

NO

EXHIBITS

CASE NO.

2018 CH 07777

DATE:

6/21/2018

CASE TYPE:

Class Action

PAGE COUNT:

12

CASE NOTE

8

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST MUNICIPAL DISTRICT, CHANCERY DIVISION

ANNA ASHKINAZI, individually)
and on behalf of a class of similarly situated)
individuals,)
)
Plaintiff,)
)
v.)
)
VITAJUWEL USA, INC.,)
a California corporation,)
)
Defendant.)

JURY TRIAL DEMANDED

No.

CLASS ACTION COMPLAINT

NATURE OF THE ACTION

1. Plaintiff ANNA ASHKINAZI (“Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against VITAJUWEL USA, INC. (“VITAJUWEL- Defendant”) on her own behalf, and on behalf of a class of similarly situated Illinois consumers who purchased Defendant’s “Gem Water” product. The action seeks compensation for damages caused by Defendant’s advertising and sales of defective products.

2. Defendant advertises and sells in stores and on-line glass water bottles. The products are branded as “Gem Water” bottles. Each “Gem Water” bottle contains inside of it various stones, including some semi-precious stones, that are hermetically encased in a separate, smaller solid glass container such that the stones never actually come in contact with any of the water in the bottle itself.

3. A true and correct copy of a “Gem Water” bottle is shown below as taken from Defendant’s website www.gem-water.com; <https://gem-water.com/collections/via-water-bottles>.



4. Defendant falsely advertises and claims that stones encased in the hermetically sealed glass capsule increase somehow the pH and the amount of dissolved oxygen in any water that is poured into a “Gem Water” bottle. All this without drinking water ever coming on contact with hermetically sealed stones.

5. In fact, “Gem Water” bottles do not and could not increase the pH or the amount of dissolved oxygen in water poured into “Gem Water” bottles.

6. On behalf of herself and the proposed class of Illinois individual consumers who purchased the “Gem Water” products, Plaintiff seeks damages, restitution, and injunctive relief against Defendant for false and deceptive representations regarding the effects of the “Gem Water” product on regular water.

PARTIES

7. At all times relevant herein, Plaintiff ANNA ASHKINAZI was a female, over 35 years old, and a long-term resident of Illinois.

8. Defendant VITAJUWEL USA, INC. is a California corporation.

JURISDICTION AND VENUE

9. Jurisdiction is proper pursuant to 735 ILCS 5/2-209 because Defendant has transacted business and committed tortious acts related to the matters complained of herein in Cook County, Illinois. Defendant advertises, distributes and otherwise sells its “Gem Water” products to thousands of consumers in Illinois generally and in Cook County specifically.

10. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, et seq. because Defendant is doing business in Cook County, Illinois, and because the transaction out of which this cause of action arises occurred in Cook County, as Plaintiff purchased the falsely advertised product at issue in Cook County.

11. This Court has personal jurisdiction over Defendant because Defendant transacted and continues to transact business in Cook County, Illinois. Defendant’s advertising and sales directed to Illinois consumers are such that Defendant has sufficient minimum contacts with Illinois and/or has sufficiently availed itself of Illinois markets to make it permissible for this Court to exercise jurisdiction over Defendant under Illinois’ long-arm statute (735 ILCS 5/2-209).

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COMMON FACTUAL ALLEGATIONS

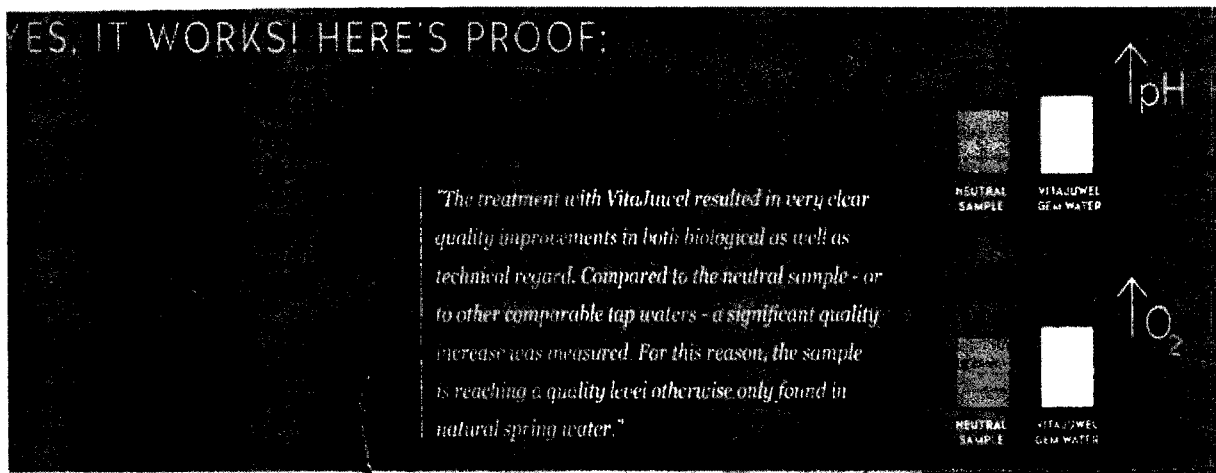
12. Defendant regularly advertises for sale its “Gem Water” products through in-store shelf tags, signage, and packaging which contain inaccurate and false information about the effects that the “Gem Water” bottles have on any water that is poured inside of them.

13. Specifically, Defendant represents that its “Gem Water” bottles increase the pH of any water poured inside from 7.87 to 8.02.

14. Defendant further falsely asserts that its “Gem Water” bottles increase the level of dissolved oxygen in any water that is poured inside from 9.90% to 10.04%.

15. A copy of Defendant’s advertising and claims is shown below.

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16. In fact, not only do Defendant’s “Gem Water” bottles fail to increase the pH and amount of dissolved oxygen in any water poured in the bottles, but there is not even any sound scientific basis for these claims given that the “gem” stones are hermetically sealed within a glass capsule that completely prevents any contact between the stones and the water being poured in.

17. Accordingly, Defendant's representations and advertisements are false, misleading, and deceptive to Illinois consumers because its "Gem Water" products do not and cannot increase the pH and dissolved oxygen content of any water that is poured in.

18. Defendant's express written representations that the bottle increases pH and oxygen were a material factor that induced and influenced Plaintiff's and other Class members' decisions to purchase "Gem Water" bottles.

19. Plaintiff and the other Class members reasonably, justifiably and materially relied on Defendant's representations as to the qualities of its "Gem Water" bottles.

20. Any reasonable consumer would have reasonably, justifiably and materially relied on Defendant's express written representations as to what effect its "Gem Water" bottles would have on any water that is poured into them.

21. Plaintiff and other members of the Class would not have purchased "Gem Water" bottles had they known that "Gem Water" products do not increase the pH or dissolved oxygen content of any water poured into the bottles.

FACTS SPECIFIC TO PLAINTIFF

22. Plaintiff ANNA ASHKINAZI purchased a "Gem Water" bottle at a Neiman Marcus store located in Cook County, Illinois on January 17, 2018.

23. Defendant's express representations that the "Gem Water" bottle would increase the pH and dissolved oxygen content of any water poured in the bottle was a material factor that induced and influenced Plaintiff's decision to purchase Defendant's "Gem Water" bottle.

24. The retail price for the "Gem Water" bottle purchased by Plaintiff was \$120. Plaintiff paid the full retail price for the product.

25. Plaintiff was deceived and/or misled by Defendant's representations regarding the effects of its "Gem Water" bottle on the pH and dissolved oxygen content of any water poured into the bottle because Defendant's "Gem Water" bottle did not and could not increase either the pH or the dissolved oxygen content of the water poured into the bottle.

Plaintiff reasonably, justifiably and materially relied on Defendant's representations as to the qualities of Defendant's "Gem Water" bottle as described above.

26. Plaintiff would not have purchased Defendant's "Gem Water" bottle had she known that the product could not and would do not increase the pH or dissolved oxygen content of any water poured into the bottle.

27. In fact, there is no sound scientific basis for Defendant's claims that its "Gem Water" bottle or any device similar to it could increase the pH and/or dissolved oxygen content of water.

28. As a result of Defendant's conduct, Plaintiff has incurred monetary damages from her purchase of the "Gem Water" bottle and has purchased a product did not and could not function as promised.

CLASS ACTION ALLEGATIONS

29. Based on 735 ILCS 5/2-801, et seq., Plaintiff brings this Lawsuit on behalf of the following class of persons: All persons who, within the applicable statute of limitations, purchased a "Gem Water" product in Illinois.

30. A class action is appropriate and warranted because, on information and belief, the products at issue are very popular and the class includes thousands of individuals and, therefore, is so numerous that joinder of all members is impracticable and economically not feasible considering

the cost of each separate suit and the amount of damages per each individual plaintiff. A class action would also avoid a multiplicity small claims lawsuits that are identical in nature as well as the possibility of inconsistent judgments.

31. Plaintiff is over 35 years old and is a well educated, health conscious consumer.

32. Plaintiff has no interest actually or potentially, directly or indirectly antagonistic to the interests of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and has retained experienced counsel. Plaintiff and her counsel anticipate no difficulty in the management of this litigation as a class action.

33. Plaintiff understands the facts and the nature of this action and her duties and obligations to the Class as a lead Plaintiff. Plaintiff is situated to fairly and adequately protect the interests of the other class members.

34. Plaintiff's counsel has experience in: complex commercial litigation, investigation and litigation of class action claims, and cases involving false and deceptive advertising. Neither Plaintiff nor Plaintiff's counsel has any interest adverse to or in conflict with the absent class members.

35. Practically all questions of law and fact are common to the claims of Plaintiff and the other members of the Class. These common questions overwhelmingly predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not limited to, the following:

- (a) Whether Defendant advertised, represented, and/or warranted that its "Gem Water" product could increase the pH and dissolved oxygen content of water poured into its "Gem Water" bottles;
- (b) Whether contrary to Defendant's warranties and promises its "Gem Water" products failed to deliver to consumer the promised benefits;

- (c) Whether Defendant's advertisement of its "Gem Water" bottles was false and/or misleading;
- (d) Whether Defendant's conduct violated public policy;
- (e) Whether Defendant's conduct violated the Illinois Consumer Fraud and Deceptive Business Practices Act;
- (f) Whether as a result of Defendant's misrepresentations of material facts related to its "Gem Water" bottles, Plaintiff and other members of the Class have sustained monetary damages;
- (g) Whether Plaintiff and other members of the Class are entitled to monetary relief, restitution, and/or injunctive relief or other remedies, and, if so, the nature of such remedies.

COUNT I

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act
(individually and on behalf of the Class)**

36. Plaintiff hereby incorporates the above stated allegations by reference as though fully set forth herein.

37. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 502/1 *et seq.* ("The Act"), prohibits deceptive acts and practices in the sale of products such as Defendant's "Gem Water" product.

38. Plaintiff and other members of the Class are "consumers" or "persons," as defined in Illinois Consumer Fraud and Deceptive Business Practices Act.

39. Defendant's conduct, as alleged herein, occurred in the course of trade or commerce.

40. Defendant's false and misleading representations regarding the qualities of its "Gem Water" bottles and their ability to alter the pH and dissolved oxygen content of water

placed within them offend public policy, have caused and continue to cause substantial injury to consumers, and constitute an unfair and deceptive trade practices.

41. Upon information and belief, and given the fact that Defendant manufactured, managed and maintained the inventory of its “Gem Water” products, Defendant knew or should have known at all relevant times that its “Gem Water” products did not and could not increase the pH or dissolved oxygen content of any water poured into the bottles.

42. Defendant intended for consumers to rely on its representations regarding its “Gem Water” products when consumers were deciding to purchase the products.

43. As a direct and proximate cause of Defendant’s deceptive and unfair trade practices, Plaintiff and other members of the Class suffered actual damages, including monetary losses in the amount they money paid for each “Gem Water” bottle they purchased.

44. Defendant’s conduct violates the Illinois Consumer Fraud and Deceptive Business Practices Act. Thus, Plaintiff and the other members of the Class are entitled to damages in the amount to be proven at trial, reasonable attorney’s fees, injunctive relief prohibiting Defendant from continuing its unfair and deceptive advertising, and any other relief, penalties or awards that are appropriate under applicable law and are otherwise just and equitable.

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for the following relief:

1. An order certifying the Class as defined above;
2. An award of actual or compensatory damages, or, in the alternative, disgorgement of all funds unjustly retained by Defendant as a result of its unfair and deceptive sales practices;
3. An award of reasonable attorney’s fees and costs;

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4. Injunctive relief prohibiting Defendant's unfair and deceptive advertising practices; and
5. Any other relief the Court deems just and equitable.

COUNT II
Breach of Express Warranty
(individually and on behalf of the Class)

45. Plaintiff hereby incorporates the allegations stated above by reference as if fully set forth herein.

46. Through its product labeling, and advertising, Defendant expressly warranted to Plaintiff and other members of the Class that "Gem Water" products increase the pH and dissolved oxygen content of any water poured into Defendant's "Gem Water" bottles.

47. These affirmations of fact and promises regarding the benefits of its "Gem Water" bottles were part of the basis of the bargain between Defendant and Plaintiff and the other members of the Class.

48. Plaintiff and other members of the Class would not have purchased Defendant's "Gem Water" bottles had they known that these affirmations and promises were false.

49. Defendant breached the express warranties it made because contrary to Defendant's express representations its "Gem Water" products do not and cannot increase the pH or dissolved oxygen content of any water poured into the bottles.

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50. As a direct and proximate result of Defendant's breach of its express warranties, Plaintiff and other members of the Class have been damaged by the amount of their purchase price for the "Gem Water" bottles and/or an amount to be determined at trial.

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for the following relief:

1. An order certifying the Class as defined above;
2. An award of actual or compensatory damages, or, in the alternative, disgorgement of all funds unjustly retained by Defendant as a result of its unfair and deceptive sales practices;
3. An award of reasonable attorney's fees and costs;
4. Injunctive relief prohibiting Defendant's unfair and deceptive advertising practices; and
5. Any other relief the Court deems just and equitable.

COUNT III
Unjust Enrichment
(in the alternative to the Second Cause of Action,
individually and on behalf of the Class)

51. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1-44 above.

52. Plaintiff and the other members of the Class conferred a benefit on Defendant when they purchased its "Gem Water" products which they otherwise would not have purchased but for Defendant's false and deceptive representations.

53. It is inequitable and unjust for Defendant to retain the revenues obtained from Plaintiff's and other Class members' purchases of Defendant's "Gem Water" bottles because Defendant knowingly misrepresented the qualities of its products. Plaintiff and other members

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of the Class would not have purchased "Gem Water" had Defendant not made these misrepresentations.

54. Accordingly, because Defendant will be unjustly enriched if it is allowed to retain such funds, Defendant must pay restitution to Plaintiff and other Class members in the amount by which Defendant was unjustly enriched.

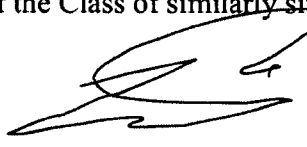
WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for the following relief:

1. An order certifying the Class as defined above;
2. An award of actual or compensatory damages, or, in the alternative, disgorgement of all funds unjustly retained by Defendant as a result of its unfair and deceptive sales practices;
3. An award of reasonable attorney's fees and costs;
4. Injunctive relief prohibiting Defendant's unfair and deceptive advertising practices; and
5. Any other relief the Court deems just and equitable.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

ANNA ASHKINAZI, individually and on behalf of the Class of similarly situated persons

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