

**CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
 COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

CONNIE NEWMAN, individually,)	
and on behalf of all similarly situated)	
current citizens of Illinois,)	
)	
Plaintiff,)	
)	
v.)	No. 19-L-0455
)	
GENERAL MILLS, INC., and GENERAL)	
MILLS SALES, INC.,)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff, Connie Newman, individually and on behalf of all other similarly-situated current Illinois citizens, alleges against General Mills, Inc., and General Mills Sales, Inc. (“Defendants” or “General Mills”) the following facts and claims upon personal knowledge, investigation of counsel, and information and belief:

CASE SUMMARY

1. This case arises out of Defendants’ deceptive and unfair labeling practices regarding its FRUIT ROLL-UPS brand food products (the “Products”).

2. On the labels of the Products, Defendants prominently represent that the Products are “NATURALLY FLAVORED” and contain “NO ARTIFICIAL FLAVORS,” which leads reasonable consumers to believe that the Products’ flavoring and flavoring profile only comes from natural ingredients.

3. The Products, however, contain the synthetic flavoring chemical “malic acid.” Based upon information and belief, the malic acid used in the Products is an artificial petrochemical that confers a “tart, fruit-like” flavor and simulates the flavor of actual fruit.

4. As a result, the representations that the Products contain “NO ARTIFICIAL FLAVORS” and are “NATURALLY FLAVORED” are false, deceptive and misleading.

5. Plaintiff brings this case to recover damages for Defendants’ false, deceptive, unfair, and misleading marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) and Illinois common law. Ill. Rev. Stat. Ch. 815, §§ 505 to 601.

THE PARTIES

6. Plaintiff, Connie Newman is an Illinois citizen residing in St. Clair County, Illinois. On numerous occasions during the Class Period (as defined below), Plaintiff purchased FRUIT ROLL-UPS, Strawberry Sensation™ variety, from Dollar Tree in Belleville, Illinois, for personal purposes after reviewing the “No Artificial Flavors” and “Naturally Flavored” label. Plaintiff paid \$1.00 per unit. If Plaintiff had known the Products contained a synthetic flavoring compound, she would not have purchased them or would have paid less for them. Plaintiff’s claims are typical of all class members in this regard.

7. The labels of each of the Products, irrespective of flavor variety, are substantially similar and identical in that each claims the Products are “NATURALLY FLAVORED” and contain “NO ARTIFICIAL FLAVORS.” Accordingly, Plaintiff has standing to pursue claims and obtain relief on behalf of the entire putative class, including for purchases of Product flavor varieties Plaintiff did not personally purchase.

8. Upon information and belief, General Mills, Inc. is the Product manufacturer. General Mills, Inc. is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. General Mills, Inc. may be served with process through its registered agent, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

9. Upon information and belief, Defendant General Mills Sales, Inc. is the Product distributor. General Mills Sales, Inc. is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. General Mills Sales, Inc. may be served with process through its registered agent, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

11. Plaintiff believes and alleges that the total value of her individual claims is equal to an amount up to a refund of the purchase prices she paid for the Products. There is therefore no diversity jurisdiction over this case.

12. Because the value of Plaintiff's claims is typical of all class members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees is far less than the five-million dollars (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no CAFA jurisdiction for this case.

13. Defendant cannot plausibly allege that it had sufficient sales of the Product in Illinois during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

14. This Court has personal jurisdiction over Defendants because Defendants have had more than minimum contacts with the State of Illinois and have purposefully availed themselves to the privilege of conducting business in this state. In addition, as explained below, Defendants have committed affirmative tortious acts within the State of Illinois that give rise to

civil liability, including distributing and advertising the Products for sale throughout the State of Illinois.

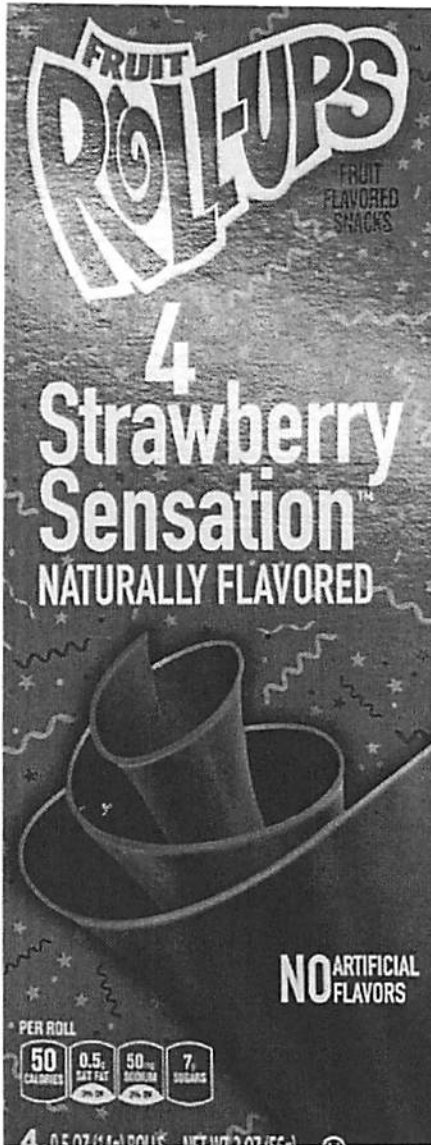
15. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because the transaction out of which Plaintiff's causes of action arose occurred in this county.

16. Plaintiff and Class Members do not seek to recover punitive damages or statutory penalties in this case.

FACTUAL ALLEGATIONS

17. Defendants manufacture, market, sell, and distribute the Products at issue.

18. Knowing that consumers like Plaintiff increasingly desire to purchase and consume natural ingredients, Defendants sought to take advantage of this growing market by labeling the Products as containing "NO ARTIFICIAL FLAVORS" and "NATURALLY FLAVORED." The product is depicted below for demonstrative purposes:



19. By affixing such labels to the packaging of the Products, Defendants entice consumers like Plaintiff to purchase the Products instead of competing products, to pay a premium for the Products, and to pay more for the them than they otherwise would have.

20. The label of the Products is deceptive and misleading because the Products all contain an artificial flavoring, despite Defendants affirmative labeling and advertising that leads reasonable consumers to believe that the Products are only naturally flavored.

21. In truth, the Products all contain the synthetic petrochemical malic acid, which simulates a “tart, fruit-like” flavor.

22. Based upon information and belief, the malic acid used in the Products is not a naturally occurring compound. It is manufactured in petrochemical plants from benzene or butane — components of gasoline and lighter fluid — through a series of chemical reactions involving highly toxic chemical precursors and byproducts.

23. Pursuant to FDA regulations, malic acid is used as a “flavor enhancer” or “flavoring agent,” and can also be used as a “pH control agent” in food. 21 C.F.R. §184.1069(c).

24. Even if Defendants only intended to use malic acid as a pH control agent, its presence in the Products nonetheless impacts, affects, or enhances the flavor and/or flavoring profile of the Product. Simply put, if Defendants removed malic acid as an ingredient the Products would taste different.

25. Defendants include the industrial chemical malic acid in the Products, which contributes to the flavoring in the Products. In reality, the Products are predominantly comprised of corn syrup and sugar – malic acid deceives the senses and makes the Products taste more like they are fruit flavored.

26. Because the Products contain an artificial flavoring ingredient that simulates and reinforces the characterizing flavor of the Products, the front label is required by the FDA to disclose those additional flavors rather than state, as it does, that the Products are only naturally flavored. 21 CFR 5 101.22.

27. According to the FDA, if “the label, labeling, or advertising of a food makes any direct or indirect representations with respect to the primary recognizable flavor(s), by word,

vignette, e.g., depiction of a fruit, or other means” then such flavor is considered the “characterizing flavor.” 21 C.F.R. 101.22(i).

28. The labels on Defendants’ Products state that they are “Fruit-Flavored Snacks,” which is to be considered a primary recognizable flavor identified on the Products’ front labels.

29. Federal regulations declare that if a food contains artificial flavor which simulates, resembles or reinforces the characterizing flavor, the name of the food on the principal display panel or panels of the label shall be accompanied by the common or usual name(s) of the characterizing flavor [which] shall be accompanied by the word(s) “artificial” or “artificially flavored”. . . , e.g., “artificial vanilla,” “artificially flavored strawberry, ”or “grape artificially flavored.” 21 C.F.R. 101.22(i) (3), (4).

30. Such statements must be in boldface print on the front display panel and of sufficient size for an average consumer to notice. *Id.*

31. The Products’ synthetic flavoring ingredient malic acid simulates, resembles, and reinforces the characterizing fruit flavor for the Products.

32. Defendants were required to display prominently on the Products’ front labels a notice that informs consumers that the Products contained artificial flavoring.

33. Defendants failed to do so, deceiving consumers and violating state and federal regulations.

34. Plaintiff and reasonable consumers reasonably believe that Products labeled with “NO ARTIFICIAL FLAVORS” and “NATURALLY FLAVORED” only contain natural ingredients that provide the flavoring.

35. Neither Plaintiff nor any reasonable consumer would expect to find synthetic petrochemicals flavoring compounds in food products claiming to contain “NO ARTIFICIAL FLAVORS” and to only be “NATURALLY FLAVORED.”

36. Neither Plaintiff nor any reasonable consumer would know that the Products contained synthetic petrochemicals flavoring compounds when reviewing the product labels.

37. Because of Defendants’ deceitful labels, Defendants charged, and Plaintiffs and Class Members paid, a premium for the Products.

38. The Products were worth less than they were represented to be, and Plaintiff and Class Members purchased and paid extra for them due to the “NO ARTIFICIAL FLAVORS” and “NATURALLY FLAVORED” label claims on and about the Products.

39. Defendants’ misrepresentation constitutes an unfair or deceptive act or practice, including but not limited to the use or employment of any deception or misrepresentation within the meaning of the ICFA and other states’ consumer protection statutes, as set forth in Paragraph 5, above.

CLASS ALLEGATIONS

40. Pursuant to 735 ILCS 5/2-801 et. seq., Plaintiff bring this action on her own behalf and on behalf of a proposed class of all other similarly situated persons (“Class Members” of the “Class”) consisting of:

All current Illinois citizens who purchased Fruit Roll-Ups labeled as “naturally flavored” and containing “no artificial flavors” for personal purposes from the five-year period prior to the filing of this Complaint up through the date of preliminary approval (the “Class Period”).

41. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendants have a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

42. Upon information and belief, the Class consists of thousands of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

43. There are numerous and substantial questions of law or fact common to all the members of the Class and which predominate over any individual issues. Included within the common question of law or fact are:

- a. whether the representation that the Products are "NATURALLY FLAVORED" and contain "NO ARTIFICIAL FLAVORS" is unfair, misleading, and deceptive;
- b. whether Defendants violated the ICFA and other state consumer protection laws by selling the Products with misleading and deceptive representations;
- c. whether Defendants intended for Plaintiff and the Class Members to rely on their "NATURALLY FLAVORED" and "NO ARTIFICIAL FLAVORS" representations;
- d. whether Defendants' acts constitute deceptive, unfair, and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;
- e. whether Defendants have been unjustly enriched; and
- f. the proper measure of damages sustained by Plaintiff and Class Members.

44. The claims of the Plaintiff are typical of the claims of Class Members, in that Plaintiff shares the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiff and Defendants' conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

45. Plaintiff will fairly and adequately protect the interests of Class Members and has retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

46. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. the claim presented in this case predominates over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoy their ill-gotten gains;
- c. given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. when the liability of Defendants has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. this action presents no difficulty that would impede its management by the court as a class action which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendants.

47. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class which would establish incompatible standards of conduct for Defendants.

48. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. Thus, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

Count One

Violation of the ICFA and Other State Consumer Protection Statutes

49. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1 through 48 as if fully set forth herein.

50. The ICFA declares the following to be unlawful: “Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact...in the conduct of any trade or commerce[.]” 815 Ill. Comp. Stat. Ann. 505/2.

51. Defendants’ conduct in advertising and selling the Products as “NATURALLY FLAVORED” and containing “NO ARTIFICIAL FLAVORS” constitutes the act, use and

employment of deception, misrepresentation, and unfair practices in the conduct of Defendants' trade or commerce.

52. Defendants intended for Plaintiff and the Class Members to rely on their "NATURALLY FLAVORED" and "NO ARTIFICIAL FLAVORS" representations. Defendants are aware that consumers like Plaintiff and Class Members are becoming more and more interested in purchasing Products that do not contain synthetic, potentially harmful, ingredients. Defendants preyed on this interest.

53. The "NATURALLY FLAVORED" and "NO ARTIFICIAL FLAVORS" misrepresentation is material because it concerns the type of information that reasonable consumers are expected to rely on in making their purchasing decision.

54. Defendants, by distributing, advertising, labeling, and selling the Products, committed the unfair and deceptive acts in the conduct of their trade and commerce.

55. Defendants' practice of advertising and selling the Products as "NATURALLY FLAVORED" and containing "NO ARTIFICIAL FLAVORS" is unfair. The practice offends public policy and is immoral, unethical, and unscrupulous because consumers are increasingly interested in purchasing and ingesting Products without synthetic substances. Selling the Products as "NATURALLY FLAVORED" and containing "NO ARTIFICIAL FLAVORS" offends the public's expectation to be told the truth about the Products they are buying.

56. Defendants' conduct causes substantial injury to consumers because consumers are being misled into purchasing Products that are not what they are represented to be.

57. Neither Plaintiff nor any reasonable consumer would expect Products labeled "NATURALLY FLAVORED" and "NO ARTIFICIAL FLAVORS" to contain synthetic

petrochemical flavoring compounds.

58. Because the Products contain synthetic petrochemical flavoring compounds, the Products as sold were worth less than the Products as represented, and Plaintiff and Class Members paid a premium for them. Had the truth be known, Plaintiff and Class Members would not have purchased the Products.

59. Plaintiff and Class Members were deceived by the “NATURALLY FLAVORED” and “NO ARTIFICIAL FLAVORS” labels on the Products and suffered economic damages as a proximate result of Defendants’ unlawful conduct as alleged herein, including the difference between the actual value of the Products and the value of the Products if they had been as represented.

60. Plaintiff also seeks to enjoin Defendants’ ongoing deceptive practices relating to is claims on the Products labels and advertising.

Count Two
Unjust Enrichment

61. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1 through 48 as if fully set forth herein.

62. By purchasing the Products, Plaintiff and class members conferred a benefit on Defendants in the form of the purchase price, or a portion thereof, of the Products.

63. Defendants appreciated the benefit because they retained money from their sale and distribution of the Products.

64. Defendants’ acceptance and retention of the benefit is inequitable and unjust and violates the fundamental principles of justice, equity, and good conscience because the benefit

was obtained by Defendants' misleading representations about the Products.

65. Equity cannot in good conscience permit Defendants to be economically enriched for such actions at Plaintiff's and Class Members' expense and in violation of Illinois law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

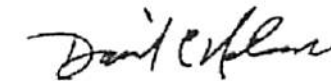
WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. award compensatory damages to Plaintiff and the proposed Class, or, alternatively, require Defendants to disgorge or pay restitution of its ill-gotten gains;
- d. for an award of declaratory and equitable relief declaring Defendants' conduct to be in violation of ICFA and enjoining Defendants from continuing to engage in deceptive and unfair marketing of the Products including, but not limited to, a label change on the Products;
- e. award pre- and post-judgment interest;
- f. award reasonable and necessary attorneys' fees and costs; and
- g. for all such other and further relief, as may be just and proper.

Dated: June 20, 2019

Plaintiff Connie Newman, Individually, and on Behalf of a
Class of Similarly Situated Individuals

By:



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