

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

Lurnia Ivory, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Nestlé USA, Inc.,

Defendant

1:21-cv-01193

Class Action Complaint

Jury Trial Demanded

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

1. Nestlé USA, Inc. (“defendant”) manufactures, markets, labels and sells Caramel Latte Powdered Coffee Creamer under its Coffee-mate brand in containers of 15 ounces (425.2 g), which claims to provide “140 Servings” of coffee creamer (“Product”).



2. However, this representation is false, deceptive and misleading.
3. Though the Product arrives at “140 Servings” based on a serving size of one teaspoon it claims contains three grams of powder, the weight of this coffee creamer in a teaspoon is four grams.
4. Independent laboratory analysis determined that the Product only provides one hundred and seven (107) servings of coffee creamer based on an actual teaspoon containing the Product, thirty-three (33) fewer than promised.
5. This means the Product delivers almost thirty-three percent (33) fewer servings of coffee creamer than the 140 promised on the label, which is what consumers paid for.
6. Through the statement, “140 Servings,” reasonable consumers will expect they can add the standard teaspoon amount of the coffee creamer to 140 cups of coffee – or some variation thereof – when used reasonably and/or according to the label’s directions.
7. No reasonable consumer will expect the number of servings is closer to 100 than 140.
8. Reasonable consumers must and do rely on a company to honestly identify and describe the components, features and amount of the Product – not limited to its “net weight” but to how much use they will get out of it – relative to itself and other comparable products.
9. The value of the Product that plaintiff purchased was materially less than its value as represented by defendant.
10. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.
11. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for them.
12. The Product is sold for a price premium compared to other similar products, \$3.79

per 15 OZ, a higher price than it would otherwise be sold for, absent the misleading representations and omissions.

Jurisdiction and Venue

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

14. Upon information and belief, the aggregate amount in controversy exceeds \$5 million, including any statutory damages, exclusive of interest and costs.

15. Plaintiff Lurnia Ivory is a citizen of Illinois.

16. Defendant Nestlé USA, Inc. is a Delaware corporation with a principal place of business in Arlington, Arlington County, Virginia.

17. The parties are citizens of different states.

18. Venue is proper because plaintiff resides in this district and a substantial portion of the events giving rise to the claims occurred in this district.

Parties

19. Plaintiff Lurnia Ivory is a citizen of Bloomington, McLean County, Illinois.

20. Defendant Nestlé USA, Inc., is a Delaware corporation with a principal place of business in Arlington, Virginia, Arlington County.

21. Defendant is a subsidiary of the largest food company in the world, the Swiss conglomerate Nestle, S.A.

22. Coffee-mate was the first brand of coffee creamer of its kind, introduced in the 1970s.

23. Based on this history and consumer awareness of the brand, it is trusted beyond other types of coffee creamer products.

24. Plaintiff bought the Product on one or more occasions within the statute of limitations

for each cause of action alleged, at stores including Kroger, E Oakland Ave, Bloomington, IL 61701, in 2020 and/or 2021, among other times.

25. Plaintiff bought the Product at or exceeding the above-referenced price.

26. Plaintiff relied on the representations that when following the directions for use, the Product could provide 140 serving of coffee creamer.

27. Plaintiff sought to purchase products with a materially greater amount of powdered coffee creamer than was present – not in terms of “net weight” but in terms of how much use she could expect from the product, conveyed by Defendant in “Servings” prominently displayed at the neck of the Product.

28. Plaintiff did not expect one-third fewer servings.

29. Plaintiff did not, nor could be expected to know, that the Product would not provide the number of servings promised on the label.

30. Plaintiff would not have purchased the Products if she knew the representations were false and misleading.

31. Plaintiff chose between Defendant’s Product and other similar products which were represented similarly, but which did not misrepresent their attributes and/or lower-priced products which did not make the claims made by Defendant.

32. The Product was worth less than what Plaintiff paid and she would not have paid as much absent Defendant's false and misleading statements and omissions.

33. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's representations are consistent with its composition.

Class Allegations

34. The class will consist of all Illinois residents who purchased the Product during the

statutes of limitations for each cause of action alleged.

35. Common questions of law or fact predominate and include whether defendant's representations were and are misleading and if plaintiff and class members are entitled to damages.

36. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

37. Plaintiff is an adequate representative because her interests do not conflict with other members.

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

39. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

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

41. Plaintiff seeks class-wide injunctive relief because the practices continue.

Illinois Consumer Fraud and Deceptive Business Practices Act
("ICFA"), 815 ILCS 505/1, et seq.

(Consumer Protection Statute)

42. Plaintiff incorporates by reference all preceding paragraphs.

43. Plaintiff and class members desired to purchase powdered coffee creamer which could provide the number of servings promised on the label.

44. Defendant's false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions.

45. Defendant misrepresented the Product through statements, omissions, ambiguities, half-truths and/or actions.

46. Plaintiff relied on the representations.

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

Breaches of Express Warranty,
Implied Warranty of Merchantability and
Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

48. The Product was manufactured, labeled and sold by defendant and expressly and impliedly warranted to plaintiff and class members that it could provide the number of servings promised on the label.

49. Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Product.

50. This duty is based on Defendant's outsized role in the market for this type of Product.

51. Plaintiff provided or will provide notice to defendant, its agents, representatives, retailers and their employees.

52. Defendant received notice and should have been aware of these issues due to complaints by regulators, competitors, and consumers, to its main offices.

53. The Product did not conform to its affirmations of fact and promises due to defendant's actions and were not merchantable because they were not fit to pass in the trade as advertised.

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

Negligent Misrepresentation

55. Defendant had a duty to truthfully represent the Product, which it breached.

56. This duty is based on defendant's position, holding itself out as having special knowledge and experience this area.

57. The representations took advantage of consumers' cognitive shortcuts made at the point-of-sale and their trust in defendant.

58. Plaintiff and class members reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, their purchase of the Product.

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

Fraud

60. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that they could provide the number of servings promised on the label

61. Defendant's fraudulent intent is evinced by its knowledge that the Product was not consistent with its representations.

Unjust Enrichment

62. Defendant obtained benefits and monies because the Product was 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 as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and

representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;

4. Awarding monetary damages, statutory damages pursuant to any statutory claims and interest pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: July 13, 2021

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

60 Cuttermill Rd Ste 409

Great Neck NY 11021-3104

Tel: (516) 268-7080

Fax: (516) 234-7800

spencer@spencersheehan.com

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 documents required by the rules of procedure 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

Lurnia Ivory, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff McLean
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

DEFENDANTS

Nestlé USA, Inc.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: Nature of Suit Code Descriptions .

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent-Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 (specify)
- 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 U.S.C. § 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 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE July 13, 2021 SIGNATURE OF ATTORNEY OF RECORD /s/Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

for the
Central District of Illinois

Lurnia Ivory, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Nestlé USA, Inc.,

Defendant(s)

Civil Action No. 1:21-cv-01193

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Nestlé USA, Inc.
c/o The Corporation Trust Company
1209 N Orange St
Wilmington DE 19801-1120

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-
3104 (516) 268-7080

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:21-cv-01193

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: