

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANNA WURTZBURGER,

Plaintiff,

-against-

AMENDED

COMPLAINT

CASE 1:16-CV-08186

KENTUCKY FRIED CHICKEN,

Defendant.

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Plaintiff, through attorney, PAMELA GABIGER, complaining of  
defendant, states:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen of New York State and the defendant is a  
citizen of New York State. The matter in controversy exceeds,  
exclusive of interest and costs, the sum of Twenty Million and  
no/100 (\$20,000,000.00) Dollars.

2. This action is brought on behalf of plaintiffs as well as on behalf of each and all other persons similarly situated who are purchasers of the \$20.00 “fill-up” bucket of Kentucky Fried Chicken meal that was advertised in the summer months of 2016. Such persons are too numerous in number to quantify and located in all parts of the United States and the world and therefore are so numerous as to make it impracticable to bring them all before the Court and the class is so numerous that joinder of all members is impracticable. The right which is the subject of this action is common to the class of all of the purchasers of the \$20.00 “fill-up” bucket of Kentucky Fried Chicken meal that was advertised in the summer months of 2016. There are questions of law and fact common to the class of such purchasers of the \$20.00 “fill-up” bucket of Kentucky Fried Chicken meal that was advertised in the summer months of 2016. The claims of the plaintiffs are typical of the class of such purchasers of the \$20.00 “fill-up” bucket of Kentucky Fried Chicken meal that was advertised in the summer months of 2016.

Plaintiff will fairly and adequately protect the interests of the class of such purchasers of the \$20.00 “fill-up” bucket of Kentucky Fried Chicken meal that was advertised in the summer months of 2016. The issues common to the class predominate over those affecting individual members. The class action is the most appropriate vehicle for litigating the claims presented. Issues involved are common to the class as a whole and they turn on questions of law applicable in the same manner to each member of the class such that the common issue may be litigated for all members in an economical fashion.

3. That on or about July, 2016, plaintiff purchased an eight piece bucket of chicken from defendant.
4. Defendant sold to plaintiff the aforementioned product pursuant to the terms and conditions contained therein.
5. That on or about July, 2016 the full purchase price of the sum of Twenty and no/100 \$20.00 Dollars was paid by the plaintiff to the defendant.

6. That the merchandise given from defendant to the plaintiff was given to plaintiff in a carton bucket.
7. That the nationally well-known producer of chicken is (Kentucky Fried Chicken) whose company produces chicken with trade name Kentucky Fried Chicken.
8. That upon information and belief, defendant delivered to plaintiff merchandise which was misleading and constituted a false and deceptive trade practice in that the advertisement on television showed a bucket overflowing with chicken and when plaintiff received the bucket of chicken there were only eight pieces of chicken in it. Plaintiff also received mashed potatoes, gravy and cole slaw. The August, 2016 advertisement falsely stated that “the meal could feed your whole family”.
9. Another TV commercial ran on or before and after June 23, 2016 and featured George Hamilton portraying Colonel Sanders on a tropical island advertising extra crispy chicken a \$20.00 fill-up

bucket of extra crispy chicken with mashed potatoes and gravy, cole slaw and biscuits.

10. Plaintiff, saw the TV commercial in New York in June, 2016 before she purchased the meal in July, 2016 in New York.

11. Plaintiff relied upon said TV commercial in making said purchase.

12. By reason of the above plaintiff was injured in that Her stomach was upset with acid reflux and her gall bladder was removed and she had pain in her stomach and later found out the chickens were injected with hormones and injured plaintiff. This happened everytime she ate the chicken. Once per week in June, 2016, July, 2016 and August, 2016 she went to defendant and purchased a pot pie from defendant which made her sick.

13. Also, the advertisement at the Kentucky Fried Chicken Store in Hopewell Junction was misleading because it said “fill up” for

\$20.00 and there was not enough chicken in the bucket to fill up the bucket.

14. Furthermore, the advertisement was misleading because defendant should have used a smaller bucket for the amount of chicken that was in it.
15. Defendant deceptively sold chicken in a bucket that appeared to be the same size as in the advertisement but the bucket sold to plaintiff and the public in general actually contained way less chicken than was shown in the advertisement.
16. Rather than reduce the size of the bucket for the eight piece bucket of chicken, defendant substantially under-filled the boxes in which these eight piece buckets of chicken were sold.
17. Defendant relies on consumers' familiarity with the bucket size and appearance, known due to decades of marketing, to mislead consumers into thinking they are purchasing the same quantity of chicken when, in reality, the company is filling the bucket with materially less chicken.

18. Not only was plaintiff cheated but defendant cheated and cheats consumers frequently and as a general rule.
19. That defendant's conduct constitutes a violation of the applicable sections of the general business law of the State of New York including sections 349 and 350 pertaining to false advertising and misleading trade practices.
20. Defendant's conduct constitutes a violation of 21 C.F.R. 100.100 a.
21. Plaintiff thereafter spoke with a representative of defendant in Georgia who stated that defendant intentionally showed the false, deceptive advertisement of an overflowing bucket of chicken on a television commercial so that the public could see the chicken.
22. Defendant therefore was aware that defendant was intentionally misleading and deceiving the public when it advertised an overflowing bucket of chicken on television but

knew that they would only sell 8 pieces of chicken in a box that was too large for the chicken to the public and to plaintiff.

23. The act or practice of defendant was consumer oriented.

24. The act or practice of defendant was misleading in a material respect.

25. Plaintiff was injured as a result of the deceptive act or practice.

26. The act or practice affected the public consumer.

27. Plaintiff was cheated and defendant cheated and cheats consumers frequently or as a general rule.

28. Later defendant changed the television commercial to advertise and sell six pieces that could be shared with a friend.

29. That as a result of the actions of defendant, plaintiff has suffered damages in the sum of Twenty Million and no/100 (\$20,000,000.00) Dollars, legal costs and fees, compensatory and punitive damages.



30. By reason of the false advertising and deceptive trade practices of the defendant plaintiff has been damaged in an amount to be awarded by a jury in the trial of this action.

31. Upon information and belief defendant thereafter and from time to time sold to various other persons the \$20.00 “fill-up” Kentucky Fried Chicken meal in consideration of the payment by the plaintiffs to the defendant in the amount of \$20.00.

AS AND FOR A SECOND CAUSE OF ACTION

32. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “31” above as if set forth at length herein.

33. At all times hereinafter mentioned, plaintiff was a resident of Hopewell Junction, County of Dutchess, State of New York.

34. At all times hereinafter mentioned, defendant was and still is a domestic corporation duly organized and existing under the laws of the state of New York with its principal place of business

at Route 82 and Route 376, Hopewell Junction, County of Dutchess, State of New York.

35. That on or about July, 2016, plaintiff purchased an eight piece bucket of chicken from defendant.

36. Defendant sold to plaintiff the aforementioned product pursuant to the terms and conditions contained therein.

37. That on or about July, 2016 the full purchase price of the sum of Twenty and no/100 \$20.00 Dollars was paid by the plaintiff to the defendant.

38. That the merchandise given from defendant to the plaintiff was given to plaintiff in a carton bucket.

39. That the nationally well-known producer of chicken is (Kentucky Fried Chicken) whose company produces chicken with trade name Kentucky Fried Chicken.

40. That upon information and belief, defendant delivered to plaintiff merchandise which was misleading and constituted a false and deceptive trade practice in that the advertisement on

television showed a bucket overflowing with chicken and when plaintiff received the bucket of chicken there were only eight pieces of chicken in it. Plaintiff also received mashed potatoes, gravy and cole slaw. The August, 2016 advertisement falsely stated that “the meal could feed your whole family”.

41. Another TV commercial ran on or before and after June 23, 2016 and featured George Hamilton portraying Colonel Sanders on a tropical island advertising extra crispy chicken a \$20.00 fill-up bucket of extra crispy chicken with mashed potatoes and gravy, cole slaw and biscuits.

42. Plaintiff, saw the TV commercial in New York in June, 2016 before she purchased the meal in July, 2016 in New York.

43. Plaintiff relied upon said TV commercial in making said purchase.

44. By reason of the above plaintiff was injured in that

Her stomach was upset with acid reflux and her gall bladder was removed and she had pain in her stomach and later found out the chickens were injected with hormones and injured plaintiff. This happened everytime she ate the chicken. Once per week in June, 2016, July, 2016 and August, 2016 she went to defendant and purchased a pot pie from defendant which made her sick.

45. Also, the advertisement at the Kentucky Fried Chicken Store in Hopewell Junction was misleading because it said "fill up" for \$20.00 and there was not enough chicken in the bucket to fill up the bucket.

46. Furthermore, the advertisement was misleading because defendant should have used a smaller bucket for the amount of chicken that was in it.

47. Defendant deceptively sold chicken in a bucket that appeared to be the same size as in the advertisement but the bucket sold to plaintiff and the public in general actually contained way less chicken than was shown in the advertisement.

48. Rather than reduce the size of the bucket for the eight piece bucket of chicken, defendant substantially under-filled the boxes in which these eight piece buckets of chicken were sold.
49. Defendant relies on consumers' familiarity with the bucket size and appearance, known due to decades of marketing, to mislead consumers into thinking they are purchasing the same quantity of chicken when, in reality, the company is filling the bucket with materially less chicken.
50. Not only was plaintiff cheated but defendant cheated and cheats consumers frequently and as a general rule.
51. That defendant's conduct constitutes a violation of the applicable sections of the general business law of the State of New York including sections 349 and 350 pertaining to false advertising and misleading trade practices.
52. Defendant's conduct constitutes a violation of 21 C.F.R. 100.100 a.
53. Plaintiff thereafter spoke with a representative of defendant in Georgia who stated that defendant intentionally showed the

false, deceptive advertisement of an overflowing bucket of chicken on a television commercial so that the public could see the chicken.

54. Defendant therefore was aware that defendant was intentionally misleading and deceiving the public when it advertised an overflowing bucket of chicken on television but knew that they would only sell 8 pieces of chicken in a box that was too large for the chicken to the public and to plaintiff.
55. The act or practice of defendant was consumer oriented.
56. The act or practice of defendant was misleading in a material respect.
57. Plaintiff was injured as a result of the deceptive act or practice.
58. The act or practice affected the public consumer.
59. Plaintiff was cheated and defendant cheated and cheats consumers frequently or as a general rule.

60. Later defendant changed the television commercial to advertise and sell six pieces that could be shared with a friend.

61. That as a result of the actions of defendant, plaintiff has suffered damages in the sum of Twenty Million and no/100 (\$20,000,000.00) Dollars, legal costs and fees, compensatory and punitive damages.

62. By reason of the false advertising and deceptive trade practices of the defendant plaintiff has been damaged in an amount to be awarded by a jury in the trial of this action.

AS AND FOR A THIRD CAUSE OF ACTION

63. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs designated "1" through "62" above as if set forth herein.

64. Defendant buys chicken that are undersized and pumps steroids into baby chickens growing them in 6-8 days instead of 6-8 weeks.

65. Just examining the bone it is discolored, frail like a winglet.

66. All the steroids are affecting children causing them to mature outwardly being pumped full of growth hormone by eating chicken.
67. The size of defendant's chicken years ago was much larger at least 30%-40% larger.
68. The portions of macaroni and cheese and mashed potatoes have been lowered in amount and size of containers incrementally.
69. If a chicken dies in the steroid process, chicken farmers sell the deceased which are ground up for feed.
70. When a chicken business shuts down, the soil around the facility is considered toxic and has to be dug up by hazardous waste companies because of their toxicity.
71. Just pulling up beside a chicken truck years ago, feathers would be flying, chickens jumping around in their cages....now they are dead looking, like zombies, almost lifeless.
72. By reason of the above plaintiff was injured in that



Her stomach was upset with acid reflux and her gall bladder was removed and she had pain in her stomach and later found out the chickens were injected with hormones and injured plaintiff. This happened everytime she ate the chicken. Once per week in June, 2016, July, 2016 and August, 2016 she went to defendant and purchased a pot pie from defendant which made her sick.

73. That as a result of the actions of defendant, plaintiff has suffered damages in the sum of Twenty Million and no/100 (\$20,000,000.00) Dollars, legal costs and fees, compensatory and punitive damages.

74. By reason of the false advertising and deceptive trade practices of the defendant plaintiff has been damaged in an amount to be awarded by a jury in the trial of this action.

WHEREFORE, plaintiff demands judgment against defendant in the sum of Twenty Million and no/100 (\$20,000.00) Dollars, legal

costs and fees, compensatory and punitive damages and an amount to be awarded by a jury upon the trial of this action pursuant to CPLR 3017 together with interest, costs and disbursements of this action and for such other and further relief as to this Court may seem just and proper.

Dated: February 15, 2017

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PAMELA GABIGER

Attorney for Plaintiff

P.O. Box 3455, Poughkeepsie, NY  
12603  
(845) 471-2447

VERIFICATION

STATE OF NEW YORK)

COUNTY OF DUTCHESS) ss.:

Anna Wurtzburger, being duly sworn, deposes and says that she is the Plaintiff in the within action, that she has read the foregoing Amended Complaint, that the same is true to her own knowledge except as to the matters therein stated to be upon information and belief and as to those matters she believes them to be true.

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ANNA WURTZBURGER

Sworn to before me this \_\_\_\_ day

Of February 2017

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NOTARY PUBLIC