on the Iced Tea Products' labels and on its website with the  
8 intent to induce average consumers into purchasing the products.

9 27. The Iced Tea Products cost more than similar products without misleading  
10 labeling and website advertising, and would have cost less absent the false and/or misleading  
11 All Natural Claims.

12 28. Plaintiffs paid more for the Iced Tea Products, and would only have been willing  
13 to pay less, or unwilling to purchase them at all, absent the misleading All Natural Claims  
14 complained of herein.

15 29. For these reasons, the Iced Tea Products were worth less than what plaintiffs  
16 paid for them, and may have been worth nothing at all.

17 **CLASS ACTION ALLEGATIONS**

18 30. While reserving the right to redefine or amend the class definition prior to  
19 seeking class certification, pursuant to Federal Rule of Civil Procedure 23, plaintiffs seek to  
20 represent a Class of all persons in California who, on or after December 14, 2012 (the "Class  
21 Period"), purchased, for personal or household use and not for resale or distribution, the  
22 Tradewinds' Iced Tea Products (the "Class").

23 31. The members in the proposed Class are so numerous that individual joinder of  
24 all members is impracticable, and the disposition of the claims of all Class Members in a  
25 single action will provide substantial benefits to the parties and Court.

26 32. Questions of law and fact common to plaintiffs and the Class include:

- 27 a. Whether Tradewinds' All Natural Claims are material to reasonable  
28 consumers;

1           b. Whether Tradewinds' All Natural Claims are false, misleading, or  
2 reasonably likely to deceive the public or consumers acting reasonably because  
3 the Iced Tea Products are not all natural;

4           c. Whether Tradewinds made any statement it knew or should have  
5 known was false or misleading;

6           d. Whether Tradewinds' practices were immoral, unethical,  
7 unscrupulous, or substantially injurious to consumers;

8           e. Whether the utility of any of Tradewinds' practices, if any,  
9 outweighed the gravity of harm to its victims;

10          f. Whether Tradewinds' conduct violated public policy;

11          g. Whether the consumer injury caused by Tradewinds' conduct was  
12 substantial, not outweighed by benefits to consumers or competition, and not  
13 one consumers themselves could reasonably have avoided;

14          h. Whether Tradewinds' policies, acts, and practices with respect to  
15 the Iced Tea Products were designed to, and did result in the purchase and use  
16 of the Iced Tea Products by the class members primarily for personal, family, or  
17 household purposes;

18          i. Whether Tradewinds represented that the Iced Tea Products have  
19 characteristics, uses, or benefits which they do not have, within the meaning of  
20 Cal. Civ. Code § 1770(a)(5);

21          j. Whether Tradewinds represented that the Iced Products are of a  
22 particular standard, quality, or grade, when they were really of another, within  
23 the meaning of Cal. Civ. Code § 1770(a)(7);

24          k. Whether Tradewinds advertised the Iced Tea Products with the  
25 intent not to sell them as advertised, within the meaning of Cal. Civ. Code §  
26 1770(a)(9);

1           1. Whether Tradewinds represented that the Iced Tea Products have  
2 been supplied in accordance with previous representations when they have not,  
3 within the meaning of Cal. Civ. Code § 1770(a)(16);

4           m. Whether through the challenged labels and advertising, Tradewinds  
5 made affirmations of fact or promises, or descriptions of the goods;

6           n. Whether Tradewinds' affirmations of fact or promises, or  
7 descriptions of the goods became part of the basis of the bargain for the Class's  
8 purchases;

9           o. Whether Tradewinds failed to provide the goods in conformation  
10 with its affirmations of fact, promises, and descriptions of the goods;

11           p. Whether Tradewinds' conduct violates state or federal statutes or  
12 regulations;

13           q. The proper amount of damages;

14           r. The proper amount of restitution;

15           s. The proper scope of injunctive relief; and

16           t. The proper amount of attorneys' fees.

17       33. These common questions of law and fact predominate over questions that affect  
18 only individual Class Members.

19       34. Plaintiffs' claims are typical of Class Members' claims because they are based  
20 on the same underlying facts, events, and circumstances relating to Tradewinds' conduct.  
21 Specifically, all Class Members, including plaintiffs, were subjected to the same misleading  
22 and deceptive conduct when they purchased the Iced Tea Products and suffered economic  
23 injury because the Iced Tea Products' All Natural Claims are false and/or misleading. Absent  
24 Tradewinds' business practice of deceptively and unlawfully labeling the Iced Tea Products,  
25 plaintiffs and Class members would only have been willing to pay less, or unwilling to  
26 purchase them at all.

27       35. Plaintiffs will fairly and adequately represent and protect the interests of the  
28 Class, have no interests incompatible with the interests of the Class, and have retained counsel

1 competent and experienced in class action litigation, and specifically in litigation involving  
2 the false and misleading advertising of food and beverages.

3 36. Class treatment is superior to other options for resolution of the controversy  
4 because the relief sought for each Class Member is small, such that, absent representative  
5 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

6 37. Tradewinds has acted on grounds applicable to the Class, thereby making  
7 appropriate final injunctive and declaratory relief concerning the Class as a whole.

8 38. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.  
9 23(a), 23(b)(2), and 23(b)(3).

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 **Violations of the Unfair Competition Law,**

13 **Cal. Bus. & Prof. Code § 17200 *et seq.***

14 39. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
15 if set forth in full herein.

16 40. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.”  
17 Cal. Bus. & Prof. Code §17200.

18 41. The acts, omissions, misrepresentations, practices, and non-disclosures of  
19 Tradewinds as alleged herein constitute business acts and practices.

20 **Fraudulent**

21 42. A statement or practice is fraudulent under the UCL if it is likely to deceive the  
22 public, applying a reasonable consumer test.

23 43. As set forth herein, defendant’s claims relating to The Iced Tea Products are  
24 likely to deceive reasonable consumers and the public.

25 **Unlawful**

26 44. The acts alleged herein are “unlawful” under the UCL in that they violate at least  
27 the following laws:

- 28
  - The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;



- 1 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- 2 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*, and
- 3 specifically § 343(a) (prohibiting food labeling that is “false or misleading in any
- 4 particular”); and
- 5 • The California Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety
- 6 Code §§ 109875 *et seq.*

7 **Unfair**

8 45. Tradewinds’ conduct with respect to the labeling, advertising, and sale of the

9 Iced Tea Products was unfair because Tradewinds’ conduct was immoral, unethical,

10 unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any,

11 does not outweigh the gravity of the harm to its victims.

12 46. Tradewinds’ conduct with respect to the labeling, advertising, and sale of the

13 Iced Tea Products was also unfair because it violated public policy as declared by specific

14 constitutional, statutory or regulatory provisions, including but not limited to the False

15 Advertising Law.

16 47. Tradewinds’ conduct with respect to the labeling, advertising, and sale of the

17 Iced Tea Products was also unfair because the consumer injury was substantial, not

18 outweighed by benefits to consumers or competition, and not one consumers themselves

19 could reasonably have avoided.

20 48. Tradewinds profited from its sale of the falsely, deceptively, and unlawfully

21 advertised Iced Tea Products to unwary consumers.

22 49. Plaintiff and Class Members are at risk to be damaged by Tradewinds’ continued

23 deceptive trade practices, because absent injunction, they will be unable to rely on the

24 product’s advertising or labeling in the future, and so will not purchase the product although

25 they would like to. Thus, injunctive relief enjoining this deceptive practice is proper.

26 50. Tradewinds’ conduct caused and continues to cause substantial injury to

27 plaintiffs and the other Class Members, who have suffered injury in fact as a result of

28 Tradewinds’ unlawful conduct.









1 72. As a result, plaintiffs seek, on behalf of themselves and other Class Members,  
2 actual damages arising as a result of Tradewinds’ breaches of express warranty.

3 **PRAYER FOR RELIEF**

4 73. Wherefore, plaintiffs, on behalf of themselves, all others similarly situated, and  
5 the general public, pray for judgment against Tradewinds as to each and every cause of action,  
6 and the following remedies:

- 7 a. An Order declaring this action to be a proper class action, appointing
- 8 plaintiffs as class representative, and appointing all undersigned counsel
- 9 as class counsel;
- 10 b. An Order requiring Tradewinds to bear the cost of class notice;
- 11 c. An Order requiring Tradewinds to pay restitution to restore all funds
- 12 acquired by means of any act or practice declared by this Court to be an
- 13 unlawful, unfair, or fraudulent business act or practice, or untrue or
- 14 misleading advertising;
- 15 d. An award of attorneys’ fees and costs;
- 16 e. An Order requiring Tradewinds to pay statutory, compensatory, and any
- 17 other actual damages where permitted by law;
- 18 f. Pre- and post-judgment interest; and
- 19 g. Any other and further relief that Court deems necessary, just, or proper.

20 **JURY DEMAND**

21 74. Plaintiffs hereby demand a trial by jury on all issues so triable.

22  
23 Dated: January 9, 2018

24 /s/ Trevor M. Flynn  
**THE LAW OFFICE OF JACK FITZGERALD, PC**  
 JACK FITZGERALD  
*jack@jackfitzgeraldlaw.com*  
 TREVOR M. FLYNN  
*trevor@jackfitzgeraldlaw.com*  
 MELANIE PERSINGER  
*melanie@jackfitzgeraldlaw.com*

1 Hillcrest Professional Building  
2 3636 Fourth Avenue, Suite 202  
3 San Diego, California 92103  
4 Phone: (619) 692-3840  
5 Fax: (619) 362-9555

**NATHAN & ASSOCIATES, APC**

6 Reuben D. Nathan, Esq.  
7 *rnathan@nathanlawpractice.com*  
8 2901 West Pacific Coast Hwy, Suite 350  
9 Newport Beach, CA 92663  
10 Tel:(949) 263-5992  
11 Facsimile:(949) 209-1948

**Ross Cornell, Esq., APC**

12 *ross.law@me.com*  
13 111 W. Ocean Blvd., Suite 400  
14 Long Beach, CA 90802  
15 Phone: (562) 612-1708  
16 Facsimile: (562) 394-9556  
17 *Attorneys for Plaintiffs*