

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 16L313

Amount Claimed Over \$50,000.00

GHERSON TOVAR,
individually and on behalf
of all other similarly-
situated citizens of Illinois,

VS

DREW'S LLC

Plaintiff(s)

Defendant(s)

Classification Prefix L Code 02 Nature of Action Tort Code 2

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

Pltf. Atty. Matthew H. Armstrong Code 6226591 NAME DREW'S LLC, Corporation Service
Address 8816 Manchester Rd. Company, Registered Agent
City St. Louis, MO 63144 Phone 314-258-0212
Add. Pltf. Atty. _____ Code _____ ADDRESS 100 North Main Street, Suite 2

SUMMONS COPY

To the above named defendant(s). :

CITY & STATE Barre, VT 05641

A. You are hereby summoned and required to appear before this court at
(court location) _____ at _____ M. On _____ 20____
to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may
be taken against you for the relief asked in the complaint.

B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto
attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this
summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you
for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with
indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this
summons is applicable this summons may not be served less than three days before the day of appearance. If service
cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

WITNESS, 6-15-16 20____
Kahalah Clay
Clerk of Court

BY DEPUTY [Signature]

DATE OF SERVICE: _____ 20____
(To be inserted by officer on copy left with defendant
or other person)

SEAL



I certify that I served this summons on defendants as follows:

(a) - (Individual defendants - personal):

By leaving a copy of the summons and a copy of the complaint with each individual defendant personally as follows:

Name of defendant	Date of service

(b) - (Individual defendants - abode):

By leaving a copy of the summons and a copy of the complaint at the usual place of abode of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant	Person with whom left	Date of service	Date of mailing

(c) - Corporation defendants):

By leaving a copy of the summons and a copy of the complaint with the registered agent office, or agent of each defendant corporation as follows:

Defendant corporation	Registered agent, officer or agent	Date of service

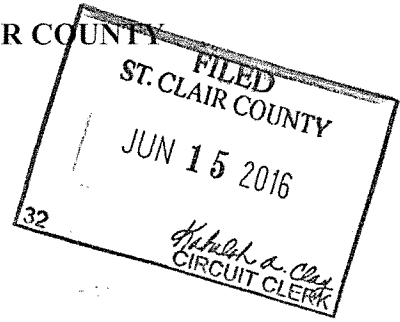
(d) - (Other service):

SHERIFF'S FEES	
Service and return	\$ _____
Miles	\$ _____
Total	\$ _____
Sheriff of _____ County	

_____, Sheriff of _____ County
_____, Deputy

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IN THE CIRCUIT COURT OF ST. CLAIR COUNTY
STATE OF ILLINOIS



GHERSON TOVAR,)
individually and on)
behalf of all other similarly-situated)
citizens of Illinois,)
)
Plaintiff,)
)
v.)
)
DREW'S LLC)
)
Defendant.)

No. 16-L-313

CLASS ACTION COMPLAINT

Plaintiff, Gherson Tovar, individually and on behalf of all other similarly-situated citizens of Illinois, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

CASE SUMMARY

1. This case arises out of Defendant Drew's LLC ("Defendant") deceptive, unfair, and false practices regarding its All Natural Salad Dressings and Quick Marinades (the "Products").

2. On the label of the Products, Defendant prominently represents that the Products are "All Natural." The Products, however, are not "All Natural" because they contain Citric Acid and/or Xanthan Gum (the "Synthetic Ingredients"), both of which are synthetic ingredients.

3. The FDA does not object to the use of the term "natural" to describe a food if the food does not contain any added color, artificial flavors, or synthetic substances.¹ Likewise,

¹ <http://www.fda.gov/aboutfda/transparency/basics/ucm214868.htm>

Plaintiff and reasonable consumers reasonably define and assume that products labeled “All-Natural” do not contain any added color, artificial flavors, or synthetic substances.

4. Because the Products contains the Synthetic Ingredients, the representation that the Products are “All Natural” is unfair, false, deceptive, and misleading.

5. By claiming that the Products are “All Natural,” Defendant deceives consumers into believing that the Products are only comprised of natural ingredients, when they in fact contain the Synthetic Ingredients.

6. Plaintiff brings this case to recover damages for Defendant’s false, deceptive, unfair, and misleading marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) and Illinois common law.

PARTIES

7. Plaintiff, Gherson Tovar, is a resident of Monroe County, Illinois. On multiple occasions during the Class Period (as defined below), including in April 2016, Plaintiff purchased various flavors of the Products at Shop ‘n Save in St. Clair County, IL for personal, family, or household purposes after reviewing the “All Natural” labels, which deceived him. If Plaintiff had known the Products were not in fact “All Natural,” he would not have purchased them or would have paid less for them. The purchase price of the Products was \$3.19. Plaintiff’s claim is typical of all class members in this regard.

8. Defendant Drew’s LLC is a Vermont corporation with its principal place of business at 926 Vermont Rt. 103 South, Chester, VT 05143.

JURISDICTION AND VENUE

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

10. Plaintiff believes and alleges that the total value of his individual claims is, at most, equal to the refund of the purchase price he paid for the Products. There is therefore no diversity jurisdiction over this case.

11. Because the value of Plaintiff's claims is typical of all class members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees is far less than the five million dollar (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no CAFA jurisdiction for this case.

12. Defendant cannot plausibly allege that it had sufficient sales of the Products in Illinois during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

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

14. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because the transaction out of which the causes of action arose occurred in this county.

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

ALLEGATIONS OF FACT

16. Defendant manufactures, sells, and distributes dressings and sauces, including the Products.

17. Knowing that consumers like Plaintiff are increasingly interested in purchasing healthy food products that do not contain potentially harmful artificial, synthetic ingredients, Defendant has sought to take advantage of this growing market by labeling certain products as “All Natural.” By affixing such a label to the packaging of the Products, Defendant is able to entice consumers like Plaintiff to pay a premium for the Products.

18. The label of the Products are deceptive, unfair, false, and misleading in that Defendant prominently represents that the Products are “All Natural”:



19. The Products, however, are not “All Natural” because they contain the Synthetic Ingredients.

20. Xanthan Gum is a synthetic thickener that is commercially manufactured by the likes of Cargill by fermenting bacteria with a carbohydrate (often GMO corn syrup), which is then sterilized and dried with isopropyl alcohol or ethanol before being pressed and ground for distribution. 7 C.F.R. 205.605(b) identifies Xanthan Gum as a synthetic substance.

21. Citric Acid is a synthetically manufactured additive, preservative, and flavoring agent that is manufactured by fermenting a sugar, usually highly processed and/or genetically modified corn syrup, with black mold (*aspergillus niger*), usually also genetically modified, and then treating the fermentation with sulfuric acid. In a warning letter to Hirzel Canning Company, the FDA indicated that the addition of Citric Acid to a product precludes the use of the term “natural” to describe the product. While Citric Acid does exist naturally in citrus fruits, on information and belief, the Citric Acid used in the Product is synthetically manufactured.

22. Neither Plaintiff nor any reasonable consumer would expect to find synthetic ingredients in Products labeled “All Natural.”

23. Neither Plaintiff nor any reasonable consumer when reviewing the label of the Products would know nor should know that Xanthan Gum and Citric Acid are not natural.

24. As a result of Defendant’s deceitful labels, Defendant was able to charge and Plaintiff and class members paid a premium for the Products. Because the Products are not in fact “All Natural,” the Products were worth less than they were represented to be, and Plaintiff and class members paid extra for them.

25. Defendant’s misrepresentation constitutes unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation within the meaning of the ICFA.

CLASS ALLEGATIONS

26. Pursuant to 735 ILCS 5/2-801 *et. seq.*, Plaintiff brings this action on her own behalf and on behalf of a proposed class of all other similarly situated persons (“Class Members” of the “Class”) consisting of:

All citizens of Illinois who purchased Drew’s All Natural Dressings and Quick Marinades for personal, household, or family purposes in the five years preceding the filing of this Petition (the “Class Period”).

27. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

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

29. There are numerous and substantial questions of law or fact common to all of the members of the Class and which predominate over any individual issues. Included within the common question of law or fact are:

- a. whether the “All Natural” claim on the Products’ labels is unfair, false, misleading, and deceptive;
- b. whether Defendant violated the ICFA by selling the Products with false, misleading, and deceptive representations;
- c. whether Defendant intended that Plaintiff and the Class Members would rely on its “All Natural” representations;

- d. whether Defendant's acts constitute unfair, deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;
- e. whether Defendant was unjustly enriched; and
- f. the proper measure of damages sustained by Plaintiff and Class Members.

30. The claims of the Plaintiff are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiff and Defendant's conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

31. Plaintiff will fairly and adequately protect the interests of Class Members and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

32. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. the claim presented in this case predominates over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
- c. given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. when the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and

- e. this action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

33. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

34. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

Count One – Violation of the ICFA

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

36. The ICFA declares the following to be unlawful: “Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact...in the conduct of any trade or commerce[.]” 815 Ill. Comp. Stat. Ann. 505/2.

37. Defendant's conduct in advertising and selling the Products as "All Natural" when they in fact contain the Synthetic Ingredients constitutes the act, use and employment of deception, fraud, false pretenses, false promises, misrepresentation, and unfair practices in the conduct of Defendant's trade or commerce.

38. Defendant intended that Plaintiff and the Class Members would rely on its "All Natural" representations. Defendant is aware that consumers like Plaintiff and Class Members are becoming more and more interested in purchasing natural, healthy products that do not contain synthetic, potentially harmful ingredients. Defendant intended to prey on this interest.

39. The "All Natural" misrepresentation is material because it concerns the type of information upon which a reasonable consumer would be expected to rely in making a decision whether to purchase.

40. Because Defendant is in the business of selling food products, Defendant committed the unfair and deceptive acts in the conduct of its trade and commerce.

41. Defendant's practice of advertising and selling the Products as "All Natural" when they in fact contain the Synthetic Ingredients is also unfair. The practice offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are increasingly interested in purchasing and using healthy, truly natural products without synthetic substances. Selling the Products as "All Natural" when it is not offends the public's expectation to be told the truth about the products they are buying.

42. Defendant's conduct causes substantial injury to consumers. Not only are consumers being misled into purchasing Products that are not what they are represented to be, but exposing consumers to unwanted and potentially harmful synthetic ingredients is substantially injurious.

43. Neither Plaintiff nor any reasonable consumer would expect to find synthetic ingredients in Products labeled “All Natural.”

44. Neither Plaintiff nor any reasonable consumer when reviewing the Products’ labels would know nor should know that the Synthetic Ingredients are not natural.

45. Because the Products are not “All Natural” as they are represented to be, the Products as sold were worth less than the Products as represented, and Plaintiff and Class Members paid a premium for them. Had the truth be known, Plaintiff and Class Members would not have purchased the Products.

46. Plaintiff and Class Members were deceived by the “All Natural” label on the Products and suffered economic damages as a proximate result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the Products and the value of the Products if they had been as represented.

Count Two – Unjust Enrichment

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

48. By purchasing the Products, Plaintiff and the class members conferred a benefit on Defendant in the form of the purchase price of the fraudulent Products.

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

50. Defendant's acceptance and retention of the benefit is inequitable and unjust and violates the fundamental principles of justice, equity, and good conscience because the benefit was obtained by Defendant's fraudulent and misleading representations about the Products.

51. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiff and Class Members' expense and in violation of Illinois law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. award compensatory damages to Plaintiff and the proposed Class, or, alternatively, require Defendant to disgorge or pay restitution of its ill-gotten gains;
- d. award pre- and post-judgment interest;
- e. award reasonable and necessary attorneys' fees and costs; and
- f. for all such other and further relief as may be just and proper.

Dated this 15th day of June 2016.

Gherson Tovar, Individually, and on Behalf of a Class of Similarly Situated Individuals, Plaintiff

By:



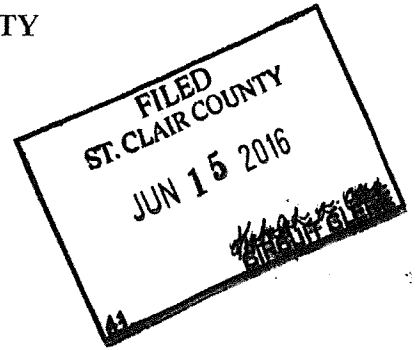
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Attorneys for Plaintiff and the Putative Class

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY
STATE OF ILLINOIS



GHERSON TOVAR,)
individually and on)
behalf of all other similarly-situated)
citizens of Illinois,)
)
Plaintiff,)
)
v.)
)
DREW'S LLC)
)
Defendant.)

No. 16-L-313

AFFIDAVIT OF DAMAGES

This affidavit is made pursuant to Supreme Court Rule 222 (b). Under the penalties of perjury as provided by Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the money damages sought by Plaintiff herein do exceed \$50,000.00.

Gherson Tovar, Individually, and on Behalf of a Class of Similarly Situated Individuals, Plaintiff

By: 
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