

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

KIERAN O’HARA, on behalf of himself and all  
other similarly situated individuals,

Plaintiff,

v.

DIAGEO-GUINNESS, USA, INC.; & DIAGEO  
NORTH AMERICA, INC.

Defendants.

**Case No. 15-14139**

**PLAINTIFF’S FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Plaintiff, Kieran O’Hara (“Plaintiff” or “O’Hara”) hereby brings this action on behalf of himself and all others similarly situated against Diageo-Guinness, USA, Inc. (“Guinness USA”) and Diageo North America, Inc. (“Diageo North America) (collectively “Defendants”) for various violations of laws and regulations.

O’Hara claims that Defendants distribute, market, advertise, package and sell several Guinness® products in an unfair and deceptive manner, and that such practices violate M.G.L. c. 93A, § 2. Additionally, O’Hara seeks recovery under legal theories of Misrepresentation; and Unjust Enrichment. More specifically, O’Hara claims that Defendants market, advertise, package and sell its Guinness® product, Guinness® Extra Stout (“Extra Stout”), in a manner which unfairly and deceptively misleads consumers into believing that all of the Extra Stout sold in the United States is brewed, sourced, bottled and imported in/from Dublin, Ireland, when in fact certain the Extra Stout sold in the United States is brewed and imported in/from Canada.

As a result of Defendants' marketing, advertising, packaging and sales practices detailed herein, O'Hara asserts that reasonable consumers were caused to act differently from the way they otherwise would have acted in relation to purchasing the misrepresented Guinness product.

**PARTIES**

1. Kieran O'Hara is resident and citizen of Swampscott, Massachusetts.
2. Defendant, Diageo-Guinness, USA, Inc., is a corporation formed under the laws of the state of Delaware with its principal place of business located at 801 Main Avenue, Norwalk, Connecticut, and with a registered agent in the Commonwealth of Massachusetts located at 44 School Street, Suite 325, Boston, Massachusetts. At all times relevant hereto Diageo-Guinness, USA, Inc., distributed, marketed, advertised, packaged and/or sold Guinness Products in this District.
3. Defendant, Diageo North America, Inc., is a corporation formed under the laws of the state of Connecticut with its principal place of business located at 801 Main Avenue, Norwalk, Connecticut, and with a registered agent in the Commonwealth of Massachusetts located at 44 School Street, Suite 325, Boston, Massachusetts. At all times relevant hereto Diageo North America, Inc., distributed, marketed, advertised, packaged and/or sold Guinness Products in this District.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA") and 28 U.S.C. § 1332(d)(2). The matters in controversy, exclusive of interest and costs, exceeds the sum of \$5,000,000.00 and there is complete diversity of jurisdiction. This Court has supplemental jurisdiction over the subject of this action pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to this action occurred in this District, including the distribution, marketing, advertising, packaging and sale practices of Defendants associated with Extra Stout.
6. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(d), because Defendants have registered agents located in the District.

**FACTUAL ALLEGATIONS REGARDING GUINNESS® EXTRA STOUT**

7. Guinness USA manufactures, distributes, markets, advertises, packages and/or sells Guinness Products throughout the United States.
8. Diageo North America manufactures, distributes, markets, advertises, packages and/or sells Guinness Products throughout the United States.
9. Extra Stout is manufactured, distributed, marketed, advertised, packaged and/or sold throughout the United States by Guinness USA.
10. Extra Stout is manufactured, distributed, marketed, advertised, packaged and/or sold throughout the United States by Diageo North America.
11. Extra Stout's label directs consumers to Guinness' website at: [www.guinness.com](http://www.guinness.com).
12. Guinness USA represents on the United States Guinness website that "*All Guinness® sold in the UK, Ireland and North America is brewed in Ireland at the historic St. James's Gate Brewery in Dublin*" See, <http://www.guinness.com/en-us/faqs.html> (last visited November 25, 2015)(emphasis added).
13. Diageo North America represents on the United States Guinness website that "*All Guinness® sold in the UK, Ireland and North America is brewed in Ireland at the historic St. James's Gate Brewery in Dublin*" See, <http://www.guinness.com/en->

[us/faqs.html](#) (last visited November 20, 2015)(emphasis added); see, also, screenshot of the Guinness website:

GUINNESS® is GUINNESS® - wherever you are. We always use pure, fresh water from natural local sources for the GUINNESS® stout brewed outside Ireland. That said, in blind tests (with a bunch of highly cynical journalists) none of our sample could tell the difference between Irish-brewed GUINNESS® and the locally produced variety. All the GUINNESS® sold in the UK, Ireland and North America is brewed in Ireland at the historic St. James's Gate Brewery in Dublin.

14. Guinness USA represents that all Guinness Products sold in the United States are brewed in Ireland at the historic St. James's Gate Brewery in Dublin.
15. Diageo North America represents that all Guinness Products sold in the United States are brewed in Ireland at the historic St. James's Gate Brewery in Dublin.
16. Guinness USA represents that all Extra Stout sold in the North America is brewed in Ireland at the historic St. James's Gate Brewery in Dublin.
17. Diageo North America represents that all Extra Stout sold in the North America is brewed in Ireland at the historic St. James's Gate Brewery in Dublin.
18. Guinness USA represents that all Extra Stout sold in the United States is brewed in Ireland at the historic St. James's Gate Brewery in Dublin.
19. Diageo North America represents that all Extra Stout sold in the United States is brewed in Ireland at the historic St. James's Gate Brewery in Dublin.
20. Extra Stout's outer packaging prominently portrays a Guinness Logo which reads: "Traditionally Brewed St. James's Gate Dublin". See, Exhibits 1 & 2.



21. Extra Stout's outer packaging states that Extra Stout is "Imported Guinness Extra Stout"  
See, Exhibits 1 & 2.
22. Extra Stout's front labels picture a Guinness Logo which reads: "Traditionally Brewed  
St. James's Gate Dublin". See, Exhibit 3.



23. Extra Stout's front labels state that Extra Stout is "Imported Guinness Extra Stout". See, Exhibit 3.
24. The language portrayed on Extra Stout's outer packaging and front labels stating  
"Traditionally Brewed St. James's Gate Dublin" in conjunction with the language

“Imported Guinness Extra Stout”, gives and reinforces the impression that Extra Stout is manufactured, sourced, brewed, bottled and/or imported from Ireland.

25. The language portrayed on Extra Stout’s outer packaging and front labels stating “Traditionally Brewed St. James’s Gate Dublin” in conjunction with the language “Imported Guinness Extra Stout”, gives and reinforces the impression that Extra Stout is manufactured, brewed, and/or bottled at St. James’s Gate, Dublin, Ireland.
26. First contact and/or purchase by a consumer is secured by the representation on Extra Stout’s outer packaging that Extra Stout is manufactured, brewed, bottled and imported from Ireland.
27. First contact and/or purchase by a consumer is secured by the representation on Extra Stout’s outer packaging that Extra Stout is manufactured, brewed, and/or bottled at St. James’s Gate, Dublin, Ireland.
28. First contact and/or purchase by a consumer is secured by the representation on Extra Stout’s front labels that Extra Stout is manufactured, brewed, bottled and/or imported from Ireland.
29. First contact and/or purchase by a consumer is secured by the representation on Extra Stout’s front labels that Extra Stout is manufactured, brewed, bottled and/or imported from St. James’s Gate, Dublin, Ireland.
30. O’Hara and consumers paid a premium price believing that Extra Stout is manufactured, brewed, naturally sourced, bottled and/or imported from Ireland.
31. O’Hara and consumers paid a premium price believing that Extra Stout is manufactured, brewed, naturally sourced, bottled and/or imported from St. James’s Gate, Dublin, Ireland.

32. Extra Stout is not manufactured, brewed, bottled and/or imported from Ireland.
33. Extra Stout is not manufactured, brewed, and/or bottled at St. James's Gate, Dublin, Ireland.
34. Extra Stout is not brewed from pure, fresh water from natural local sources in Ireland.
35. Extra Stout sold in the United States is manufactured, brewed, bottled and/or imported from Canada. See, Exhibits 4 & 5.



36. Extra Stout's outer packaging does not mention, reference and/or indicate that Extra Stout is manufactured, brewed, bottled and/or imported from Canada. See, Exhibits 1 & 2.
37. Extra Stout's front labels do not mention, reference and/or indicate that Extra Stout is manufactured, brewed, bottled and/or imported from Canada. See, Exhibit 3.
38. Extra Stout's labels do not prominently place on their labeling a representation that Extra Stout is manufactured, brewed, bottled and/or imported from Canada with sufficient

conspicuousness, as compared with other words, statements, designs, or devices in the labeling, including but not limited to, the Guinness Logo and statements made on both Extra Stout's outer packaging and front labels.

39. Extra Stout's label only contains one small print disclosure on the back label of the bottle acknowledging that Extra Stout is actually brewed and bottled in New Brunswick, Canada. See, Exhibits 4 & 5.
40. Extra Stout's label only contains one small print disclosure on the back label of the bottle acknowledging that Extra Stout is actually a product of Canada. See, Exhibits 4 & 5.
41. Extra Stout is not labeled, advertised, marketed and/or sold in a manner that would render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use that Extra Stout was actually manufactured, brewed, bottled and/or imported from Canada.
42. The image, picture, statements, and/or graphic(s) displayed on Extra Stout's outer packaging, front labels and/or website creates a false impression that Extra Stout is manufactured, brewed, naturally sourced, bottled and/or imported from Ireland.
43. The image, picture, statements, and/or graphic(s) displayed on Extra Stout's outer packaging, web site and/or front labels creates a false impression that Extra Stout is manufactured, brewed, naturally sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.
44. The image, picture, statements, and/or graphic(s) displayed on Extra Stout's outer packaging, web site and/or front labels misrepresents the products in such a manner that had the buyer received disclosure of the true facts, a reasonable consumer would reconsider the purchase of the product.

45. The image, picture, statements, and/or graphic(s) displayed on Extra Stout's outer packaging, web site and/or front labels misrepresent the products in such a manner that later, on disclosure of the true facts, there is a likelihood that the consumer might have paid a premium price for the Extra Stout.
46. The customary method of distribution, marketing, advertising, packaging and sale of Extra Stout fails to inform the consumer that Extra Stout is manufactured, brewed, bottled and/or imported from Canada.
47. O'Hara purchased Extra Stout in Massachusetts.
48. As a result of Defendants' representations on the outer packaging, front labels and/or website, O'Hara believed Extra Stout was manufactured, brewed, bottled and/or imported from Ireland.
49. As a result of Defendants' representations on the outer packaging and/or website, O'Hara believed Extra Stout was manufactured, brewed, bottled and/or imported at St. James's Gate Brewery, Dublin, Ireland.
50. As a result of Defendants' labeling, O'Hara believed Extra Stout was manufactured, brewed, bottled and/or imported from Ireland.
51. As a result of Defendants' labeling, O'Hara believed Extra Stout was manufactured, brewed, bottled and/or imported at St. James's Gate Brewery, Dublin, Ireland.
52. As a result of Defendants' representations, O'Hara paid a premium price for Extra Stout.
53. As a result of Defendants' labeling/marketing, O'Hara paid a premium price for Extra Stout.

54. O'Hara purchased Extra Stout because, in part, he believed Extra Stout was manufactured, brewed, bottled and/or imported from the St. James's Gate Brewery, Dublin Ireland.
55. A reasonable person would believe that Extra Stout was manufactured, brewed, bottled and/or imported from Ireland.
56. A reasonable person would believe that Extra Stout was manufactured, brewed, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.
57. Consumers have purchased Extra Stout in Massachusetts.
58. Consumers have purchased Extra Stout throughout the United States.
59. As a result of Defendants' representations consumers believe, and/or have been led to believe, Extra Stout is manufactured, brewed, bottled and/or imported from Ireland.
60. As a result of Defendants' representations consumers believe, and/or have been led to believe, Extra Stout is manufactured, brewed, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.
61. As a result of Defendants' labeling/marketing, consumers believe, and/or have been led to believe, Extra Stout is manufactured, brewed, bottled and/or imported from Ireland.
62. As a result of Defendants' labeling/marketing, consumers believe, and/or have been led to believe, Extra Stout is manufactured, brewed, bottled and/or imported form St. James's Gate Brewery, Dublin, Ireland.
63. As a result of Defendants representations consumers have paid a premium price for Extra Stout.
64. As a result of Defendants labeling/marketing, consumers paid a premium price for Extra Stout.

65. Consumers purchased Extra Stout because, in part, they believed Extra Stout is manufactured, brewed, bottled and/or imported at the St. James's Gate Brewery, Dublin Ireland.
66. O'Hara and consumers have been damaged by Defendants' by the practices described herein, including but not limited to, the premium price increase they paid for Extra Stout.
67. At all times relevant hereto, Defendants were engaged in trade and commerce as defined by M.G.L. c. 93A.
68. On or about December 1, 2015, O'Hara, through counsel, forwarded the requisite class-wide consumer protection act demand letters to Defendants. See, Exhibits 6 & 7 (*O'Hara's 93A Demands to Defendants*).
69. O'Hara's class-wide consumer protection act demand letters to Defendants sought relief on behalf of O'Hara and other similarly situated individuals which included, but was not limited to, the following:
- A. The return of the full cost of Extra Stout purchased by all consumers in the Commonwealth labeled/misbranded/advertised/sold in the manner described herein; and
  - B. That Defendants cease and desist the labeling/ misbranding/ advertising/sales practices described herein in a legally enforceable manner.
70. On or about December 30, 2015, Defendants, through counsel, responded to O'Hara's class-wide consumer protection act demand letter. See, Exhibit 8 (*Defendants' Joint Response to O'Hara's 93A Demand*)(*"Defendants' Response"*).<sup>1</sup>

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<sup>1</sup> Defendants, through counsel, jointly responded to *O'Hara's 93A Demands to Defendants*.

71. In Defendants' Response, Defendants refused to make any offer of settlement to consumers in the Commonwealth who were affected by the labeling/ misbranding/ advertising/sales practices complained of in O'Hara's class-wide Demand.See, **Exhibit 8**.
72. In Defendants' Response, Defendants refused to make any offer of settlement to any persons who were affected by the labeling/ misbranding/ advertising/sales practices complained of herein. See, **Exhibit 8**.
73. The damages sought for Massachusetts consumers in O'Hara's class-wide demand were reasonably ascertainable.
74. In Defendants' Response, Defendants refused to agree to cease and desist the practices complained of in a legally binding manner.

**WHEREFORE**, O'Hara seeks actual and punitive damages, on behalf of himself and other similarly situated individuals, including but not limited to, any and all amounts paid for Extra Stout (together with associated loss of use thereon), and/or any premium price paid for Extra Stout (together with associated loss of use thereon) collected as a result of Defendants material, knowing, and/or willful misrepresentations and practices complained of herein. O'Hara also seeks to enjoin Defendants from the acts and/or omissions complained of herein.

**CLASS ALLEGATIONS**

75. O'Hara brings this action on behalf of himself and all others similarly situated pursuant to Federal Rule of Civil Procedure 23 and M.G.L. c. 93A.
76. The Class and Sub-Class ("Classes") shall be defined as:

Nationwide Class (“National Class”):

All consumers residing in the United States who purchased Extra Stout at a retail location for off-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland, when said Extra Stout was not manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland; and/or

All consumers residing in the United States who purchased Extra Stout at a restaurant, bar and/or other lawfully licensed service establishment for on-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland, when said Extra Stout was not manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland.

Massachusetts Sub-Class (“Massachusetts Class”):

All consumers who purchased Extra Stout in Massachusetts at a retail location for off-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland, when said Extra Stout was not manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland; and/or

All consumers who purchased Extra Stout in Massachusetts at a restaurant, bar and/or other lawfully licensed service establishment for on-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland, when said Extra Stout was not manufactured, brewed, sourced, bottled and/or imported from the St. James’s Gate Brewery, Dublin, Ireland.

77. The members of the Classes are so numerous that joinder of all members would be impracticable. Upon information and belief, the Classes are comprised of thousands of consumers who have purchased Extra Stout throughout the United States and Massachusetts.
78. O’Hara’s claims are typical of the claims of other members of the Classes, as all members of the Classes have been similarly affected by Defendants’ acts and practices as described herein.

79. O'Hara will fairly and adequately protect the interests of the Classes and is represented by counsel experienced in complex class action litigation.
80. Common questions of law and fact exist and predominate over any questions of law or fact which may affect only individual members of the Classes. Common questions of law and fact include:
- A. Whether Extra Stout sold in the United States was falsely, deceptively and/or misleadingly misrepresented to have been manufactured, brewed, sourced, bottled and/or imported from Ireland;
  - B. Whether Extra Stout sold in the United States was falsely, deceptively and/or misleadingly misrepresented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland;
  - C. Whether the acts and omissions of Defendants set forth herein are/were likely to mislead a reasonable consumer.
  - D. Whether O'Hara and members of the Classes were damaged by paying a premium price based upon Defendants' acts and omissions as set forth herein;
  - E. Whether O'Hara and members of the Classes were damaged based upon Defendants' acts and omissions as set forth herein;
  - F. Whether O'Hara and members of the Classes are entitled to damages;
  - G. Whether the acts and practices of Defendants described herein constitute misrepresentation;
  - H. Whether the acts and practices of Defendants described herein constitute unjust enrichment;
  - I. Whether the Defendants violated Massachusetts state laws and regulations;

- J. Whether the Defendants violated M.G.L. c. 93A, § 2;
  - K. Whether the acts and omissions of Defendants described herein were committed willfully, knowingly and/or in bad faith;
  - L. Whether O'Hara and the Classes are entitled to compensatory damages, including but not limited to, statutory and/or actual damages (with interest thereon) and/or restitution;
  - M. Whether Defendants should be required to reimburse and/or disgorge any profits gained as a result of the acts and omissions described herein;
  - N. The applicable statute of limitations to be determined on any or all of the successful causes of action; and
  - O. Whether Defendants should be permanently enjoined from continuing the practice which is the subject matter of this civil action.
81. A class action will cause an orderly and expeditious administration of the claims of O'Hara and the Classes.
82. A class action is the superior method for the adjudication of these claims as it will foster economies of time, effort and expense to ensure uniformity of decisions, presenting the most efficient manner of adjudicating the claims set forth herein.

**COUNT I**  
**MISREPRESENTATION**  
**(O'Hara and the National Class v. Defendants)**

83. O'Hara repeats and re-alleges the allegations set forth above.
84. O'Hara purchased Extra Stout advertised, labeled, marketed and/or sold by Defendants.
85. In connection with advertising, labeling, marketing and/or sale of Extra Stout, Defendants made a material, knowing, and/or willful misrepresentation(s) that Extra Stout was

manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.

86. Defendants knew that Extra Stout was/is in fact not manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.
87. Defendants' misrepresentations listed above constituted false statements of material fact.
88. O'Hara relied upon Defendants' misrepresentation(s).
89. The misrepresentation(s) caused O'Hara to buy Extra Stout.
90. Defendants' misrepresentations(s) caused O'Hara to purchase Extra Stout rather than buy another product.
91. Members of the Classes have purchased Extra Stout.
92. In connection with advertising, labeling, marketing and/or sale of Extra Stout to Members of the Classes, Defendants made a material, knowing, and/or willful misrepresentation(s) that Extra Stout was manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.
93. Defendants knew that Extra Stout was/is in fact not manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.
94. Defendants' misrepresentations described above constituted false statements of material fact.
95. Members of the Classes relied upon Defendants' misrepresentations.
96. The Defendants' misrepresentations caused members of the Classes to purchase Extra Stout.
97. Defendants' misrepresentations(s) caused Members of the Classes to act differently and/or buy Extra Stout rather than another product.

98. O'Hara and members of the Classes have suffered damages as a result of Defendants' misrepresentations including, but not limited to, financial detriment.
99. O'Hara and members of the Classes have suffered damages as a result of Defendants' misrepresentations including, but not limited to, the premium price paid for a product represented to have been manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.

**WHEREFORE**, O'Hara respectfully requests that this Court enter judgment against Defendants for their misrepresentation(s) and award damages to adequately compensate O'Hara and members of the Classes, that the Court order Defendants to cease and desist the practices complained of herein, and that the Court award damages, court costs and attorneys' fees.

**COUNT II**  
**UNJUST ENRICHMENT**  
**(O'Hara and the National Class v. Defendants)**

100. Plaintiff repeats and re-alleges the allegations set forth above.
101. Defendants received from O'Hara and members of the Classes a benefit related to the premium price associated with the false advertising, labeling, marketing and/or misrepresentations set forth herein.
102. Defendants undertook steps associated with the distribution, marketing, advertising and/or sale of their products, as set forth herein, in order to mislead O'Hara and members of the Classes into believing Extra Stout was manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland.
103. Defendants knowingly collected monies from O'Hara and members of the Classes in excess of what O'Hara and the members of the Classes would have paid for beer not

manufactured, brewed, sourced, bottled and/or imported in the St. James's Gate Brewery, Dublin, Ireland.

104. O'Hara believed that he was paying a premium price for a product manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Ireland.

105. Members of the Classes believed they were paying a premium price for a product manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Ireland.

106. Defendants directly benefited from the premium price collected from O'Hara and members of the Classes for Extra Stout based upon the advertising, labeling, marketing and/or misrepresentations set forth herein to the detriment of O'Hara and members of the Classes.

107. As a result, O'Hara and members of the Classes have conveyed an unwarranted benefit upon Defendants.

108. Defendant had knowledge of the unwarranted benefit and voluntarily accepted and retained the benefit.

109. Defendants collection of monies from O'Hara and the members of the Classes, related to the advertising, labeling, marketing and/or misrepresentations associated with Extra Stout constituted the unjust enrichment of Defendants to the unjust detriment of O'Hara and the members of the Classes.

110. Defendants will be unjustly enriched if they are permitted to retain the unwarranted benefit received due to the misrepresentations set forth herein.

111. O'Hara and members of the Classes are entitled to recover the unwarranted benefit conveyed upon Defendants.

**WHEREFORE**, O'Hara respectfully requests that this Court enter judgment against Defendants and award damages to adequately compensate O'Hara and the Classes for the amounts Defendants were unjustly enriched, that the Court order Defendants to cease and desist the practices complained of herein, and that the Court award damages, court costs and attorneys' fees.

**COUNT III**  
**VIOLATION OF M.G.L. c. 93A**  
**(O'Hara and the Massachusetts Sub-Class v. Defendants)**

112. O'Hara and the Class repeat and re-allege the allegations set forth above, and assert that the acts and practices of Defendants as described herein constitute violations of M.G.L. c. 93A, §§ 2 and 9.

113. On or about December 1, 2015, O'Hara, through counsel, forwarded the requisite class-wide consumer protection act demand letters to Defendants. See, Exhibits 6 & 7.

114. O'Hara's class-wide consumer protection act demand letters to Defendants sought relief on behalf of O'Hara and other similarly situated individuals which included, but was not limited to, the following:

- a. The return of the full cost of Extra Stout purchased by all consumers in the Commonwealth labeled/misbranded/advertised/sold in the manner described herein; and
- b. That Defendants cease and desist the labeling/ misbranding/ advertising/sales practices described herein in a legally enforceable manner.

115. On or about December 30, 2015, Defendants, through counsel, responded to O'Hara's class-wide consumer protection act demand letter. See, Exhibit 8.

116. In Defendants' Response, Defendants refused to make any offer of settlement to consumers in the Commonwealth who were affected by the labeling/ misbranding/ advertising/sales practices complained of in O'Hara's class-wide Demand. See, **Exhibit 8**.
117. In Defendants' Response, Defendants refused to make any offer of settlement to any persons who were affected by the labeling/ misbranding/ advertising/sales practices complained of herein. See, **Exhibit 8**.
118. The damages sought for Massachusetts consumers in O'Hara's class-wide demand were reasonably ascertainable.
119. In Defendants' Response, Defendants refused to agree to cease and desist the practices complained of in a legally binding manner.
120. Defendants' advertising, labeling, marketing and/or sale of Extra Stout to Members of the Classes was made with a material, knowing, and/or willful misrepresentation that Extra Stout was manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland constitutes an unfair and deceptive practice.
121. O'Hara purchased Extra Stout under the conditions described herein.
122. Members of the Massachusetts Sub-Class purchased Extra Stout under the conditions described herein.
123. Defendants' acts and practices described herein have caused O'Hara and the Class(es) to suffer damages, including but not limited to the following:
- A. Financial detriment;
  - B. Paying a premium price for a product that was not manufactured, brewed, sourced, bottled and/or imported from the location it claimed to be;

- C. The purchase price of the product which was labeled/ misbranded/ advertised/sold in a false manner;
- D. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it was manufactured, brewed, sourced, bottled and/or imported from a location where it was not;
- E. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it had more value than it actually had;
- F. Monies spent in connection with the purchase of the Extra Stout which was labeled/misbranded/advertised/sold in the manner detailed herein (including but not limited to any bottle redemption value); and
- G. Defendants' unjust receipt and retention of all monies spent in connection with the purchase of the Extra Stout which was labeled/ misbranded/ advertised/sold in the manner detailed herein.

**WHEREFORE**, O'Hara respectfully requests that this Court enter judgment against Defendants for their violations of M.G.L. c. 93A and award damages to adequately compensate O'Hara and the Massachusetts Sub-Class. O'Hara and the Massachusetts Sub-Class also respectfully request that this Court declare that the acts and practices of Defendants described herein were committed willfully, knowingly and/or in bad faith in violation of M.G.L. c. 93A, §§ 2 and 9, and that in accordance with M.G.L. c. 93A, the Court treble the amount of the Judgment and add thereto court costs and attorneys' fees.

**COUNT IV**  
**VIOLATION OF M.G.L. c. 93A**  
**For Violations of 940 CMR 3.02**  
**(O'Hara and the Massachusetts Sub-Class v. Defendants)**

124. O'Hara and the Class repeat and re-allege the allegations set forth above, and assert that the acts and practices of Defendants as described herein constitute violations of 940 CMR 3.02 and M.G.L. c. 93A, §§ 2 and 9.

125. On or about December 1, 2015, O'Hara, through counsel, forwarded the requisite class-wide consumer protection act demand letters to Defendants. See, Exhibits 6 & 7.

126. O'Hara's class-wide consumer protection act demand letters to Defendants sought relief on behalf of O'Hara and other similarly situated individuals which included, but was not limited to, the following:

- a. The return of the full cost of Extra Stout purchased by all consumers in the Commonwealth labeled/misbranded/advertised/sold in the manner described herein; and
- b. That Defendants cease and desist the labeling/ misbranding/ advertising/sales practices described herein in a legally enforceable manner.

127. On or about December 30, 2015, Defendants, through counsel, responded to O'Hara's class-wide consumer protection act demand letter. See, Exhibit 8.

128. In Defendants' Response, Defendants refused to make any offer of settlement to consumers in the Commonwealth who were affected by the labeling/ misbranding/ advertising/sales practices complained of in O'Hara's class-wide Demand. See, Exhibit 8.

129. In Defendants' Response, Defendants refused to make any offer of settlement to any persons who were affected by the labeling/ misbranding/ advertising/sales practices complained of herein. See, Exhibit 8.

130. The damages sought for Massachusetts consumers in O'Hara's class-wide demand were reasonably ascertainable.

131. In Defendants' Response, Defendants refused to agree to cease and desist the practices complained of in a legally binding manner.

132. 940 CMR 3.02 sets forth the acts and/or practices that constitute false advertising in the Commonwealth.

133. A violation of 940 CMR 3.02 constitutes a violation of M.G.L. c. 93A, § 2.

134. 940 CMR 3.02(2) states in pertinent part:

No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, *or origin of the product offered*, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.

940 CMR 3.02(2)(*emphasis added*).

135. Defendants' labeling/advertising/misbranding/sales practices detailed herein creates a false impression of the *origin*, grade, quality, make and/or value of the Extra Stout offered.

136. Defendants' labeling/advertising/misbranding/sales practices detailed herein misrepresents the Extra Stout products.

137. Defendants' labeling/advertising/misbranding/sales practices detailed herein misrepresents the Extra Stout in such a manner that later, on disclosure of the true facts, there is a likelihood that a buyer may be switched from the advertised product to another.
138. A consumers' first contact with Defendants' Extra Stout, in the manner detailed herein, creates a false impression of the *origin*, grade, quality, make and/or value of the Extra Stout offered.
139. A consumers' first contact with Defendants' Extra Stout, in the manner detailed herein, misrepresents the *origin*, grade, quality, make and/or value of the Extra Stout.
140. A consumers' first contact with Defendants' Extra Stout, in the manner detailed herein, misrepresents the Extra Stout in such a manner that later, on disclosure of the true facts, there is a likelihood that a buyer may be switched from the advertised product to another.
141. Defendants' labeling/advertising/misbranding/sales practices, detailed herein, created a false impression of the *origin*, grade, quality, make and/or value of the Extra Stout purchased by O'Hara.
142. Defendants' labeling/advertising/misbranding/sales practices detailed herein misrepresented the *origin*, grade, quality, make and/or value of the Extra Stout purchased by O'Hara.
143. O'Hara's first contact with Extra Stout created a false impression of the *origin*, grade, quality, make and/or value of the Extra Stout.
144. O'Hara's first contact with Extra Stout, misrepresented the *origin*, grade, quality, make and/or value of the Extra Stout purchased by O'Hara.

145. Defendants' labeling/advertising/misbranding/sales practices detailed herein created a false impression of the *origin*, grade, quality, make and/or value of the Extra Stout purchased by members of the Massachusetts Sub-Class.
146. Defendants' labeling/advertising/misbranding/sales practices detailed herein misrepresented the *origin*, grade, quality, make and/or value of the Extra Stout purchased by members of the Massachusetts Sub-Class.
147. Members of the Massachusetts Sub-Class first contact with Extra Stout created a false impression of the *origin*, grade, quality, make and/or value of the Extra Stout.
148. Members of the Massachusetts Sub-Class first contact with Extra Stout, misrepresented the *origin*, grade, quality, make and/or value of the Extra Stout purchased by members of the Massachusetts Sub-Class.
149. Defendants' labeling/advertising/misbranding/sales practices detailed herein constitute violations of 940 CMR 3.02(2).
150. Defendants' violations of 940 CMR 3.02, set forth herein, constitute violations of M.G.L. c. 93A, § 2.
151. Defendants' advertising, labeling, marketing and/or sale of Extra Stout to Members of the Classes with a material, knowing, and/or willful misrepresentation(s) that Extra Stout was manufactured, brewed, sourced, bottled and/or imported from St. James's Gate Brewery, Dublin, Ireland constitutes an unfair and deceptive practice.
152. O'Hara purchased Extra Stout under the conditions described herein.
153. Members of the Massachusetts Sub-Class purchased Extra Stout under the conditions described herein.

154. Defendants' acts and practices described herein have caused O'Hara and the Class(es) to suffer damages, including but not limited to the following:

- A. Financial detriment;
- B. Paying a premium price for a product that was not manufactured, brewed, sourced, bottled and/or imported from the location it claimed to be;
- C. The purchase price of the product which was labeled/ misbranded/ advertised/sold in a false manner;
- D. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it was manufactured, brewed, sourced, bottled and/or imported from a location where it was not;
- E. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it had more value than it actually had;
- F. Monies spent in connection with the purchase of the Extra Stout which was labeled/misbranded/advertised/sold in the manner detailed herein (including but not limited to any bottle redemption value); and
- G. Defendants' unjust receipt and retention of all monies spent in connection with the purchase of the Extra Stout which was labeled/ misbranded/ advertised/sold in the manner detailed herein.

**WHEREFORE**, O'Hara respectfully requests that this Court enter judgment against Defendants for their violations of 940 CMR 302 and M.G.L. c. 93A and award damages

to adequately compensate O'Hara and the Massachusetts Sub-Class. O'Hara and the Massachusetts Sub-Class also respectfully request that this Court declare that the acts and practices of Defendants described herein were committed willfully, knowingly and/or in bad faith in violation of M.G.L. c. 93A, §§ 2 and 9, and that in accordance with M.G.L. c. 93A, the Court treble the amount of the Judgment and add thereto court costs and attorneys' fees.

**COUNT V**  
**VIOLATION OF M.G.L. c. 93A**  
**For Violations of M.G.L. c. 94, § 187 and 940 CMR 3.16(3)**  
**(O'Hara and the Massachusetts Sub-Class v. Defendants)**

155. O'Hara and the Class repeat and re-allege the allegations set forth above, and assert that the acts and practices of Defendants as described herein constitute violations of M.G.L. c. 94, § 187; 940 CMR 3.16(3); and M.G.L. c. 93A, §§ 2 and 9.

156. On or about December 1, 2015, O'Hara, through counsel, forwarded the requisite class-wide consumer protection act demand letters to Defendants. See, Exhibits 6 & 7.

157. O'Hara's class-wide consumer protection act demand letters to Defendants sought relief on behalf of O'Hara and other similarly situated individuals which included, but was not limited to, the following:

- a. The return of the full cost of Extra Stout purchased by all consumers in the Commonwealth labeled/misbranded/advertised/sold in the manner described herein; and
- b. That Defendants cease and desist the labeling/ misbranding/ advertising/sales practices described herein in a legally enforceable manner.

158. On or about December 30, 2015, Defendants, through counsel, responded to O'Hara's class-wide consumer protection act demand letter. See, **Exhibit 8**.
159. In Defendants' Response, Defendants refused to make any offer of settlement to consumers in the Commonwealth who were affected by the labeling/ misbranding/ advertising/sales practices complained of in O'Hara's class-wide Demand. See, **Exhibit 8**.
160. In Defendants' Response, Defendants refused to make any offer of settlement to any persons who were affected by the labeling/ misbranding/ advertising/sales practices complained of herein. See, **Exhibit 8**.
161. The damages sought for Massachusetts consumers in O'Hara's class-wide demand were reasonably ascertainable.
162. In Defendants' Response, Defendants refused to agree to cease and desist the practices complained of in a legally binding manner.
163. M.G.L. c. 94, § 187 sets forth the requirements for branding of, inter alia, foods in the Commonwealth.
164. Extra Stout is a food which was required to conform to the branding requirements of M.G.L. c. 94, § 187.
165. M.G.L. c. 94, § 187 sets forth the circumstances which constitute a misbranding of foods in the Commonwealth.
166. Defendants' labeling/branding of Extra Stout, as described herein constitutes violations of M.G.L. c. 94, § 187.
167. M.G.L. c. 94, § 187 is a statute meant for the protection of the public's welfare, intended to provide protection to the consumers of the Commonwealth.
168. 940 CMR 3.16(3) provides that:

[A]n act or practice is a violation of M.G.L. c. 93A, § 2 if . . . it fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection . . . .”

169. Defendants’ misbranding and violations of M.G.L. c. 94, § 187, as described herein, constitutes violations of 940 CMR 3.16(3), and therefore, *per se* violations of M.G.L. c. 93A, § 2.
170. O’Hara purchased Extra Stout under the conditions described herein.
171. Members of the Massachusetts Sub-Class purchased Extra Stout under the conditions described herein.
172. Defendants’ acts and practices described herein have caused O’Hara and the Class(es) to suffer damages, including but not limited to the following:
- A. Financial detriment;
  - B. Paying a premium price for a product that was not manufactured, brewed, sourced, bottled and/or imported from the location it claimed to be;
  - C. The purchase price of the product which was labeled/ misbranded/ advertised/sold in a false manner;
  - D. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it was manufactured, brewed, sourced, bottled and/or imported from a location where it was not;

- E. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it had more value than it actually had;
- F. Monies spent in connection with the purchase of the Extra Stout which was labeled/misbranded/advertised/sold in the manner detailed herein (including but not limited to any bottle redemption value); and
- G. Defendants' unjust receipt and retention of all monies spent in connection with the purchase of the Extra Stout which was labeled/ misbranded/ advertised/sold in the manner detailed herein.

**WHEREFORE**, O'Hara respectfully requests that this Court enter judgment against Defendants for their violations of M.G.L. c. 94, § 187; 940 CMR 3.16(3) and M.G.L. c. 93A and award damages to adequately compensate O'Hara and the Massachusetts Sub-Class. O'Hara and the Massachusetts Sub-Class also respectfully request that this Court declare that the acts and practices of Defendants described herein were committed willfully, knowingly and/or in bad faith in violation of M.G.L. c. 93A, §§ 2 and 9, and that in accordance with M.G.L. c. 93A, the Court treble the amount of the Judgment and add thereto court costs and attorneys' fees.

**COUNT VI**  
**VIOLATION OF M.G.L. c. 93A**  
**For Violations of M.G.L. c. 94, § 187; 105 CMR 520.115 and 940 CMR 3.16(3)**  
**(O'Hara and the Massachusetts Sub-Class v. Defendants)**

173. O'Hara and the Class repeat and re-allege the allegations set forth above, and assert that the acts and practices of Defendants as described herein constitute violations of M.G.L. c. 94, § 187; 105 CMR 520.115; 940 CMR 3.16(3); and M.G.L. c. 93A, §§ 2 and 9.

174. On or about December 1, 2015, O'Hara, through counsel, forwarded the requisite class-wide consumer protection act demand letters to Defendants. See, Exhibits 6 & 7.

175. O'Hara's class-wide consumer protection act demand letters to Defendants sought relief on behalf of O'Hara and other similarly situated individuals which included, but was not limited to, the following:

- a. The return of the full cost of Extra Stout purchased by all consumers in the Commonwealth labeled/misbranded/advertised/sold in the manner described herein; and
- b. That Defendants cease and desist the labeling/ misbranding/ advertising/sales practices described herein in a legally enforceable manner.

176. On or about December 30, 2015, Defendants, through counsel, responded to O'Hara's class-wide consumer protection act demand letter. See, Exhibit 8.

177. In Defendants' Response, Defendants refused to make any offer of settlement to consumers in the Commonwealth who were affected by the labeling/ misbranding/ advertising/sales practices complained of in O'Hara's class-wide Demand. See, Exhibit 8.

178. In Defendants' Response, Defendants refused to make any offer of settlement to any persons who were affected by the labeling/ misbranding/ advertising/sales practices complained of herein. See, Exhibit 8.

179. The damages sought for Massachusetts consumers in O'Hara's class-wide demand were reasonably ascertainable.

180. In Defendants' Response, Defendants refused to agree to cease and desist the practices complained of in a legally binding manner.

181. 105 CMR 520.115 states in pertinent part:

(A) A word, statement, or other information required by or under authority of M.G.L. c. 94 to appear on the label may lack that prominence and conspicuousness required by M.G.L. c. 94, § 187 paragraph 7, under food, by reason (among other reasons) of:

(1) The failure of such word, statement, or information to appear on the part of panel of the label which is presented or displayed under customary conditions of purchase;

(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be under customary conditions of purchase, the part or panel displayed; ...

105 CMR 520.115.

182. Defendants' labeling/branding of Extra Stout, as detailed herein, fails to include on the part of the label which is displayed under customary conditions of purchase a word, statement or other information as required by M.G.L. c. 94.

183. Defendants' labeling/branding of Extra Stout, as detailed herein, fails to include on the part of the label which is displayed under customary conditions of purchase a word or statement of actual origin, manufacture, bottling, and/or brewing as required by M.G.L. c. 94.

184. Defendants' labeling/branding of Extra Stout, as detailed herein, fails to include on two (2) parts of the label(s) (with sufficient space) a word, statement or other information as required by M.G.L. c. 94 as to render it likely to be under customary conditions of purchase, the part or panel displayed.

185. Defendants' labeling/branding of Extra Stout, as detailed herein, fails to include on two (2) parts of the label(s) (with sufficient space) a word or statement of actual origin,

manufacture, bottling, and/or brewing as required by M.G.L. c. 94 as to render it likely to be under customary conditions of purchase, the part or panel displayed.

186. Defendants' labeling/branding of Extra Stout, as detailed herein, constitute violations of 940 CMR 520.115.

187. Defendants' labeling/branding of Extra Stout, as detailed herein, constitute violations of M.G.L. c. 94, § 187.

188. 940 CMR 520.115 and M.G.L. c. 94, § 187 are a regulation and statute meant for the protection of the public's welfare, intended to provide protection to the consumers of the Commonwealth.

189. 940 CMR 3.16(3) provides that:

[A]n act or practice is a violation of M.G.L. c. 93A, § 2 if . . . it fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection . . . .”

190. Defendants' violations of 940 CMR 520.115 and M.G.L. c. 94, § 187, as described herein, constitutes violations of 940 CMR 3.16(3), and therefore, *per se* violations of M.G.L. c. 93A, § 2.

191. O'Hara purchased Extra Stout under the conditions described herein.

192. Members of the Massachusetts Sub-Class purchased Extra Stout under the conditions described herein.

193. Defendants' acts and practices described herein have caused O'Hara and the Class(es) to suffer damages, including but not limited to the following:

A. Financial detriment;

- B. Paying a premium price for a product that was not manufactured, brewed, sourced, bottled and/or imported from the location it claimed to be;
- C. The purchase price of the product which was labeled/ misbranded/ advertised/sold in a false manner;
- D. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it was manufactured, brewed, sourced, bottled and/or imported from a location where it was not;
- E. The purchase price of the product which was labeled/ misbranded/ advertised/sold with the representation that it had more value than it actually had;
- F. Monies spent in connection with the purchase of the Extra Stout which was labeled/misbranded/advertised/sold in the manner detailed herein (including but not limited to any bottle redemption value); and
- G. Defendants' unjust receipt and retention of all monies spent in connection with the purchase of the Extra Stout which was labeled/ misbranded/ advertised/sold in the manner detailed herein.

**WHEREFORE**, O'Hara respectfully requests that this Court enter judgment against Defendants for their violations of 940 CMR 520.115; M.G.L. c. 94, § 187; 940 CMR 3.16(3) and M.G.L. c. 93A and award damages to adequately compensate O'Hara and the Massachusetts Sub-Class. O'Hara and the Massachusetts Sub-Class also respectfully request that this Court declare that the acts and practices of Defendants described herein

were committed willfully, knowingly and/or in bad faith in violation of M.G.L. c. 93A, §§ 2 and 9, and that in accordance with M.G.L. c. 93A, the Court treble the amount of the Judgment and add thereto court costs and attorneys' fees.

**COUNT VII**  
**DECLARATORY JUDGMENT**  
**(O'Hara and the National Class v. Defendants)**

194. O'Hara repeats and re-alleges the allegations set forth above.

195. There exists an actual controversy as to whether Extra Stout sold in the United States was/is advertised, marketed and/or sold in a manner that indicates that it is manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery in Dublin, Ireland.

196. There exists an actual controversy as to whether Extra Stout sold in the United States was/is brewed, sourced, bottled and/or imported from the St. James's Gate Brewery in Dublin, Ireland.

197. O'Hara and the Classes are entitled to a declaration as to how Defendants can market, advertise and/or sell Extra Stout in the United States.

198. O'Hara and the Classes are entitled to a declaration as to whether Defendants representations, advertising, labeling, marketing and/or selling of Extra Stout, as described herein, are in violation of Massachusetts law, Massachusetts Regulations and/or Federal law and regulations.

199. O'Hara and members of the Classes are entitled to a declaration that Defendants acts and omissions as described herein are willful, knowing, unfair and/or deceptive.

200. O'Hara and members of the Classes are entitled to a declaration that Defendants acts and omissions as described herein were committed willfully, knowingly and/or in bad faith.

**WHEREFORE**, O'Hara and members of the Classes demand that this Honorable Court declare that Defendants' representations, advertising, labeling, marketing and/or selling of Extra Stout in the United States and/or Massachusetts, as described herein, is unlawful.

**PRAYERS FOR RELIEF**

**WHEREFORE**, O'Hara, on behalf of himself and all others similarly situated, demand judgment against Defendants as follows:

- A. An order determining that this action is a proper class action and certifying O'Hara as representative of the putative Classes;
- B. An order appointing O'Hara's counsel as competent legal representatives of the putative Classes in this action;
- C. An order determining that Extra Stout sold in the United States was/is falsely, deceptively and/or misleadingly misrepresented to have been manufactured, brewed, sourced, bottled and/or imported from Ireland;
- D. An order determining that Extra Stout sold in the United States was/is falsely, deceptively and/or misleadingly misrepresented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland;
- E. An order determining the acts and omissions of Defendants set forth herein misled reasonable consumers.
- F. An order determining that O'Hara and members of the Classes were damaged by paying a premium price based upon Defendants acts and omissions as set forth herein;
- G. An order determining that O'Hara and members of the Classes were damaged based upon Defendants acts and omissions as set forth herein;

- H. An order determining that O'Hara and members of the Classes are entitled to damages;
- I. An order determining that the acts and practices of Defendants described herein constitute misrepresentation;
- J. An order determining that the acts and practices of Defendants described herein constitute unjust enrichment;
- K. An order determining the Defendants violated Massachusetts state laws and regulations;
- L. An order determining the Defendants violated Federal laws and regulations;
- M. An order determining the Defendants violated M.G.L. c. 93A, § 2;
- N. An order determining the acts and omissions of Defendants described herein were committed willfully, knowingly and/or in bad faith;
- O. An order determining O'Hara and members of the Classes are entitled to compensatory damages, including statutory and/or actual damages (with interest thereon) and/or restitution;
- P. An order determining Defendants should be required to reimburse and/or disgorge any profits gained as a result of the acts and omissions described herein;
- Q. The applicable statute of limitations to be determined on any or all of the successful causes of action;
- R. Whether Defendants should be permanently enjoined from continuing the practice which is the subject matter of this civil action.
- S. An order determining that O'Hara and members of the Classes are entitled to as damages, and the proper measure of damages; and
- T. An order awarding O'Hara and members of the Classes any further relief as may be just and appropriate.

**DEMAND FOR JURY TRIAL**  
**JURY DEMAND**

O'Hara, on behalf of himself and all other similarly situated individuals hereby demands trial by jury on all counts of this Complaint, which are triable by a jury.

Respectfully submitted.  
Plaintiff, by his attorney,

DATE: 1/13/16

/s/ Kevin J. McCullough

---

Kevin J. McCullough, Esq.  
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(617) 231-7829

# EXHIBIT 1



# EXHIBIT 2



# EXHIBIT 3



# EXHIBIT 4

17 59



# GUINNESS

EXTRA STOUT

Brewed since 1759 with natural ingredients, today GUINNESS is enjoyed in over 150 countries. Experience the robust, mellow and satisfying flavor for yourself.

*Arthur Guinness*

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CA CASH REFUND

# EXHIBIT 5



**GUINNESS**

ULTRA STOUT

Since 1759 with natural  
GUINNESS is  
today GUINNESS is  
over 150 countries.  
the robust, mellow  
flavor for yourself.

*Signature*

W & M 10c REFUND

10c REFUND

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OK+



SH REFUND

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Imported by DIAGEO - Guinness USA, Stamford, CT.  
Brewed and bottled by Guinness Brewing Company,  
New Brunswick, Canada. Product of Canada.  
The GUINNESS word, HARP Device and ARTHUR GUINNESS  
Signature are trade marks.

# **EXHIBIT 6**



Forrest, LaMothe, Mazow,  
McCullough, Yasi & Yasi, P.C.  
Consumer Advocacy and Class Action Litigation



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Concord, CA 94519  
(415) 579-9481  
(877) 599-8890

PLEASE ADDRESS ALL  
CORRESPONDENCE  
TO THE SALEM,  
MASSACHUSETTS  
ADDRESS

December 1, 2015

**Notification of Willful/Knowing Violation of M.G.L. c. 93A, § 2**  
**Notification of Willful/Knowing Violation of M.G.L. c. 94, § 187**  
**Notification of Willful/Knowing Violation of 105 CMR 520.115**  
**Notification of Willful/Knowing Violation of 940 CMR 3.02**  
**Notification of Willful/Knowing Violation of 940 CMR 3.16**  
**Demand Pursuant to M.G.L. c. 93A, § 9(3)**

**Via Certified Mail – 7015 0920 0002 0574 0028**

**Via First Class Mail**

Diageo-Guinness USA, Inc.  
Attn: President, Tom Looney  
801 Main Avenue  
Norwalk, CT 06851

**Re: O’Hara et al. v. Diageo-Guinness, USA, Inc. & Diageo North America, Inc.**

Dear Sir or Madam:

Please be advised that this office represents Mr. Kieran O’Hara (“O’Hara”) in a claim against Diageo-Guinness, USA, Inc. (“Guinness USA”) and Diageo North America, Inc. (“Diageo North America”) (collectively “Defendants”) for violations of all of the statutes and regulations referenced above. O’Hara also serves this demand (and files the corresponding civil action) seeking recovery for a putative class(es) of similarly situated persons.

O’Hara claims that Defendants distribute, market, advertise, package and sell its Guinness® product, Guinness® Extra Stout (“Extra Stout”), in an unfair and deceptive manner, and that such practices constitute violations of M.G.L. c. 93A, §§ 2 & 9.

More specifically, O’Hara claims that Defendants manufacture, market, advertise, package and/or sell Extra Stout in a manner which unfairly and deceptively misleads consumers into believing that all of its Guinness Products, including Extra Stout, sold in the United States are manufactured, brewed, sourced, bottled and/or imported in/from Dublin, Ireland, when in fact Extra Stout sold in the United States is manufactured, brewed, sourced, bottled and/or imported in/from Canada.

O'Hara purchased Extra Stout which was manufactured, advertised, marketed and sold by Defendants. The outer packaging of Extra Stout's six-pack container prominently portrays a Guinness Logo which reads: "Traditionally Brewed St. James's Gate Dublin". Further the package contains the language "Imported Guinness Extra Stout". Nowhere on the package is there any indication to the purchaser that Extra Stout is brewed and/or imported from Canada.

In addition, Extra Stout's front labels picture a Guinness Logo which reads: "Traditionally Brewed St. James's Gate Dublin", and also contain the statement "Imported Guinness Extra Stout". Again, nowhere on the front label is there any indication to the purchaser that Extra Stout is brewed and/or imported from Canada.

O'Hara asserts that the language displayed on Extra Stout's outer packaging and front labels stating "Traditionally Brewed St. James's Gate Dublin" in conjunction with the language "Imported Guinness Extra Stout", gives and reinforces, to the purchaser, the first impression that Extra Stout is manufactured, sourced, brewed, bottled and/or imported from St. James's Gate, Dublin, Ireland.

Moreover, Guinness's United States web site claims that "*All Guinness® sold in the UK, Ireland and North America is brewed in Ireland at the historic St. James's Gate Brewery in Dublin*" See, <http://www.guinness.com/en-us/faqs.html> (last visited November 25, 2015)(emphasis added). O'Hara asserts that this representation clearly applies to Extra Stout, as it claims *all* Guinness products are brewed and/or bottled at the historic St. James's Gate Brewery in Dublin.

It is clear that O'Hara, and any other reasonable consumer in the United States, when presented with an opportunity to purchase Extra Stout in a retail location and/or restaurant/bar environment is presented with (or first contact is secured by) a representation that Extra Stout is manufactured, sourced, brewed, bottled and/or imported from St. James's Gate, Dublin, Ireland.

As a result of this representation, O'Hara asserts that he has paid a premium for his Extra Stout purchases that he, and other reasonable consumers in the United States, purchased under the false belief that Extra Stout was/is manufactured, sourced, brewed and/or bottled at the historic St. James's Gate Brewery in Dublin, when in fact Extra Stout sold in the United States is manufactured, sourced, brewed and/or bottled in Canada. Further, O'Hara contends that had he, and other reasonable consumers in the United States, been accurately informed of Extra Stout's true origin and export location, that they would have likely switched and purchased another product rather than Extra Stout.

While O'Hara acknowledges that Defendants have disclosed in relatively small font on the back of Extra Stout bottle labels that Extra Stout is brewed and imported from Canada, O'Hara, and all other consumers, contend that neither that statement nor any of the advertising representations made by Defendants adequately informs a consumer (especially in relation to first contact with the product) that Extra Stout is not in fact manufactured, sourced, brewed and/or bottled at the historic St. James's Gate Brewery in Dublin. Moreover, O'Hara contends that a consumer is not made aware of the actual manufacturing location until after the purchase has been made.

Furthermore, as you may be aware, M.G.L. c. 94, § 187 states that a product is unlawfully labeled/misbranded:

1. "...if it is in package form and fails to bear a label showing (1) the name and place of business of the manufacturer, packer and distributor:"; and
2. "...if any word, statement, or other information required by or under authority of this chapter to appear on the label *or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use:*".

M.G.L. c. 94, § 187 (emphasis added).

As a result of Defendants' labeling practices of Extra Stout, as described herein, O'Hara claims that in the course of marketing, advertizing and/or selling of Extra Stout, Defendants have violated M.G.L. c. 94, § 187 and as such violated 940 CMR 3.16(3) and M.G.L. C. 93A, §§ 2 & 9.<sup>1</sup>

In addition, O'Hara also asserts that by failing to prominently and conspicuously disclose the actual name and place of business of the manufacturer, packer and distributor on the outer packaging and/or front label and/or by failing to provide the origin location information on two or more parts or panels of the label, Defendants have also violated 105 CMR 520.115, which states in pertinent part:

(A) A word, statement, or other information required by or under authority of M.G.L. c. 94 to appear on the label may lack that prominence and conspicuousness required by M.G.L. c. 94, § 187 paragraph 7, under food, by reason (among other reasons) of:

*(1) The failure of such word, statement, or information to appear on the part of panel of the label which is presented or displayed under customary conditions of purchase;*

*(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be under customary conditions of purchase, the part or panel displayed; ...*

Id. (emphasis added). O'Hara asserts that a violation of 105 CMR 520.115 constitutes separate and distinct violations of 940 CMR 3.16(3) and M.G.L. C. 93A, §§ 2 & 9.

Finally, O'Hara claims that the marketing, advertizing and/or sales practices of Defendants described herein constitutes false advertising and a violation of 940 CMR 3.02(2), which states in pertinent part that:

---

<sup>1</sup> 940 CMR 3.16(3) states: "Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of M.G.L. c. 93A, § 2, if: ... [i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection..."

No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, *or origin of the product offered*, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

Even though the true facts are subsequently made known to the buyer, the law is violated *if the first contact or interview is secured by deception*.

940 CMR 3.02(2)(emphasis added). A violation of 940 CMR 3.02(2) constitutes a separate and distinct *per se* violation of M.G.L. c. 93A, § 2.

For these reasons, O'Hara contends that Defendants are selling a product that is not, and cannot lawfully be advertised and/or sold in the manner described herein, and that Defendants' advertising, marketing and/or sale of the Extra Stout has been done in an unfair and deceptive manner. Moreover, O'Hara claims that Defendants are advertising, marketing and/or selling Extra Stout in a manner which constitutes: false advertising; misbranding; misrepresentation, and as a result Defendants have been unjustly enriched.

Based upon Defendants' unlawful acts and/or omissions described herein, O'Hara has suffered harm and damage, including but not limited to, the purchase (at a premium price) of a product which advertises, markets, and brands itself to be manufactured, sourced, brewed, bottled and/or imported from the historic St. James's Gate Brewery, when in fact it is not.

In addition, O'Hara alleges that Defendants' acts and omissions described herein (misbranding and false advertising) have reasonably caused other consumers to act differently from the way he/she would have otherwise acted. More precisely, O'Hara alleges that Defendants have committed an unfair and deceptive act in relation to all consumers by falsely representing (at first contact and on its website) that Extra Stout is manufactured, sourced, brewed, bottled and/or imported from the historic St. James's Gate Brewery in Dublin, Ireland. O'Hara asserts that a consumer under reasonable circumstances purchases Extra Stout under the foregoing false belief.

Accordingly, O'Hara has filed a putative class action against Defendants in the United States District Court, District of Massachusetts, seeking to represent not only himself, but other similarly situated individuals. The causes of action upon which O'Hara and the putative class(es) seek recovery emanate from the unlawful practices described herein.

More precisely, for the purposes of the putative class action, the putative Class and Sub-Class ("Classes") whom O'Hara seeks to represent shall be defined as follows:

Nationwide Class ("National Class"):

All consumers residing in the United States who purchased Extra Stout at a retail location for off-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland; and/or

All consumers residing in the United States who purchased Extra Stout at a restaurant, bar and/or other lawfully licensed service establishment for on-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland.

Massachusetts Sub-Class (Massachusetts Class"):

All consumers who purchased Extra Stout in Massachusetts at a retail location for off-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland; and/or

All consumers who purchased Extra Stout in Massachusetts at a restaurant, bar and/or other lawfully licensed service establishment for on-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland.

As a result of the practices described herein, O'Hara and the putative Classes assert that they have suffered causally related damages which include, but are not necessarily limited to, the premium price paid for and/or the price of the Extra Stout purchased. Specifically, O'Hara and the putative classes allege that they have paid more money for the Extra Stout than they would have paid for another beverage option, because of the false representation and belief that the Extra Stout was manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland.

In accordance with the requirements of M.G.L. 93A, § 9(3), O'Hara now demands (for the full and final settlement of this claim on behalf of O'Hara *and* the Classes) the full costs of Extra Stout purchased under the circumstances described herein.

O'Hara also demands that Defendants immediately cease and desist from continuing the practices described herein in such a manner which is legally binding upon it. More specifically, O'Hara demands that Defendants conspicuously advertise, market and package Extra Stout in such a manner that a reasonable consumer in the United States is aware Extra Stout is brewed and imported from Canada before purchase and/or at first contact with the product.

O'Hara makes this demand on behalf of himself and the putative Classes going back four (4) years from the date of the filing of the associated civil action.

Pursuant to M.G.L. c. 93A (and assuming a violation thereof) Defendants must provide a written response to this demand within thirty (30) days of receipt of this demand thereof, and make a reasonable offer of settlement in relation thereto.

Should this monetary and injunctive demand be met, O'Hara also demands that Defendants, through their counsel, work diligently with O'Hara's counsel to produce the requisite confirmatory discovery necessary to define/identify the Classes and assist in adequately notifying and paying the Classes.

Finally, O'Hara demands that Defendants agrees to be wholly responsible for any costs associated with class-wide notification, administration of the claims of the putative Classes, as well as the payment of reasonable costs and reasonable attorneys' fees for O'Hara's counsel.

We note that any tentative class settlement which the parties may agree upon must be approved by a court of competent jurisdiction by way of preliminary, and then final approval pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to the applicable sections of M.G.L. 93A.

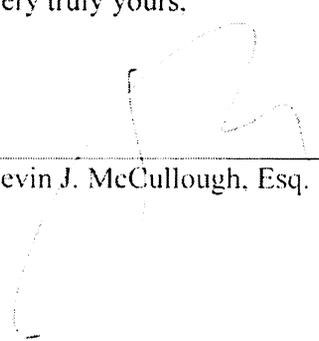
As noted above, Defendants have thirty (30) days to respond to this demand letter. Should Defendants (within 30 days) make a reasonable offer (or an offer which a court later deems reasonable) then O'Hara acknowledges that Defendants shall limit their damages owed to each member of the Classes to the return of all funds wrongly received (together with reasonable interest thereon) and/or \$25.00 per person affected by the acts described herein (whichever is greater).

Conversely, should Defendants fail to timely respond, or should it respond timely, but with an offer which O'Hara deems unreasonable, then O'Hara shall pursue additional claims for relief pursuant to M.G.L. 93A. Pursuant to sections 9(3) and 9(4) of M.G.L. c. 93A, O'Hara shall seek recovery of all related costs and attorneys' fees and at least two, but not more than three times actual damages.

We look forward to receiving a timely response to this consumer protection act demand letter.

Please preserve the original of this correspondence for production at any hearing or trial which may later occur and which shall in part, involve this correspondence and its relationship to the statute in question.

Very truly yours,



---

Kevin J. McCullough, Esq.

# **EXHIBIT 7**



Forrest, LaMothe, Mazow,  
McCullough, Yasi & Yasi, PC  
Consumer, Advertising and Class Action Litigation



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(415) 570-9481  
(877) 599-8896

PLEASE ADDRESS ALL  
CORRESPONDENCE  
TO THE SALEM,  
MASSACHUSETTS  
ADDRESS

<http://forrestlamothe.com>

December 1, 2015

**Notification of Willful/Knowing Violation of M.G.L. c. 93A, § 2**  
**Notification of Willful/Knowing Violation of M.G.L. c. 94, § 187**  
**Notification of Willful/Knowing Violation of 105 CMR 520.115**  
**Notification of Willful/Knowing Violation of 940 CMR 3.02**  
**Notification of Willful/Knowing Violation of 940 CMR 3.16**  
**Demand Pursuant to M.G.L. c. 93A, § 9(3)**

***Via Certified Mail – 7015 0920 0002 0574 0011***  
***Via First Class Mail***

Diageo North America, Inc.  
Attn: President, Ivan Menezes  
801 Main Avenue  
Norwalk, CT 06851

**Re: O'Hara et al. v. Diageo-Guinness, USA, Inc. & Diageo North America, Inc.**

Dear Sir or Madam:

Please be advised that this office represents Mr. Kieran O'Hara ("O'Hara") in a claim against Diageo-Guinness, USA, Inc. ("Guinness USA") and Diageo North America, Inc. ("Diageo North America") (collectively "Defendants") for violations of all of the statutes and regulations referenced above. O'Hara also serves this demand (and files the corresponding civil action) seeking recovery for a putative class(es) of similarly situated persons.

O'Hara claims that Defendants distribute, market, advertise, package and sell its Guinness® product, Guinness® Extra Stout ("Extra Stout"), in an unfair and deceptive manner, and that such practices constitute violations of M.G.L. c. 93A, §§ 2 & 9.

More specifically, O'Hara claims that Defendants manufacture, market, advertise, package and/or sell Extra Stout in a manner which unfairly and deceptively misleads consumers into believing that all of its Guinness Products, including Extra Stout, sold in the United States are manufactured, brewed, sourced, bottled and/or imported in/from Dublin, Ireland, when in fact Extra Stout sold in the United States is manufactured, brewed, sourced, bottled and/or imported in/from Canada.

O'Hara purchased Extra Stout which was manufactured, advertised, marketed and sold by Defendants. The outer packaging of Extra Stout's six-pack container prominently portrays a Guinness Logo which reads: "Traditionally Brewed St. James's Gate Dublin". Further the package contains the language "Imported Guinness Extra Stout". Nowhere on the package is there any indication to the purchaser that Extra Stout is brewed and/or imported from Canada.

In addition, Extra Stout's front labels picture a Guinness Logo which reads: "Traditionally Brewed St. James's Gate Dublin", and also contain the statement "Imported Guinness Extra Stout". Again, nowhere on the front label is there any indication to the purchaser that Extra Stout is brewed and/or imported from Canada.

O'Hara asserts that the language displayed on Extra Stout's outer packaging and front labels stating "Traditionally Brewed St. James's Gate Dublin" in conjunction with the language "Imported Guinness Extra Stout", gives and reinforces, to the purchaser, the first impression that Extra Stout is manufactured, sourced, brewed, bottled and/or imported from St. James's Gate, Dublin, Ireland.

Moreover, Guinness's United States web site claims that "*All Guinness® sold in the UK, Ireland and North America is brewed in Ireland at the historic St. James's Gate Brewery in Dublin*" See, <http://www.guinness.com/en-us/faqs.html> (last visited November 25, 2015)(emphasis added). O'Hara asserts that this representation clearly applies to Extra Stout, as it claims *all* Guinness products are brewed and/or bottled at the historic St. James's Gate Brewery in Dublin.

It is clear that O'Hara, and any other reasonable consumer in the United States, when presented with an opportunity to purchase Extra Stout in a retail location and/or restaurant/bar environment is presented with (or first contact is secured by) a representation that Extra Stout is manufactured, sourced, brewed, bottled and/or imported from St. James's Gate, Dublin, Ireland.

As a result of this representation, O'Hara asserts that he has paid a premium for his Extra Stout purchases that he, and other reasonable consumers in the United States, purchased under the false belief that Extra Stout was/is manufactured, sourced, brewed and/or bottled at the historic St. James's Gate Brewery in Dublin, when in fact Extra Stout sold in the United States is manufactured, sourced, brewed and/or bottled in Canada. Further, O'Hara contends that had he, and other reasonable consumers in the United States, been accurately informed of Extra Stout's true origin and export location, that they would have likely switched and purchased another product rather than Extra Stout.

While O'Hara acknowledges that Defendants have disclosed in relatively small font on the back of Extra Stout bottle labels that Extra Stout is brewed and imported from Canada, O'Hara, and all other consumers, contend that neither that statement nor any of the advertising representations made by Defendants adequately informs a consumer (especially in relation to first contact with the product) that Extra Stout is not in fact manufactured, sourced, brewed and/or bottled at the historic St. James's Gate Brewery in Dublin. Moreover, O'Hara contends that a consumer is not made aware of the actual manufacturing location until after the purchase has been made.

Furthermore, as you may be aware, M.G.L. c. 94, § 187 states that a product is unlawfully labeled/misbranded:

1. "...if it is in package form and fails to bear a label showing (1) the name and place of business of the manufacturer, packer and distributor;"; and
2. "...if any word, statement, or other information required by or under authority of this chapter to appear on the label *or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;*".

M.G.L. c. 94, § 187 (emphasis added).

As a result of Defendants' labeling practices of Extra Stout, as described herein, O'Hara claims that in the course of marketing, advertising and/or selling of Extra Stout, Defendants have violated M.G.L. c. 94, § 187 and as such violated 940 CMR 3.16(3) and M.G.L. C. 93A, §§ 2 & 9.<sup>1</sup>

In addition, O'Hara also asserts that by failing to prominently and conspicuously disclose the actual name and place of business of the manufacturer, packer and distributor on the outer packaging and/or front label and/or by failing to provide the origin location information on two or more parts or panels of the label, Defendants have also violated 105 CMR 520.115, which states in pertinent part:

(A) A word, statement, or other information required by or under authority of M.G.L. c. 94 to appear on the label may lack that prominence and conspicuousness required by M.G.L. c. 94, § 187 paragraph 7, under food, by reason (among other reasons) of:

*(1) The failure of such word, statement, or information to appear on the part of panel of the label which is presented or displayed under customary conditions of purchase;*

*(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be under customary conditions of purchase, the part or panel displayed; ...*

Id. (emphasis added). O'Hara asserts that a violation of 105 CMR 520.115 constitutes separate and distinct violations of 940 CMR 3.16(3) and M.G.L. C. 93A, §§ 2 & 9.

Finally, O'Hara claims that the marketing, advertising and/or sales practices of Defendants described herein constitutes false advertising and a violation of 940 CMR 3.02(2), which states in pertinent part that:

---

<sup>1</sup> 940 CMR 3.16(3) states: "Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of M.G.L. c. 93A, § 2, if: ... [i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection..."

No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, *or origin of the product offered*, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

Even though the true facts are subsequently made known to the buyer, the law is violated *if the first contact or interview is secured by deception*.

940 CMR 3.02(2)(emphasis added). A violation of 940 CMR 3.02(2) constitutes a separate and distinct *per se* violation of M.G.L. c. 93A, § 2.

For these reasons, O'Hara contends that Defendants are selling a product that is not, and cannot lawfully be advertised and/or sold in the manner described herein, and that Defendants' advertising, marketing and/or sale of the Extra Stout has been done in an unfair and deceptive manner. Moreover, O'Hara claims that Defendants are advertising, marketing and/or selling Extra Stout in a manner which constitutes: false advertising; misbranding; misrepresentation, and as a result Defendants have been unjustly enriched.

Based upon Defendants' unlawful acts and/or omissions described herein, O'Hara has suffered harm and damage, including but not limited to, the purchase (at a premium price) of a product which advertises, markets, and brands itself to be manufactured, sourced, brewed, bottled and/or imported from the historic St. James's Gate Brewery, when in fact it is not.

In addition, O'Hara alleges that Defendants' acts and omissions described herein (misbranding and false advertising) have reasonably caused other consumers to act differently from the way he/she would have otherwise acted. More precisely, O'Hara alleges that Defendants have committed an unfair and deceptive act in relation to all consumers by falsely representing (at first contact and on its website) that Extra Stout is manufactured, sourced, brewed, bottled and/or imported from the historic St. James's Gate Brewery in Dublin, Ireland. O'Hara asserts that a consumer under reasonable circumstances purchases Extra Stout under the foregoing false belief.

Accordingly, O'Hara has filed a putative class action against Defendants in the United States District Court, District of Massachusetts, seeking to represent not only himself, but other similarly situated individuals. The causes of action upon which O'Hara and the putative class(es) seek recovery emanate from the unlawful practices described herein.

More precisely, for the purposes of the putative class action, the putative Class and Sub-Class ("Classes") whom O'Hara seeks to represent shall be defined as follows:

Nationwide Class ("National Class"):

All consumers residing in the United States who purchased Extra Stout at a retail location for off-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland; and/or

All consumers residing in the United States who purchased Extra Stout at a restaurant, bar and/or other lawfully licensed service establishment for on-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland.

Massachusetts Sub-Class (Massachusetts Class"):

All consumers who purchased Extra Stout in Massachusetts at a retail location for off-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland; and/or

All consumers who purchased Extra Stout in Massachusetts at a restaurant, bar and/or other lawfully licensed service establishment for on-site personal use within the period that Extra Stout was represented to have been manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland, when it was not manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland.

As a result of the practices described herein, O'Hara and the putative Classes assert that they have suffered causally related damages which include, but are not necessarily limited to, the premium price paid for and/or the price of the Extra Stout purchased. Specifically, O'Hara and the putative classes allege that they have paid more money for the Extra Stout than they would have paid for another beverage option, because of the false representation and belief that the Extra Stout was manufactured, brewed, sourced, bottled and/or imported from the St. James's Gate Brewery, Dublin, Ireland.

In accordance with the requirements of M.G.L. 93A, § 9(3), O'Hara now demands (for the full and final settlement of this claim on behalf of O'Hara *and* the Classes) the full costs of Extra Stout purchased under the circumstances described herein.

O'Hara also demands that Defendants immediately cease and desist from continuing the practices described herein in such a manner which is legally binding upon it. More specifically, O'Hara demands that Defendants conspicuously advertise, market and package Extra Stout in such a manner that a reasonable consumer in the United States is aware Extra Stout is brewed and imported from Canada before purchase and/or at first contact with the product.

O'Hara makes this demand on behalf of himself and the putative Classes going back four (4) years from the date of the filing of the associated civil action.

Pursuant to M.G.L. c. 93A (and assuming a violation thereof) Defendants must provide a written response to this demand within thirty (30) days of receipt of this demand thereof, and make a reasonable offer of settlement in relation thereto.

Should this monetary and injunctive demand be met, O'Hara also demands that Defendants, through their counsel, work diligently with O'Hara's counsel to produce the requisite confirmatory discovery necessary to define/identify the Classes and assist in adequately notifying and paying the Classes.

Finally, O'Hara demands that Defendants agrees to be wholly responsible for any costs associated with class-wide notification, administration of the claims of the putative Classes, as well as the payment of reasonable costs and reasonable attorneys' fees for O'Hara's counsel.

We note that any tentative class settlement which the parties may agree upon must be approved by a court of competent jurisdiction by way of preliminary, and then final approval pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to the applicable sections of M.G.L. 93A.

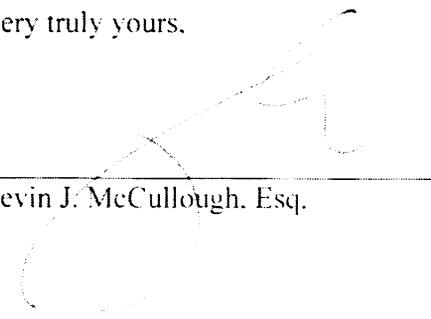
As noted above, Defendants have thirty (30) days to respond to this demand letter. Should Defendants (within 30 days) make a reasonable offer (or an offer which a court later deems reasonable) then O'Hara acknowledges that Defendants shall limit their damages owed to each member of the Classes to the return of all funds wrongly received (together with reasonable interest thereon) and/or \$25.00 per person affected by the acts described herein (whichever is greater).

Conversely, should Defendants fail to timely respond, or should it respond timely, but with an offer which O'Hara deems unreasonable, then O'Hara shall pursue additional claims for relief pursuant to M.G.L. 93A. Pursuant to sections 9(3) and 9(4) of M.G.L. c. 93A, O'Hara shall seek recovery of all related costs and attorneys' fees and at least two, but not more than three times actual damages.

We look forward to receiving a timely response to this consumer protection act demand letter.

Please preserve the original of this correspondence for production at any hearing or trial which may later occur and which shall in part, involve this correspondence and its relationship to the statute in question.

Very truly yours,



---

Kevin J. McCullough, Esq.

# **EXHIBIT 8**



HUNTON & WILLIAMS LLP  
1111 BRICKELL AVENUE  
SUITE 2500  
MIAMI, FLORIDA 33131

TEL 305 • 810 • 2500  
FAX 305 • 810 • 2460

SAMUEL A. DANON  
DIRECT DIAL: 305 • 810 • 2510  
EMAIL: [sdanon@hunton.com](mailto:sdanon@hunton.com)

December 30, 2015

FILE NO: 57133.187

**Via Electronic and Overnight Mail**

Kevin J. McCullough  
Forrest, LaMothe, Mazow, McCullough, Yasi & Yasi, P.C.  
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Salem, MA 01970  
Phone: (617) 231-7829  
Fax: (877) 599-8890  
[McCullough@forrestlamothe.com](mailto:McCullough@forrestlamothe.com)

Re: *O'Hara et al. v. Diageo-Guinness, USA, Inc. & Diageo North America, Inc.*:  
Demand Response Pursuant to Mass. Gen. Laws ch. 93A, § 9(3)

Dear Mr. McCullough:

I am writing on behalf of Diageo-Guinness, USA, Inc. and Diageo North America, Inc. (collectively, "Diageo") in response to your December 1, 2015 written demand for relief on behalf of Mr. Kieran O'Hara and a purported class of similarly situated individuals.<sup>1</sup> This letter constitutes Diageo's written tender of settlement in response to Mr. O'Hara's demand, as contemplated by Chapter 93A, § 9(3).

In your letter, you allege that Guinness Extra Stout is deceptively labeled with respect to the product's country of origin. Diageo denies that the labeling of Guinness Extra Stout is or ever was deceptive or misleading, and nothing in this letter should be construed as a concession of the accuracy of any of your assertions of fact or law. Further, Diageo denies that class treatment would be appropriate based on the circumstances described in your letter.

Nevertheless, consistent with Diageo's long-standing commitment to its customers' satisfaction, and to avoid the expense and uncertainty of litigation, Diageo is prepared, without admitting any liability, to offer Mr. O'Hara \$25.00. A settlement check will be delivered within three business days of Mr. O'Hara's acceptance of this offer.

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<sup>1</sup> Diageo is also in receipt of your letter dated December 11, 2015. Diageo is aware of its preservation obligations and has complied with all its obligations under the law.

Kevin J. McCullough  
December 30, 2015  
Page 2

This offer amount is necessarily “reasonable in relation to the injury actually suffered by the petitioner.” Mass. Gen. Laws ch. 93A, § 9(3). Pursuant to Chapter 93A, § 9(3), a claimant may recover “the amount of actual damages or twenty-five dollars, whichever is greater.” *Id.* As you are aware, in this case, the \$25.00 statutory maximum far exceeds any actual damages Mr. O’Hara could have suffered, even if his claim were valid. Likewise, the remaining causes of action in Mr. O’Hara’s Complaint do not offer Mr. O’Hara the chance to obtain greater relief.

This offer is extended to Mr. O’Hara only. Your purported demand on behalf of an uncertified class is a legal nullity and premature. Diageo is not required to make a written tender of settlement to an as yet uncertified class. *See, e.g., Hermida v. Archstone*, 950 F. Supp. 2d 298 (D. Mass. 2013); *Richards v. Arteva Specialties S.A.R.L.*, 850 N.E.2d 1068 (Mass. App. Ct. 2006). In case class certification ever occurs, Diageo reserves all rights to respond as it deems appropriate to any subsequent demand made on behalf of individual members of the proposed class or on behalf of a certified class as a whole, including, without limitation, the right to extend a written tender of settlement to the members of the class that would also serve to limit any recovery to the relief tendered.

Your request for injunctive relief is also unavailing. Although Diageo denies that Guinness Extra Stout was ever deceptively advertised, marketed, or packaged, you will in no event be entitled to injunctive relief. For business reasons having nothing to do with your allegations, the brewing and bottling of Guinness Extra Stout was moved to St. James’s Gate, Dublin, Ireland in Summer 2015. Moreover, and again for business reasons unrelated to your allegations and prior to your December 1, 2015 letter, Diageo also changed the marketing and packaging of Guinness Extra Stout, including changing the webpage that you refer to both in your letter and your Complaint.

Furthermore, be advised that, upon service, Diageo anticipates making an offer of judgment and moving for a stay of the litigation until the Supreme Court decides *Campbell-Ewald Co. v. Gomez*, No. 14-857 (U.S.). In *Campbell-Ewald*, the Supreme Court will determine whether a putative class action becomes moot when the plaintiff receives an offer of judgment.

The Supreme Court is expected to decide *Campbell-Ewald* in early 2016, and the First Circuit U.S. Court of Appeals has indicated that a stay is appropriate until *Campbell-Ewald* is decided. *See Bais Yaakov of Spring Valley v. ACT, Inc.*, No. 14-1789 (1st Cir. Sept. 23, 2015) (granting the defendant’s motion to stay the mandate in light of *Campbell-Ewald*); *see also Klein v. Verizon Commc’ns, Inc.*, No. 14-1660 (4th Cir. June 17, 2015) (granting a stay pending *Campbell-Ewald*); *Bais Yaakov of Spring Valley v. Varitronics, LLC*, No. 14-5008, 2015 WL 5092501, at \*3-4 (D. Minn. Aug. 28, 2015) (same); *Wolf v. Lyft, Inc.*, No. 15-cv-1441, 2015 WL 4455965, at \*2 (N.D. Cal. July 20, 2015) (same); *Boise v. ACE USA, Inc.*, No. 15-cv-21264, 2015 WL 4077433, at \*5-6 (S.D. Fla. July 6, 2015) (same); *Williams v. Elephant Ins. Co.*, No. 15-cv-119, 2015 WL 3631691, at \*1 (E.D. Va. May 27, 2015) (same).

Kevin J. McCullough  
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Accordingly, Diageo requests that you agree to a stay pending the resolution of *Campbell-Ewald*.<sup>2</sup>

Diageo disputes that it has violated Massachusetts law (or the law of any other state). Nonetheless, in good faith, we seek to resolve these issues without litigation. Accordingly, please indicate whether you will accept this written offer of settlement within thirty (30) days. Please do not hesitate to contact me should you wish to discuss this claim.

Sincerely,



Samuel A. Danon

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<sup>2</sup> Alternatively, you may wish to withhold service of the Complaint until *Campbell-Ewald* is decided.