

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

Lamarr Golston, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Bumbu Rum Company LLC,

Defendant

1:23-cv-00241

Class Action Complaint

Jury Trial Demanded

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

1. Bumbu Rum Company, LLC (“Defendant”) manufactures beverages distilled from sugar cane under the Bumbu Rum Co. brand described as “Original Craft Rum” (“Product”).



2. The representations are misleading to consumers for multiple reasons.

3. First, the Product is not rum because federal and identical state regulations require this distilled spirit to be “bottled at not less than 40 percent alcohol by volume (“ABV”) (80° proof),” and it is only 35 percent ABV or 70° proof. 27 C.F.R. § 5.147(a).¹

4. Second, the Product does not qualify as rum due to the addition of ingredients, including flavoring materials, which alter its class and type. 27 C.F.R. § 5.155.

5. The Product is closer to a cordial or liqueur because it is believed to contain added sugar and flavorings beyond threshold to qualify under this type of beverage. 27 CFR 5.150(a)

6. However, the description of “rum liqueur” would not be accurate because the significant amount of added vanilla and banana flavoring and sweetening results means its predominant characteristic is no longer rum.

7. The Product is self-described as a “Distilled spirits specialty product[s],” reflected in the smaller less conspicuous text in the middle of the cross on the front label which states, “Rum With Natural Flavors.” 27 C.F.R. § 5.156(a)

8. However, this representation is still misleading because it is significantly less prominent than the embossed “Bamboo Rum Co.” on the front label and inconsistent with how it is described, as an “Original Craft Rum” and “premium rum,” in advertising and point-of-sale displays at Defendant’s directions and instructions.

9. According to world-renowned rum distiller Richard Seale, “the rum category is flooded with doctored rums and added sugars and added sherry masquerading as premium rum,” which is how the Product is described and marketed to consumers.

¹ This State has adopted identical federal regulations to those identified here.

Jurisdiction and Venue

10. Jurisdiction is based on the Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

11. The aggregate amount in controversy exceeds \$5 million, including any statutory damages, exclusive of interest and costs.

12. Plaintiff is a citizen of New York.

13. Defendant’s member is Sovereign Brands, LLC, whose membership is comprised of persons or entities that are not citizens of New York.

14. The class of persons Plaintiff seeks to represent includes persons who are citizens of different states from which Defendant’s members are citizen.

15. The members of the classes Plaintiff seeks to represent are more than 100, because the Product has been sold with the representations described here from thousands of locations including liquor stores, grocery stores, convenience stores, warehouse club stores, big box stores, and/or online, across the States covered by Plaintiff’s proposed classes.

16. Venue is in this District with assignment to the Buffalo Division because Plaintiff resides in Niagara County and a substantial part of the events or omissions giving rise to the claims occurred here, including his purchase and use of the Product, and awareness the representations were misleading.

Parties

17. Plaintiff Lamarr Golston is a citizen of Niagara Falls, New York, Niagara County.

18. Defendant Bumbu Rum Company LLC is a Delaware limited liability company with a principal place of business in Highland Park, Lake County, Illinois.

19. Defendant’s members consist of persons who are not citizens of New York.

20. Plaintiff purchased the Product on one or more occasions within the statutes of limitations for each cause of action alleged, at one or more stores including Military Liquors in Niagara Falls, between 2022 and 2023, and/or among other times.

21. As a result of the false and misleading representations, the Product is sold at a premium price, approximately no less than \$35 per 750 mL, excluding tax and sales, higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions.

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

23. Plaintiff paid more for the Product than he would have paid had he known it was not rum and that it could more accurately be described and labeled as a cordial or liqueur due to the amounts of added flavoring and sweetening added.

24. The value of the Product that Plaintiff purchased was materially less than its value as represented by Defendant.

25. Plaintiff chose between Defendant's Product and products represented similarly, but which did not misrepresent their attributes and/or components.

Class Allegations

26. Plaintiff seeks certification under Fed. R. Civ. P. 23 of the following class:

New York Class: All persons in the State of New York who purchased the Product during the statutes of limitations for each cause of action alleged; and

Consumer Fraud Multi-State Class: All persons in the States of Arkansas, Kansas, Montana, Nebraska, North Dakota, Oklahoma and Utah who purchased the Product during the statutes of limitations for each cause of action alleged.

27. Common questions of issues, law, and fact predominate and include whether Defendant's representations were and are misleading and if Plaintiff and class members are entitled

to damages.

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

29. Plaintiff is an adequate representative because his interests do not conflict with other members.

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

31. 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.

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

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

33. Plaintiff incorporates by reference all preceding paragraphs.

34. Plaintiff was unaware the Product was not rum or a premium rum, and that it could more accurately be described and labeled as a cordial or liqueur due to the amounts of added flavoring and sweetening added instead of "rum with natural flavors" which was significantly less conspicuous and prominent than the embossed brand name of Bumbu Rum Co.

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

Violation of State Consumer Fraud Acts
(Consumer Fraud Multi-State Class)

36. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State Class are similar to the consumer protection statute invoked by Plaintiff and prohibit the use of unfair or deceptive business practices in the conduct of commerce.

37. The members of the Consumer Fraud Multi-State Class reserve their rights to assert their consumer protection claims under the Consumer Fraud Acts of the States they represent and/or the consumer protection statute invoked by Plaintiff.

38. Defendant intended that members of the Consumer Fraud Multi-State Class would rely upon its deceptive conduct, which they did, suffering damages.

Breaches of Express Warranty,
Implied Warranty of Merchantability/Fitness for a Particular Purpose and
Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

39. The Product was manufactured, identified, marketed, and sold by Defendant and expressly and impliedly warranted to Plaintiff and class members that the Product was a premium rum, not a cordial or liqueur due to the amounts of added flavoring and sweetening added nor “rum with natural flavors,” which was significantly less conspicuous and prominent than the embossed brand name of Bumbu Rum Co.

40. Defendant directly marketed the Product to Plaintiff and consumers through its advertisements and marketing, through various forms of media, on the packaging, in print circulars, direct mail, and targeted digital advertising.

41. Defendant knew the product attributes that potential customers like Plaintiff were seeking, such as a premium rum, and developed its marketing and labeling to directly meet those needs and desires.

42. The representations were conveyed in writing and promised the Product would be defect-free, and Plaintiff understood this meant it was a premium rum, not a cordial or liqueur due to the amounts of added flavoring and sweetening added nor “rum with natural flavors,” which was significantly less conspicuous and prominent than the embossed brand name of Bumbu Rum Co.

43. Defendant affirmed and promised that the Product was a premium rum, not a cordial

or liqueur due to the amounts of added flavoring and sweetening added nor “rum with natural flavors,” which was significantly less conspicuous and prominent than the embossed brand name of Bumbu Rum Co.

44. Defendant described the Product so Plaintiff and consumers believed it was a premium rum, not a cordial or liqueur due to the amounts of added flavoring and sweetening added nor “rum with natural flavors,” which was significantly less conspicuous and prominent than the embossed brand name of Bumbu Rum Co., which became part of the basis of the bargain that it would conform to its affirmation and promises.

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

46. This duty is based on Defendant’s outsized role in the market for this type of product, custodian of the Bumbu Rum brand, advertised to consumers as a premium rum made in the manner of sailors from the seventeenth century in the Caribbean region.

47. Plaintiff recently became aware of Defendant’s breach of the Product’s warranties.

48. Plaintiff provided or provides notice to Defendant, its agents, representatives, retailers, and their employees that it breached the Product’s express and implied warranties.

49. Defendant received notice and should have been aware of these issues due to complaints by third-parties, including regulators, competitors, and consumers, to its main offices, and by consumers through online forums.

50. The Product did not conform to its affirmations of fact and promises due to Defendant’s actions.

51. The Product was not merchantable because it was not fit to pass in the trade as advertised, not fit for the ordinary purpose for which it was intended and did not conform to the

promises or affirmations of fact made on its packaging, container, or label, because it was marketed as if it was a premium rum, not a cordial or liqueur due to the amounts of added flavoring and sweetening added nor “rum with natural flavors,” which was significantly less conspicuous and prominent than the embossed brand name of Bumbu Rum Co.,

52. The Product was not merchantable because Defendant had reason to know the particular purpose for which the Product was bought by Plaintiff, because he expected it was a premium rum, not a cordial or liqueur due to the amounts of added flavoring and sweetening added nor “rum with natural flavors,” which was significantly less conspicuous and prominent than the embossed brand name of Bumbu Rum Co., and he relied on Defendant’s skill or judgment to select or furnish such a suitable product.

Negligent Misrepresentation

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

54. This duty was non-delegable, based on Defendant’s position, holding itself out as having special knowledge and experience in this area, the seller of a rum made in the same manner as sailors of centuries past.

55. The representations and omissions took advantage of consumers’ cognitive shortcuts made at the point-of-sale and their trust in Defendant, a widely recognized and iconic brand.

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

Fraud

57. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that it was a premium rum, not a cordial or liqueur due to the amounts of added flavoring and sweetening added nor “rum with natural flavors,” which was significantly less conspicuous and

prominent than the embossed brand name of Bumbu Rum Co.,

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

Unjust Enrichment

59. 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. Awarding monetary, statutory and/or punitive damages and interest;
3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: March 18, 2023

Respectfully submitted,

/s/ Spencer Sheehan

Sheehan & Associates, P.C.
60 Cuttermill Rd Ste 412
Great Neck NY 11021
(516) 268-7080
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 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

Lamarr Golston, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 412 Great Neck NY 11021-3104 (516) 268-7080

DEFENDANTS

Bumbu Rum Company LLC

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions .

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE March 18, 2023 SIGNATURE OF ATTORNEY OF RECORD /s/Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Western District of New York

Lamarr Golston, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Bumbu Rum Company LLC,

Defendant(s)

Civil Action No. 1:23-cv-00241

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bumbu Rum Company LLC
c/o Registered Agent Solutions, Inc.
838 Walker Rd Ste 21-2
Dover DE 19904-2751

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 412 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. 1:23-cv-00241

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: