

United States District Court
Eastern District of New York

1:19-cv-00650

Freddie Jamison individually and on behalf
of all others similarly situated

Plaintiff

- against -

Complaint

Target Corporation

Defendant

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Target Corporation (“defendant”) manufactures, markets, distributes and sells products identified as “graham crackers” or “honey graham crackers” (the “Products”) under its private label brand, Market Pantry.¹

2. The Products are packaged in boxes of 408g (14.4 oz) and 816g (28.8 oz) and sold to consumers from defendant’s more than 1,800 stores across the country and website.

3. The relevant front label representations (i) identify the Products as “Graham Crackers,” (ii) emphasize “honey” through modified and larger font above “Graham Crackers,” “Made with Real Honey” and the flight path of a bee, (iii) depict darker colored crackers pressed against a marshmallow chocolate combination (s’mores), (v) state “No High Fructose Corn Syrup” and (vi) claim “8g Whole Grains” with “per serving” in smaller font.

4. The presence of honey as a sweetening component is accentuated through the darker yellow color scheme, because consumers associate this color with honey.

¹ The Market Pantry brand encompasses numerous grocery items, with total yearly sales exceeding \$1 billion.



5. The representations of the Products as “graham crackers” is misleading, false, deceptive and unfair because it creates an erroneous impression that graham flour is the predominant or exclusive flour component, as opposed to white flour.

6. This is because the predominant flour in is not graham flour but refined, white flour (“unbleached enriched flour”), indicated on the ingredient list, reproduced below, in miniscule font below the nutrition facts on the side panel.

ENRICHED FLOUR (WHEAT FLOUR, NIACIN, IRON, THIAMIN MONONITRATE, RIBOFLAVIN, FOLIC ACID), GRAHAM FLOUR (WHOLE GRAIN WHEAT FLOUR), SUGAR, CANOLA AND/OR SOYBEAN AND/OR PALM OIL, HONEY, LEAVENING (BAKING SODA, CALCIUM PHOSPHATE), SALT, NATURAL FLAVOR, SOY LECITHIN, SODIUM SULFITE.

7. Graham flour is a coarse-ground, whole wheat flour, made from the whole grain – the endosperm, germ, and bran.

8. Enriched flour – also known as white flour, flour or refined flour – is made from refined grains, which only contain the endosperm.

9. Consumers increasingly seek products containing whole grains for its numerous health benefits, as it is associated with lower risk of several diseases and conditions, while refined flour is not.

10. Consumers understand that a cracker of the present type is made from one or more types of wheat flour, such as white, brown or whole grain varieties.

11. It is reasonable for consumers expect a product labeled “graham crackers” to contain more graham (whole grain) flour than non-whole wheat flour, because “graham” precedes and modifies “crackers,” telling the shopper what they are getting.

12. Dictionaries confirm what reasonable consumers expect when it comes to graham crackers, defining them as “a slightly sweet cracker made of whole wheat flour” and “a semisweet cracker, usually rectangular in shape, made chiefly of whole-wheat flour.”²

13. The modifying term, “graham” gives the incorrect and misleading impression that the flour used is exclusively or predominantly graham flour (whole grain) instead of the refined flour which actually is the main flour component.

14. Consumers expect products to have common or usual names which describe the food in as simple and direct terms as possible, its basic nature and its characterizing properties or ingredients.

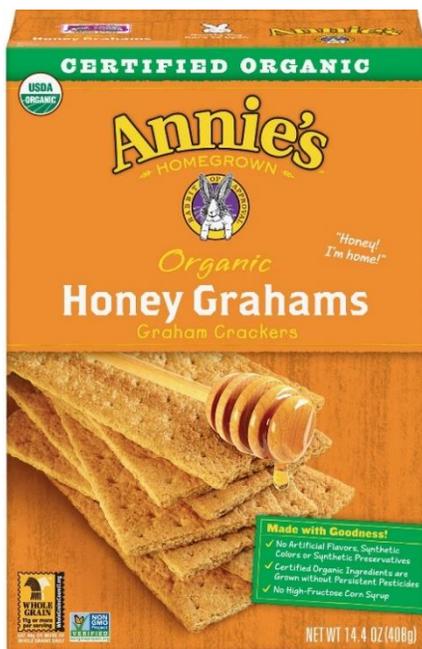
15. When the proportion or amount of a component has a material bearing on price or consumer acceptance, it is deceptive and misleading for the representations to create the erroneous impression that component is present in an amount greater than is actually the case.

² <https://www.dictionary.com/browse/graham-cracker>

16. Though the Products are represented and labeled as “Graham Crackers,” the representations do not reveal the percentage of the food that is graham flour compared to white flour or enriched flour

17. The Products are not represented simply as “Crackers” with a statement such as “Contains Graham Flour.”

18. The Products’ name, “graham crackers,” is also misleading because the the name is not uniform among all identical or similar products which are designated as “graham crackers,” where graham flour is the predominant flour.



BEST INGREDIENTS: Organic Whole Wheat Flour (graham flour), Organic Wheat Flour, Organic Cane Sugar, Organic Expeller-Pressed Sunflower Oil, Organic Honey, Leavening (baking soda, ammonium bicarbonate, cream of tartar), Organic Molasses, Sea Salt, Organic Brown Sugar, Organic Dried Molasses, Natural Flavor, Mixed Tocopherols (Vitamin E) to Protect Flavor, Organic Rosemary Extract.

INGREDIENTS
Whole Wheat Flour, Sugar, Sunflower Oil, Powdered Sugar, Molasses, Honey, Sunflower Lecithin, Leavening (Sodium Bicarbonate), Salt, Natural Flavor, Eggs, Milk.

19. The practice of passing off refined white flour mixed with small amounts of coarser

bran (whole grain) flour has plagued consumers for over 100 years.³

20. While the form of the misleading practice has changed, deceptive tactics regarding the amount of graham flour in products has not.

21. The Products are further misleading because they emphasize the presence of honey – “HONEY Graham Crackers,” “made with real honey,” a flying bee and darkish yellow colors.

22. Consumers are accustomed to graham crackers being made in the traditional way, with honey as the predominant sweetening agent, as opposed to sugar.

23. However, the Products fail to conform to reasonable consumer expectations because they contain more sugar than honey.

24. The Products contain other representations which are misleading and deceptive.

25. Excluding tax, the Products cost no less than \$2.99, a premium price compared to other similar products.

Jurisdiction and Venue

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

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

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

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

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

³ J.A. Le Clerc et al., “Graham Flour: A Study of the Physical and Chemical Differences Between Graham Flour and Imitation Graham Flours,” USDA Bureau of Chemistry Bulletin (164), Apr. 12, 1913

District.

Parties

31. Plaintiff is a citizen of Kings County, New York.

32. Defendant is a Minnesota corporation with a principal place of business in Minneapolis, Minnesota.

33. In 2016, 2017 and/or 2018, plaintiff purchased one or more Products for personal consumption, for no less than \$2.99 per (14.4 oz) product, excluding tax, within this district and/or State.

34. Plaintiff paid this premium because prior to purchase, plaintiff saw and relied on the misleading representations.

35. Plaintiff would purchase the Products again if there were assurances that the Products' representations were no longer misleading.

Class Allegations

36. The classes consist of all consumers in the following states: all, New York who purchased any Products with actionable representations during the statutes of limitation.

37. A class action is superior to other methods for fair and efficient adjudication.

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

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

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

41. Plaintiff(s) is/are an adequate representative because his/her/their interests do not conflict with other members.

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

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

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

45. Plaintiff(s) seeks class-wide injunctive relief because the practices continue.

New York General Business Law ("GBL") §§ 349 & 350

46. Plaintiff incorporates by references all preceding paragraphs.

47. Defendant's representations are false, unfair, deceptive and misleading

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

49. Plaintiff desired to purchase products which were as described by defendant and expected by reasonable consumers, given the product type

50. The representations and omissions were relied on by plaintiff and class members, who paid more than they would have, causing damages.

Negligent Misrepresentation

51. Plaintiff incorporates by references all preceding paragraphs.

52. Defendant misrepresented the composition of the Products.

53. Defendant had a duty to disclose and/or provide non-deceptive labeling of the Products and knew or should have known same were false or misleading.

54. This duty is based, in part, on defendant's representation that the Products are "Graham Crackers" and "Honey Graham Crackers," when graham flour and honey, more desirable flour and sweetening types to consumers, are not the predominant flour and sweetener present.

55. Defendant negligently misrepresented and/or negligently omitted material facts.

56. Plaintiff reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, the purchase of the Products.

57. Plaintiff and class members would not have purchased the Products or paid as much if the true facts had been known, thereby suffering damages.

Breach of Express Warranty and Implied Warranty of Merchantability

58. Plaintiff incorporates by references all preceding paragraphs.

59. Defendant manufactures, labels and sells Products purporting to be derived predominantly from whole grains (graham flour) as opposed to refined white or enriched flour.

60. The representations as "graham crackers" and "honey graham crackers" warranted to plaintiff and class members that they contained nutrients such as fiber and protein, and honey, in superior amounts to what they actually possessed, based on if they were primarily from whole grains and had more honey than sugar.

61. Defendant warranted such attributes to plaintiff and class members, when this was not truthful and was misleading.

62. Defendant owed a special duty based on its responsibility as one of the largest grocery sellers in the nation.

63. Every week, millions of consumers go to defendant's stores to stock their cupboards with "homestyle" items and expect a brand name like "Market Pantry" to truthfully represent their contents, since the terms harken back to a mythical era of smaller towns, less complicated foods

and honest dealing.

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

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

Fraud

66. Plaintiff incorporates by references all preceding paragraphs.

67. Defendant's purpose was to mislead consumers who seek products with more nutrients and higher quality ingredients which confer health benefits.

68. Defendant's intent was to secure economic advantage in the marketplace against competitors.

69. Plaintiff and class members observed and relied on defendant's claims, causing them to pay more than they would have, entitling them to damages.

Unjust Enrichment

70. Plaintiff incorporates by references all preceding paragraphs.

71. Defendant obtained benefits and monies because the Products were not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff(s) as representative and the undersigned as counsel for the class;

2. Entering preliminary and permanent injunctive relief by directing defendant to correct such practices to comply with the law;
3. Awarding monetary damages and interest, including treble and punitive damages, pursuant to the common law and GBL claims;
4. Awarding costs and expenses, including reasonable fees for plaintiffs' attorneys and experts; and
5. Such other and further relief as the Court deems just and proper.

Dated: February 1, 2019

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan (SS-8533)

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1:19-cv-00650
United States District Court
Eastern District of New York

Freddie Jamison individually and on behalf of all others similarly situated

Plaintiff

- against -

Target Corporation

Defendant

Complaint

Sheehan & Associates, P.C.
505 Northern Blvd., #311
Great Neck, NY 11021
Tel: (516) 303-0052
Fax: (516) 234-7800

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

Dated: February 1, 2019

/s/ Spencer Sheehan
Spencer Sheehan

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Freddie Jamison individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Kings
(c) Attorneys (Firm Name, Address, and Telephone Number)
Sheehan & Associates, P.C., 505 Northern Boulevard, Suite 311, Great Neck, NY 11021, (516) 303-0552

DEFENDANTS
Target Corporation
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

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

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

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

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

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

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

DATE 02/01/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Spencer Sheehan

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

CERTIFICATION OF ARBITRATION ELIGIBILITY

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

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

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

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

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

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

BAR ADMISSION

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

- Yes
- No

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

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s/ Spencer Sheehan

