

United States District Court  
Southern District of New York

7:21-cv-00924

Timothy Lee, individually and on behalf of all  
others similarly situated,

Plaintiff,

- against -

Amended Complaint

The Kingsford Products Company LLC,

Defendant.

Timothy Lee (“Plaintiff”), based on personal knowledge, information and belief, and investigation of counsel, alleges as follows:

1. The Kingsford Products Company, LLC (“Kingsford” or “Defendant”) engages in deceptive business practices in the marketing, advertising and promotion of its 100% Natural Hardwood Briquettes (“Product”), often described as “barbecue charcoals.”

2. Barbecuing is a method of food preparation where food is cooked slowly at low temperatures over indirect heat.

3. This American cultural pastime dates to the colonial era, when the colonists were introduced to this technique by the Native Americans, who had perfected this method.

4. In fact, it has been claimed that the first Thanksgiving feast was actually a barbecue.

5. The Native Americans and early colonists cooked their food using a form of hardwood charcoal (“lump charcoal”), created through slowly burning wood pieces in the absence of oxygen until all the natural chemicals, sap and moisture are removed.

6. Several hundred years later, a competitor to lump charcoal emerged in the form of

the briquette, commonly referred to as “barbecue charcoal,” specifically designed to provide more efficient barbecuing to Americans.

7. Henry Ford popularized briquettes, and they increased in usage alongside automobiles that took Americans to parts of the country they had never seen.

8. Ford’s earliest briquettes consisted of wood scraps – stumps, branches, sawdust – that were left over from the wood used in Ford automobiles.

9. Though briquettes can be made with only natural ingredients, they typically contain additives like starch, limestone, sodium nitrate, and sodium tetraborate pentahydrate (borax).

10. Starch is used as a binder to hold the numerous components together.

11. Limestone is used to provide light-ash color to the briquettes.

12. Borax is a synthetic chemical used to release the identically shaped briquettes from their molds. Also known as sodium borate, sodium tetraborate or disodium tetraborate, the compound is often mixed in pesticide, anti-fungal and or other household products. Canada and the European Union restrict the use of borax. Such safety regulation does not exist in the United States although it is banned for use in food additives.

13. A growing number of consumers prefer lump charcoal to briquettes because it does not contain fillers or additives, is more likely to be a natural product, burns hotter and lights faster than briquettes and produces a smaller amount of ash after burning out.

14. The Product is marketed as “100% Natural Hardwood Briquets” which delivers a “Cleaner Burn.”



15. However, the representations are misleading because the Product is not (1) “100% Natural” nor (2) “100% Natural Hardwood.”

16. Consumers expect a “100% Natural” charcoal product to contain only substances derived from nature, without synthetic components and not be subjected to chemical processes which alters their character and type.

17. The Product is not “100% Natural” because it contains synthetic ingredients such as borax.

18. The Product also is not comprised of “100% Natural Hardwood.”

19. The Product contains limestone, borax, starch, sawdust and other substances instead of only hardwood, which is the source for lump charcoal.

20. Defendant does not disclose and omits material information that the Product is mainly composed of aforementioned materials, substances and compounds.

21. Because the information is not disclosed, consumers like Plaintiff, believe the Product to be comprised of 100% natural hardwood. The omitted information is not on the label nor on Defendant's website. The information is not easily accessible to most consumers.

22. The term "briquet" is a French word which is equivalent to "briquette" in English. The term "briquette" is defined as a block of compressed charcoal or coal dust used as fuel.

23. Charcoal is further defined as porous black solid, consisting of an amorphous form of carbon, obtained as a residue when wood, bone, or other organic matter is heated in the absence of air. Therefore, the term "briquet" does not clarify the representation.

24. Numerous consumers have been deceived by Defendant's misrepresentations as evidenced by user comments on their own website.

25. One consumer commented "Don't be fooled. This is their usual kingsford..." referring to the conventional charcoal.

### **No replacement for lump charcoal**

Don't be fooled. This is the usual kingsford briquette with a little bit of wood added. It is not in any way a replacement for lump charcoal.

26. Even consumers who gave high rating were confused with the composition of the Product with one stating "we can cook without chemicals."

#### **Kingsford 100% Natural Hardwood**

Kingsford 100% Natural Hardwood Briquets.... I was raised on Kingsford..... I see why my dad used it... some really good stuff.... and now they have 100% natural which makes it even better for me and my family... great to know that we can cook without the chemicals

27. Some consumers were unaware that the Product is only slightly distinguishable from the “blue bag,” their original product, by addition of wood materials and minor adjustments.

If you like to grill or smoke meats then this is the product for you. Natural hardwood charcoal gives your meat great flavor without using processed briquettes that can contain extra chemicals.

28. Numerous other comments follow in other websites such as” “I feel safer,” and “just regular kingsford coals with a little bit of sawdust in them” which indicates that the consumers are deceived and/or confused by the representation.

29. The front label contains a graphic of a green flame accompanied by the statement “Cleaner Burn\*.”

30. The green flame and comparative claim give consumers the impression the Product is beneficial, or less harmful to the environment, compared to other fire sources such as propane gas and lump charcoal.

31. However, this representation is misleading because it is insufficiently and inconspicuously qualified by an asterisk referring to small font on the bottom of the bag that notes these attributes are only when the Product is “compared to Kingsford Original Charcoal.”



32. Moreover, numerous studies have shown that briquettes like the Product produce higher levels of carbon dioxide than lump charcoal and propane and are thus more harmful to the

environment and cannot be said to result in a “cleaner burn” than any similar fire source.

33. In contrast, Defendant markets and sells similar line of products that are labeled correctly. See illustration below.



34. This product is labeled “Charcoal Briquets **With** Applewood.” The word “With” inform buyers that the product may be composed of other materials besides Applewood although this product is also composed of similar materials as the hardwood charcoal.

35. Defendant’s misrepresentation and omissions were motivated to induce Plaintiff and the Class to purchase the Product. Plaintiff and the putative class relied on the claims.

36. As a result of Defendant’s conduct and omissions, Plaintiff and the putative class purchased the Product, which failed to conform as promised.

37. They were deprived of the benefit of the bargain and suffered monetary loss.

38. Plaintiff and the Class lack the ability to test or verify Defendant’s claims at the point of sale. Consumers would not know the true nature of the labeling merely by reading the labels nor are they expected to know.

39. Plaintiff and the Class relied on the representations and omissions in deciding to purchase the Product.

**JURISDICTION AND VENUE**

40. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) - Class Action Fairness Act of 2005 or “CAFA”.

41. Under CAFA, district courts have “original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity.

42. This court has personal jurisdiction over Defendant because it conducts and transacts business, contracts to provide and/or supply and provides and/or supplies services and/or goods within New York.

43. Venue is proper because Plaintiff and many class members reside in this District and Defendant does business in this District and State.

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

**PARTIES**

45. Plaintiff Timothy Lee is a citizen of Dutchess County, New York.

46. Plaintiff purchased the Product on at least one occasion, at Home Depot, 80 Independent Way SE, Brewster, NY 10509 between January 27, 2020 and July 27, 2020.

47. Plaintiff purchased the product for personal and household use in reliance on the labeling, including “100% Natural,” “100% Natural Hardwood” and “Cleaner Burn.” As a result of the representations made by Defendant, Plaintiff expected the product to conform to the descriptions.

48. Had Plaintiff known the truth about the misrepresentations and omissions, he would not have purchased the Product at a premium price.

49. Instead, he would have purchased a competing product that is less expensive.

50. Plaintiff cannot rely on the truthfulness of the Product in the future unless Defendant makes corrective changes. Plaintiff may consider future purchases if Defendant engages in corrective labeling and advertising or modifies the Product's composition.

51. Defendant The Kingsford Products Company LLC is a Delaware limited liability company with a principal place of business in Oakland, California, and upon information and belief, at least one member of defendant is not a citizen of this state.

52. Defendant manufactures, markets, labels and sells its "100% Natural Hardwood Briquettes" for between \$13 - \$16 for a 12-pound bag, available at convenience, grocery, home improvement and other retail stores.

53. Kingsford is the leading manufacturer of charcoal in the United States.

54. The labeling and advertising were designed to induce consumers to purchase the Product.

### **CLASS ALLEGATIONS**

55. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2) and/or 23(b)(3) ("the Class").

56. The proposed class consists of: All persons who purchased the Product in New York during the relevant statute of limitations.

57. Plaintiff also seeks an injunctive relief class.

58. The members of the class are so numerous that joinder is impracticable.

59. Plaintiff's claims are typical of the claims of the entire class.

60. Plaintiff will fairly and adequately represent and protect the interests of the other class members for purposes of Federal Rule of Civil Procedure 23(a)(4).

61. Plaintiff has no interests antagonistic to those of other class members.



62. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel experienced in class action litigation.

63. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact exist as to all members of the class and predominate over any questions affecting only individual members of the class.

64. Class certification under Federal Rule of Civil Procedure 23(b)(3) is superior to other available methods for the fair and efficient adjudication of this controversy.

65. Since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the class members to seek redress for the wrongful conduct alleged.

66. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

67. Class members have suffered and will suffer irreparable harm and damages as a result of Defendant's wrongful conduct.

### **COUNT I**

#### **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW §§ 349 & 350**

68. Plaintiff incorporates by reference all preceding paragraphs.

69. Plaintiff brings this claim on behalf of himself and other members of the Class for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law §§ 349 & 350.

70. Defendant's business acts and practices and/or omissions constitute deceptive acts or practices under NY GBL §§ 349 & 350, enacted to protect the public from unconscionable, deceptive or unfair acts or practices in the conduct of any business.

71. The practices and omissions of Defendant described throughout this Complaint were specifically directed to consumers.

72. Defendant's actions impact the public at large because Plaintiff and members of the Class were injured in the same way as thousands of others purchasing the Product as a result of Defendant's deceptive conduct.

73. By committing the acts alleged in this Complaint, Defendant materially misled Plaintiff and the Class into purchasing the Product, in part or in whole, due to an erroneous belief that the Product has qualities that it does not have.

74. The representations are unfair, deceptive, and misleading.

75. Defendant's claims materially misled Plaintiff and are likely in the future to mislead reasonable consumers.

76. Had Plaintiff and members of the Class known of the true facts about the Product, they would not have purchased the Product and/or paid substantially less for competing product.

77. Defendant's violations proximately caused Plaintiff and other members of the Class to suffer actual damages in the form of, inter alia, monies spent to purchase the Product.

78. Plaintiff and class members are entitled to recover such damages, together with equitable and declaratory relief, appropriate damages, including punitive damages, attorneys' fees and costs.

**COUNT II**  
**BREACH OF EXPRESS WARRANTY**

79. Plaintiff incorporates by reference all preceding paragraphs.

80. Defendant is, and at all times relevant was, a merchant and sold goods to Plaintiff.

81. Defendant made an affirmation of fact and promise about the composition of its Product.

82. Plaintiff relied upon Defendant's expressed warranties regarding its specialized knowledge, expertise, experience, skills, and judgment to properly perform its duties in a manner

that would not present an unreasonable risk of harm or place an undue burden upon Plaintiff.

83. By selling the Products that did not conform as promised to consumers like Plaintiff and the Class, after it gained knowledge of non-conformance, Defendant breached its expressed warranty.

84. The product, as sold, did not conform to the express warranties.

85. At the time Defendant warranted and sold the goods, it knew that the goods did not conform to the warranties. Defendant wrongfully and fraudulently misrepresented and concealed materials facts regarding its goods.

86. Defendant was provided with notice, and has been on notice, of the non-conformance and of its breach of express written warranty through customer complaints.

87. As a direct and proximate result of Defendant's breach of its express warranties, Plaintiffs suffered damages in an amount to be determined at trial.

**COUNT III**  
**NEGLIGENT MISREPRESENTATION**

88. Plaintiff incorporates by reference all preceding paragraphs.

89. Defendant, directly or through their agents and employees, made false representations, concealments, and omissions to Plaintiff and members of the Class.

90. Defendant has failed to fulfill their duties to disclose the material facts in making the representations to Plaintiff and members of the Class.

91. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

92. Defendant knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiff and members of the Class.

93. Plaintiff and members of the Class would have acted differently had they not been misled. They would not have paid money, paid less money or purchased an alternative product.

94. Defendant has an obligation to correct the misinformation that was disseminated through their advertising of the Products. By not informing Plaintiff and members of the Class, Defendant breached their duty. Defendant also profited financially as a result of this breach.

95. Plaintiff and members of the Class relied upon these false representations and omissions by Defendant when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

96. Plaintiff and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Products, other consequential losses and any interest that would have been accrued on all those monies, the specific amount to be determined at trial.

97. Defendant acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiff and members of the Class.

98. Plaintiff and members of the Class are entitled to punitive damages.

**COUNT IV**  
**FRAUD**

99. Plaintiff incorporates by reference all preceding paragraphs.

100. Defendant intentionally made materially false and misleading representations and omissions regarding the Product on the labeling.

101. Plaintiff and members of the Class were induced by, and relied on, Defendant's false and misleading packaging, representations and omissions and did not know at the time that they were purchasing a product that did conform to the description.

102. Defendant knew or should have known of their false and misleading labeling,

packaging and misrepresentations and omissions.

103. Nevertheless, Defendant continued to promote and market the product in a deceptive and misleading manner to induce customers to purchase the Product.

104. As a proximate result of Defendant's conduct, Plaintiff and members of the Class suffered damages in an amount to be determined at trial.

**COUNT V**  
**UNJUST ENRICHMENT**

105. Plaintiff incorporates by reference all preceding paragraphs.

106. Defendant received proceeds from their sale of the goods, which were purchased by Plaintiff and the Class for an amount far greater than the reasonable value because the Product did not conform to the description and did not perform as promised.

107. Defendant knows of and appreciates the benefit conferred by Plaintiff and the Class and has retained the benefit notwithstanding their knowledge that the benefit is unjust.

108. It is against equity and good conscience to permit Defendant to retain the ill-gotten benefits received from Plaintiff and the Class given that Product was not what Defendant purported them to be.

109. It would be unjust and inequitable for Defendant to retain the benefit, warranting disgorgement to Plaintiff and the Class of all monies paid for the product, and/or all monies paid for which Plaintiffs and the Class did not receive benefit.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all members of the Class, pray for judgment as follows:

A. Certifying the proposed Class as requested herein;

- B. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this suit;
- C. Declaring that Defendant has committed the violations of law alleged herein;
- D. Providing for any and all injunctive relief the Court deems appropriate;
- E. Awarding statutory damages in the maximum amount for which the law provides;
- F. Awarding monetary and statutory damages including but not limited to any compensatory, incidental, or consequential damages in an amount that the Court or jury will determine, in accordance with applicable law;
- G. Providing for any and all equitable monetary relief the Court deems appropriate;
- H. Awarding punitive or exemplary damages in accordance with proof and in an amount consistent with applicable precedent;
- I. Awarding Plaintiffs their reasonable costs and expenses of suit, including attorneys' fees;
- J. Awarding pre- and post-judgment interest to the extent the law allows; and
- K. For such further relief as this Court may deem just and proper.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all claims so triable.

July 16, 2021

Respectfully submitted,

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