

United States District Court
Eastern District of New York

1:18-cv-01293 () ()

Romel Hightower, individually and on behalf of
all others similarly situated,

Plaintiff

- against -

Complaint

American Halal Company, Inc.,

Defendant

The above-named plaintiff, (“plaintiff”) individually and on behalf of all others similarly situated, by attorneys, alleges upon information and belief, except for those allegations pertaining to plaintiff, which are based on personal knowledge:

1. American Halal Company, Inc. (“defendant”) manufactures and sells food products under the brand “Saffron Road.”
2. As “Saffron Road” is an homage to the famous “Silk Road,” which connected the East and West, the Saffron Road products incorporate ingredients and flavors which may be new to consumers in this country.
3. The relevant Saffron Road product here are the “Lentil Crackers” (the “Products”), sold to consumers through third-parties via brick-and-mortar stores and online.
4. Lentils are a part of the 12 leguminous crops known as pulses, which also includes dry beans, dry peas, and chickpeas (also known as garbanzo beans), which produce an edible seed that grows within a pod.
5. Consumption of pulse-based products has increased over the past decade owing in part to their having:
 - twice as much protein as whole grains like wheat, making them a viable protein source in place or instead of animal products

- high in fiber (increased satiety)
- high in B-vitamins and minerals like iron, potassium, magnesium and zinc
- effect of lowering blood sugar levels (glycemic index/GI), relevant to those with diabetes

6. Pulse-based products are also valued because they are:

- naturally gluten-free, which appeals to the increasing percentage of people seeking to limit or exclude gluten and/or grains from their diet
- not made from or consist of genetically modified organisms (GMOs), a key selling point to those wanting to eat more natural foods

7. As consumers increasingly are aware of how the food they eat impacts the

world around them, pulses are valued because their production:

- entails a smaller carbon footprint than an equivalent amount of animal protein would require – in other words, it's better for the environment
- leaves behind nitrogen in the soil, providing valuable nutrients to future crops, and disrupts disease and insect cycles

8. The Products are sold in at least three varieties and contain common representations, other than the distinguishing flavor – Sea Salt, Rosemary Herb and Cracked Pepper.

Sea Salt



T-1(a)

Rosemary Herb



T-1(b)

Cracked Pepper



T-1(c)

9. The Products' identical representations focus exclusively on lentils:

- “oven baked LENTIL CRACKERS”
- “Plant Based Protein – 5 Grams Per Serving”
- “unlocking the power of lentils, which are nutritional powerhouses dense in protein, high in fiber, and low in fat”
- other back label claims emphasizing the aforesaid qualities of lentils (i.e., “high in protein”)

10. The back and side panels contain similar or identical information.

Back Panel

Supplemental Panel



T-2(a)



T-2(b)

11. However, contrary to the Products' representations and exclusive emphasis on lentils and by extension lentil flour, they also contain corn flour and pea flour, as the second and fifth listed ingredients for the Products.

Ingredient List (Rosemary Herb)



T-3(a)

12. The Products' misleading representations include the Product name in large font capitals on the front, back and alternate side panel and the back panel, which only discusses lentils, including their history, varieties (red fako, etc.) and nutritional benefits.

13. This gives a reasonable consumer the erroneous impression that lentils (lentil flour) are present in an amount greater than is actually the case, in terms of percentage and absolute amount, because there is no mention that other flours are used.

14. This is misleading because the amount of lentil flour used has a material bearing on price and consumer acceptance of the product.

15. Plaintiff believed the Products were made with only lentils as the flour source in the same way consumers would observe products named "wheat crackers" and reasonably expect they were composed of only flour derived from wheat.

16. Excluding tax, the Products cost no less than \$3.99, a premium price compared to other similar products.

Jurisdiction and Venue

17. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2).

18. Upon information and belief, the aggregate amount in controversy is more than \$5,000,000.00, exclusive of interests and costs.

19. This Court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

20. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and in New York.

21. A substantial part of events and omissions giving rise to the claims occurred in this District.

Class Allegations

22. The classes consist of all consumers in all states and all consumers in New York State who purchased any Products bearing any actionable representations herein during the statutes of limitation periods.

23. A class action is superior to other methods for the fair and efficient adjudication of this controversy.

24. The class is so numerous that joinder of all members, even if permitted, is impracticable, as there are likely hundreds of thousands of members.

25. Common questions of law or fact predominate and include whether the representations were likely to deceive reasonable consumers and if plaintiff and class members are entitled to damages.

26. Plaintiff's claims and the basis for relief are typical to other members because all were subjected to the same representations.

27. Plaintiff is an adequate representative because her interests do not conflict with other members.

28. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

29. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest.

30. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

31. Plaintiff seeks class-wide injunctive relief because the practices continue, with the injunctive class maintained as a class action because it meets the same criteria as

the non-injunctive class.

Parties

32. Plaintiff is a citizen of Queens County, New York.

33. Defendant is a Delaware corporation with a principal place of business in Connecticut.

34. In 2017, plaintiff purchased the Product for no less than \$4.29, excluding tax, at a store within this District, a premium relative to similar products.

35. Plaintiff paid this premium because prior to purchase, plaintiff saw and relied on the front label identification and description, “Lentil Crackers,” along with the other representations, which exclusively focused on lentils, which gave plaintiff the impression the Product was only derived from lentil flour.

Violations of New York General Business Law §§ 349 & 350

36. Plaintiff repeats and realleges all allegations in foregoing paragraphs.

37. Defendant’s acts, practices, advertising, labeling, packaging, representations and omissions are not unique to the parties and have a broader impact on the public.

38. The representations as “Lentil Crackers” are false and misleading for the reasons described herein.

39. No reasonable consumer would expect a product described and identified as Lentil Crackers to contain other non-lentil flour ingredients.

40. The representations and omissions were relied on by plaintiff and class members, who paid more than they would have without getting all they bargained for.

Breach of Express Warranty and Implied Warranty of Merchantability

41. Plaintiff repeats and realleges all allegations in foregoing paragraphs.

42. Defendant manufactures and sells snack products purporting to consist exclusively of lentil flour and warranted same to plaintiff and class members.

43. The Products did not conform to their affirmations of fact and promises, wholly due to defendant's actions.

44. Plaintiff and class members relied on defendant's claims, paying more than they would have otherwise.

Fraud

45. Plaintiff repeats and realleges all allegations in foregoing paragraphs.

46. Defendant described and identified the Products as Lentil Crackers and touted lentils exclusively, when it could have used non-misleading names or descriptions.

47. Defendant's purpose was to mislead consumers who increasingly seek products derived from non-traditional flours and where same is the sole flour source.

48. Defendant's intent was to distinguish its Products in the marketplace amongst the numerous other companies producing non-wheat flour products.

49. Plaintiff and class members observed and relied on the representations, which they understood to mean that lentil flour was the sole ingredient flour contained therein.

50. Plaintiff and class members paid more than they would have due to the false representations, entitling them to damages.

Unjust Enrichment

51. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

52. Defendant obtained benefits and monies because the Products were not as represented, to the detriment and impoverishment of plaintiff and class members, who seek

restitution and disgorgement of such inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, plaintiff, individually and on behalf of all others similarly situated, prays for judgment:

1. Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct its practices to comply with the law;
3. Awarding monetary damages and interest, including treble and punitive damages, pursuant to the common law and GBL claims;
4. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
5. Such other and further relief as the Court deems just and proper.

Dated: February 28, 2018

Respectfully submitted,

Levin-Epstein & Associates, P.C.

/s/Joshua Levin-Epstein

Joshua Levin-Epstein

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New York, NY 10119

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Sheehan & Associates, P.C.

/s/Spencer Sheehan

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1:18-cv-01293 () ()
United States District Court
Eastern District of New York

Romel Hightower, individually and on behalf of all others similarly situated

Plaintiff

- against -

American Halal Company, Inc.

Defendant

Complaint

Levin-Epstein & Associates, P.C.
1 Penn Plaza
Suite 2527
New York, NY 10119
Tel: (212) 792-0046
Fax: (212) 563-7108

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: February 28, 2018

/s/ Joshua Levin-Epstein
Joshua Levin-Epstein

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Romel Hightower individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Queens
(c) Attorneys (Firm Name, Address, and Telephone Number)
Levin Epstein & Associates, P.C., 1 Penn Plaza, Suite 2527, New York, NY 10119, (212) 792-0046

DEFENDANTS
American Halal Company, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF 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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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 - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332(d)(2)
Brief description of cause:
False advertising

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 5,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

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

DATE 02/28/2018
SIGNATURE OF ATTORNEY OF RECORD /s/ Joshua Levin-Epstein

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

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Joshua Levin-Epstein, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ Joshua Levin-Epstein

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Romel Hightower, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

American Halal Company, Inc.

Defendant(s)

Civil Action No. 1:18-cv-01293

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) American Halal Company, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Levin Epstein & Associates, P.C. 1 Penn Plaza, Suite 2527 New York, NY 10119

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk