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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

LEIF NELSON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MILLERCOORS, LLC and
MILLERCOORS' OIL CAN BREWERIES
Defendants.

Case No. 1:15-cv-07082-JG-RML

**AMENDED
CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff Leif Nelson (“Plaintiff”), files this class action complaint on behalf of himself and all others similarly situated against MillerCoors, LLC and MillerCoors’ Oil Can Breweries (collectively “Miller” or “Defendant”), and states as follows:

INTRODUCTION

1. This is a class action on behalf of consumers of Foster’s beer who have been deceived that Foster’s, a historically Australian beer, is manufactured in and imported from Australia. Defendant has committed unfair and deceptive practices and has been unjustly enriched by marketing and selling beer in a way that misleads consumers into believing that Foster’s Beer is still imported from Australia using the slogan “Foster’s, Australian for Beer”, and selling Foster’s Beer at prices substantially higher than domestic beer, despite the fact that the beer is now brewed in the United States with domestic ingredients.

JURISDICTION, VENUE AND PARTIES

2. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000, and there is complete diversity of citizenship.

3. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because Defendant caused harm to class members residing in this district.

4. Defendant MillerCoors, LLC is a Delaware corporation with its headquarters at 250 S Wacker Dr., Chicago, Illinois 60606.

5. Defendant MillerCoors’ Oil Can Breweries is a subsidiary of Defendant MillerCoors, LLC with offices at 7001 North Freeway Service Road West, Fort Worth, Texas 76131. Defendant MillerCoors’ Oil Can Breweries’ legal department is located at 250 S Wacker Dr., Chicago, Illinois 60606.

SUBSTANTIVE ALLEGATIONS
The History of Foster's Beer

6. In 1887, William and Ralph Foster began brewing the original Foster's Lager in Melbourne, Australia. Foster's Beer remained independent within Australia until 1907, when it merged with Carlton, Victoria, Shamrock, McCracken and Castlemaine breweries to form Carlton & United Breweries ("CUB"). CUB continued acquiring dozens of breweries throughout the 1900s in its quest to become one of the largest brewery groups in Australia.¹

7. In 1972, CUB began shipping Foster's Lager in their iconic 25.4 ounce cans to the United States. The cans resembled motor oil cans and, as a result, Foster's quickly gained popularity and attention as the American population promptly nicknamed them "Foster's Oil Cans."²

8. After continued expansion, CUB formed Foster's Brewing Group Ltd. in 1990. Foster's Brewing Group Ltd. is based in Melbourne, Australia and produces Foster's Beer solely for Australian consumption. Within the United States Foster's Beer is owned and controlled by Foster's USA LLC. Foster's USA LLC produced all beer sold and consumed within the United States.³

9. CUB joined the SABMiller Group in 2011 following its international growth and success. On November 7, 2012, Foster's sold its 49.9% interest in Foster's USA LLC to

¹ Carlton & United Breweries Official Website, *History*, available at: <http://cub.com.au/history/1880s/> (last visited July 23, 2015).

² Carlton & United Breweries Official Website, *History*, available at: <http://cub.com.au/history/1970s/> (last visited July 23, 2015).

³ Encyclopedia.com, *Foster's Brewing Group Ltd.*, available at: http://www.encyclopedia.com/topic/Fosters_Brewing_Group_Ltd.aspx (last visited July 23, 2015).

MillerCoors LLC. Foster's USA LLC is now wholly owned by MillerCoors LLC, the domestic parent company of Miller Brewing Company, and is ultimately owned by SABMiller Group.⁴

10. SABMiller Group, Defendant Miller's parent company, is the world's second largest brewer. In 2014, SABMiller Group generated gross revenue of more than \$22 billion.⁵ In the United States, SABMiller Group operates eight breweries and produced over one billion gallons of malt beverages in 2014.⁶

11. Imported beer is the fastest growing segment of the American beer market, nearly doubling in market share during the 1990s.⁷

12. Miller currently sells Foster's Beer throughout the United States in 25.4 ounce "Oil Cans," 12 ounce bottles, 12 ounce cans, and in draft form.

13. For over 125 years, Foster's was known for its lager consisting of Pride of Ringwood hops that are only grown by Hop Products Australia in the three specific locations: Bushy Park, Tasmania, Ovens River, Victoria, and Ellerslie Hop Estates in Myaree. Foster's touts, "These hops and an exclusive Foster's yeast are what give Foster's its bold refreshing taste. The secret yeast doesn't produce sulfur harshness that other beers can exhibit, which means that Foster's taste is never skunky and always Australian."⁸ On its official website Defendant proclaims, "Foster's is available in more than 150 countries, making it the largest-

⁴ SAB Miller 2014 Annual Financial Report, available at: <http://www.sabmiller.com/docs/default-source/investor-documents/reports/2014/financial-reports/annual-report-2014.pdf?sfvrsn=8> (last visited Dec. 10, 2015).

⁵ *Id.* at pg. 2.

⁶ SABMiller Official Website, *Where We Operate*, available at: <http://www.sabmiller.com/about-us/where-we-operate#q=NA&id=d2cdf471-2c9d-6131-b545-ff00002059a6&type=Region> (last visited Dec. 10, 2015).

⁷ ABC News Website, *Business of Beer: Imports Gain, Microbrews Rebound*, available at: <http://abcnews.go.com/Business/story?id=88407> (last visited Dec. 10, 2015).

⁸ Foster's Official Website, *Foster's Legacy*, available at: <http://www.fostersbeer.com/#/foster-s-> (last visited Dec. 10, 2015).

selling Australian beer brand in the world.”⁹ Defendant has gone to great lengths to market, advertise, and sell Foster’s Beer as an imported, Australian beer.

14. Foster’s Beer consumers in the United States knew that the only way to get Australian beer of such high quality, as boasted about on Foster’s Beer packaging and marketing materials, was to import the beer from Australia. As such, Foster’s Beer consumers relied on Miller’s representations that Foster’s Beer was imported from Australia and brewed with the same ingredients as it has been in the past, and they paid a premium for imported Foster’s Beer.

15. In 2011, following SABMiller’s acquisition of Foster’s, Defendant moved the brewing location of Foster’s Beer to the “Oil Can Brewery” in Fort Worth, Texas in an effort to save money by cutting transportation and import costs. Due to Defendant’s relocation to the United States, Foster’s is no longer a product of Australian origin and, accordingly, should not be marketed and priced as such.

16. Although Foster’s is no longer imported from Australia, the marketing and advertising of Foster’s has remained largely unchanged. In fact, the packaging for Foster’s contains multiple references to Australian culture and symbols including an image of a Red Kangaroo, the national symbol of Australia, and the Southern Cross constellation. The Southern Cross constellation, a main component on the Australian national flag, is made up of five white stars. These images are the center of the can as depicted below:

⁹ *Id.*



17. These images were present on the cans and packaging of Foster's Beer purchased by Plaintiff and the Class. (Photographs attached hereto as Exhibit A.)

18. Additionally, the individual cans and bottles that are currently sold within the United States remain almost identical to the imported variety that was previously sold here, deceiving consumers into believing they are purchasing the same product as they had in the past.

19. Most breweries proudly display their location. Now, Defendant is misleading its loyal customers to believe that Foster's Beer is the same, imported product it had been for years.

20. Defendant's misleading packaging and labeling is buttressed by an overall marketing campaign, online and in advertisements that misleads the consuming public to believe that Foster's is imported from Australia. For example, on its website Defendant touts that Foster's is "the largest-selling Australian beer brand in the world."¹⁰

21. In addition to deceiving consumers in regard to the true origin of Foster's Beer through its use of the slogan "Foster's – Australian for Beer," Defendant continues deceiving

¹⁰ Foster's Official Website, *Foster's Legacy*, available at: <http://www.fostersbeer.com/#/foster-s-legacy> (last visited Dec. 10, 2015).

consumers through their pervasive “How to Speak Australian” advertising campaign. The campaign, which consists of multiple aired television ads, depicts Foster’s as being a product from Australia by using Australian accents and scenery.¹¹

22. Furthermore, Defendant’s deceptive marketing campaign is bolstered by Foster’s official webpage. The webpage reinforces the false notion that Foster’s is an Australian beer by including an outline of the country of Australia, references to its roots and history in Australia, and use of Australian symbols and phrases including “How to Speak Australian,” “Foster’s – Australian for Beer,” and a video screen with images of rugby players. (Pages from Defendant’s website attached hereto as Exhibit B.)

23. Defendant’s misrepresentations cause confusion among consumers. Consumers believe they are purchasing beer imported from Australia brewed with Australian ingredients, when, in fact, they are purchasing beer brewed in Fort Worth, Texas, with ingredients from the United States.

24. Defendant knows that consumers are willing to pay more for imported beers that use non-domestic ingredients due to their perception that they are of better quality, and believe they are paying costs associated with importing the beer to the United States.

25. Beer consumers are willing to pay a premium for high quality, imported beer. Consumers in the United States often pay higher prices for their beer because foreign breweries follow centuries of brewing practices and traditions, and the breweries use only premium quality ingredients from local farms. Indeed, many breweries, in the United States and around the world, are located in certain areas solely because the water in those regions yields a higher quality beer.

¹¹ Youtube, *How To Speak Australian*, available at: <https://www.youtube.com/watch?v=Lw8JOrkAVs4> (last visited Aug. 3, 2015).

Consumers have grown accustomed to the consistency from these imported beers. As a result, consumers pay higher prices for imported beer than similar beers that are brewed domestically.

26. MillerCoors spokesman Pete Marino admitted: “If a BMW could make an X3 or X5 in South Carolina and sell it for the same price, why couldn’t brewers do the same? That opened a window.” MillerCoors made the decision to move production of Foster’s to the United States about five years ago. Mr. Marino explained: “The move was largely driven by costs.”¹²

27. As a result of these unfair and deceptive practices, Defendant has collected millions of dollars from the sale of Foster’s Beer that it would not have otherwise earned. Plaintiff and class members paid money for a beer that is not what it purports to be or what they bargained for. They paid a premium for Foster’s Beer when they could have instead bought other, less expensive, domestic beer, and consumers have lost the opportunity to purchase and consume other, truly imported beer.

Plaintiff’s Experiences

28. At all relevant times, Plaintiff Leif Nelson resided in, and continues to reside in, New York, New York. During the relevant time period, Plaintiff purchased Foster’s Beer in reliance on the representations contained on the packaging that the beer was imported from Australia and Foster’s history of being an imported beer from Australia. Specifically, Plaintiff purchased Foster’s from several retail locations in New York from January 2012 to January 2015. Plaintiff has since learned that Foster’s is no longer imported from Australia, but produced in Fort Worth, Texas. Plaintiff took into account Defendant’s misrepresentations and omissions that Foster’s was imported from Australia in making his purchases, and would not have purchased Foster’s had he known that Defendant’s representations were false. Based on

¹² The Wall Street Journal, *Trouble Brews for ‘Imported’ Beers Made in America*, available at: <http://www.wsj.com/articles/trouble-brews-for-imported-beers-madein-america-1435188835> (last visited July 23, 2015)

Defendant's misrepresentations and deceptive conduct, Plaintiff purchased beer that had less value than what he paid, and he has accordingly suffered legally cognizable damages proximately caused by Defendant's misconduct. After learning the truth about Defendant's mislabeling of Foster's, Plaintiff decided to stop purchasing it. If the Products were accurately labeled Plaintiff would continue purchasing them.

CLASS ALLEGATIONS

29. Plaintiff brings this action as class action pursuant to Federal Rule of Civil Procedure 23. Plaintiff seeks to represent the following classes:

- A. The "New York Class," which consists of: All consumers within the State of New York who purchased Foster's Beer during the applicable liability period for their personal use, rather than for resale or distribution. Excluded from the New York Class are Defendant's current or former officers, directors, and employees; counsel for Plaintiff and Defendant; and the judicial officer to whom this lawsuit is assigned.
- B. The "Multi-State Class," which consists of: All consumers in Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, or Wyoming who purchased Foster's Beer during the applicable liability period for their personal use, rather than for resale or distribution. Excluded from the Multi-State Class are Defendant's current or former officers, directors, and employees; counsel for Plaintiff and Defendant; and the judicial officer to whom this lawsuit is assigned.
- C. The "Nationwide Class," which consists of: All consumers in the United States and its territories who purchased Foster's Beer during the applicable liability period for their personal use, rather than for resale or distribution. Excluded from the Nationwide Class are Defendant's current or former officers, directors, and employees; counsel for Plaintiff and Defendant; and the judicial officer to whom this lawsuit is assigned.

(collectively referred to as the “Class”).

30. The requirements of Federal Rule of Civil Procedure 23 are satisfied because:

A. Numerosity: The members of each class are so numerous that joinder of all members is impracticable. While the exact number of Class members is presently unknown to Plaintiff, based on Defendant’s volume of sales, Plaintiff estimates that each class numbers in the thousands.

B. Commonality: There are questions of law and fact that are common to the Class members and that predominate over individual questions. These include the following:

- i. Whether Defendant materially misrepresented to the Class members that Foster’s Beer is being imported from Australia;
- ii. Whether Defendant’s misrepresentations and omissions were material to reasonable consumers;
- iii. Whether Defendant’s labeling, marketing, and sale of Foster’s Beer constitutes an unfair, unlawful, or fraudulent business practice;
- iv. Whether Defendant’s labeling, marketing, and sale of Foster’s Beer constitutes false advertising;
- v. Whether Defendant’s conduct injured consumers and, if so, the extent of the injury; and
- vi. The appropriate remedies for Defendant’s conduct.

C. Typicality: Plaintiff’s claims are typical of the claims of the Class members because Plaintiff suffered the same injury as the Class members by nature of their purchases of Foster’s Beer based on Defendant’s misrepresentations that Foster’s Beer is imported from Australia.

D. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the members of each class. Plaintiff does not have any interests that are adverse to those of the Class members. Plaintiff has retained competent counsel experienced in class action litigation and intends to prosecute this action vigorously and have the financial means of doing so.

E. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class action treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Since the damages suffered by individual Class members are 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, while an important public interest will be served by addressing the matter as a class action.

31. The prerequisites for maintaining a class action for injunctive or equitable relief pursuant to Federal Rule of Civil Procedure 23 (b)(2) are met because Defendant has acted or refused to act on grounds generally applicable to each Class member, thereby making appropriate final injunctive or equitable relief with respect to each class as a whole.

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

FIRST CAUSE OF ACTION

(VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1 *et seq.*)

(ON BEHALF OF THE NATIONWIDE CLASS)

33. Plaintiff re-alleges and incorporate by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

34. Plaintiff asserts this claim on behalf of himself and on behalf of the Nationwide Class, pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (the “ICFA”).

35. Section 2 of the ICFA provides, in pertinent part:

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, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

815CS 505/2 (footnotes omitted).

36. Under the ICFA, the term “consumer” means “any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household.” 815 ILCS 505/1(e).

37. Under the ICFA, the terms “trade” and “commerce” mean “the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible,

real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.” 815 ILCS 505/1(f).

38. Plaintiff and the Nationwide Class members have standing to assert this claim because they are “consumers” within the meaning of the ICFA, and Defendant addresses its practices to the market generally and otherwise implicates consumer protection concerns. At all relevant times, Defendant conducted “trade” and “commerce” within the meaning of 815 ILCS 505/1(f).

39. Defendant’s unlawful, unfair and/or deceptive practices described herein are continuing in nature and are widespread practices.

40. Defendant’s actions, which were willful and wanton, constitute intentional violations of the ICFA.

41. Defendant intended that Plaintiff and the Nationwide Class members rely on the unfair and deceptive acts and omissions alleged herein so that they would buy, and/or continue to buy, Defendant’s Foster’s Beer.

42. As fully alleged above, by advertising, marketing, distributing, and/or selling Foster’s Beer with claims that it was of Australian origin and using the other representations identified in detail above, to Plaintiff and the Nationwide Class members, Defendant engaged in, and continues to engage in, deceptive acts and practices because Foster’s Beer, in fact, is not of Australian origin, as alleged in detail above.

43. Plaintiff and the Nationwide Class members seek to enjoin such unlawful, deceptive acts, and practices described above. Each of the Nationwide Class members will be irreparably harmed unless the Court enjoins Defendant’s unlawful, deceptive actions in that

Defendant will continue to falsely and misleadingly advertise Foster's Beer as being of Australian origin.

44. Plaintiff and the Nationwide Class members believed Defendant's representations that the beer they purchased was from Australia. Plaintiff and the Nationwide Class members would not have purchased Foster's Beer had they known it is not actually from Australia, as alleged in detail above.

45. Plaintiff and the Nationwide Class members were injured in fact and lost money as a result of Defendant's conduct of improperly marketing Foster's Beer as Australian in origin. Plaintiff and the Nationwide Class members paid for imported beer, but did not receive such beer.

46. The beer Plaintiff and the Nationwide Class members received was worth less than the beer for which they paid. Plaintiff and the Nationwide Class members paid a premium price on account of Defendant's misrepresentations that Foster's Beer is of Australian origin.

47. Plaintiff and the Nationwide Class members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, enjoining Defendant from continuing to disseminate its false and misleading statements, and other relief allowable under the ICFA.

48. Therefore, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION

(Violations of New York General Business Law § 349 – on Behalf of the New York Class)

49. Plaintiff incorporates by reference the allegations set forth above.

50. Plaintiff bring this claim on behalf of himself, on behalf of the New York Class, and on behalf of the Nationwide Class pursuant to New York General Business Law section 349 ("GBL 349").

51. GBL 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York].”

52. As fully alleged above, by advertising, marketing, distributing, and/or selling Foster’s Beer with claims that it was of Australian origin and using the other representations identified in detail above, to Plaintiff, the New York Class members, and the Nationwide Class members, Defendant engaged in, and continues to engage in, deceptive acts and practices because Foster’s Beer, in fact, is not of Australian origin, as alleged in detail above.

53. Plaintiff, the New York Class members, and the Nationwide Class members seek to enjoin such unlawful, deceptive acts, and practices described above. Each of the New York Class members and Nationwide Class members will be irreparably harmed unless the Court enjoins Defendant’s unlawful, deceptive actions in that Defendant will continue to falsely and misleadingly advertise Foster’s Beer as being of Australian origin.

54. Plaintiff, the New York Class members, and the Nationwide Class members believed Defendant’s representations that the beer they purchased was from Australia. Plaintiff, the New York Class members, and the Nationwide Class members would not have purchased Foster’s Beer had they known it is not actually from Australia, as alleged in detail above.

55. Plaintiff, the New York Class members, and the Nationwide Class members were injured in fact and lost money as a result of Defendant’s conduct of improperly marketing Foster’s Beer as Australian in origin Plaintiff, the New York Class members, and the Nationwide Class members paid for imported beer, but did not receive such beer.

56. The beer Plaintiff, the New York Class members, and the Nationwide Class members received was worth less than the beer for which they paid. Plaintiff, the New York Class members, and the Nationwide Class members paid a premium price on account of

Defendant's misrepresentations that Foster's Beer is of Australian origin.

57. By reason of the foregoing, Defendant's conduct, as alleged herein, constitutes deceptive acts and practices in violation of GBL 349, and Defendant is liable to Plaintiff, the New York Class members, and the Nationwide Class members for the actual damages that they have suffered as a result of Defendant's actions. The amount of such damages is to be determined at trial, but will not be less than \$50.00. N.Y. Gen. Bus. Law § 349(h).

58. Plaintiff, the New York Class members, and the Nationwide Class members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief prohibiting Defendant from continuing to disseminate its false and misleading statements, and other relief allowable under GBL 349.

59. THEREFORE, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION

(Violations of New York General Business Law § 350 – on Behalf of the New York Class)

60. Plaintiff incorporates by reference the allegations set forth above.

61. Plaintiff brings this claim on behalf of himself, on behalf of the New York Class, and on behalf of the Nationwide Class, pursuant to New York General Business Law section 350 (“GBL 350”).

62. GBL 350 makes “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service” in New York unlawful.

63. Under GBL 350, the term “false advertising” means, in relevant part, “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a(1).

64. As fully alleged above, by advertising, marketing, distributing, and/or selling Foster's Beer with claims that it is of Australian origin, and using the other representations

identified above, to Plaintiff, the New York Class members, and the Nationwide Class members, Defendant violated GBL 350 by engaging in, and it continues to violate GBL 350 by continuing to engage in, false advertising concerning the composition of Foster's Beer, which is, in fact, not from Australia, as alleged in detail above.

65. Plaintiff, the New York Class members, and the Nationwide Class members seek to enjoin such unlawful acts and practices as described above. Each of the New York Class members and Nationwide Class members will be irreparably harmed unless the Court enjoins Defendant's unlawful actions, in that Plaintiff, the New York Class members, and the Nationwide Class members will continue to be unable to rely on Defendant's representations that Foster's Beer is from Australia.

66. Plaintiff, the New York Class members, and the Nationwide Class members believed Defendant's representations that the Foster's Beer is of Australian origin. Plaintiff, the New York Class members, and the Nationwide Class members would not have purchased Foster's Beer had they known the beer is not, in fact, from Australia, as alleged in detail above.

67. Plaintiff, the New York Class members, and the Nationwide Class members were injured in fact and lost money as a result of Defendant's conduct of improperly marketing Foster's Beer as being from Australia. Plaintiff, the New York Class members, and the Nationwide Class members paid for beer that was of Australian origin, but did not receive such beer.

68. The products Plaintiff, the New York Class members, and the Nationwide Class members received were worth less than the Products for which they paid. Plaintiff, the New York Class members, and the Nationwide Class members paid a premium price on account of Defendant's misrepresentations that Foster's Beer is of Australian origin.

69. Plaintiff, the New York Class members, and the Nationwide Class members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, enjoining Defendant from continuing to disseminate its false and misleading statements, and all other relief allowable under GBL 350.

70. THEREFORE, Plaintiff prays for relief as set forth below.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation– on Behalf of the New York Class and Nationwide Class)

71. Plaintiff incorporates by reference the allegations set forth above.

72. As discussed above, Defendant represented that Foster's Beer is of Australian origin.

73. At all relevant times Defendant made these representations, Defendant knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

74. At a minimum, Defendant negligently misrepresented and/or negligently omitted material facts about Foster's Beer.

75. The negligent misrepresentations and omissions made by Defendant, upon which Plaintiff, the New York Class members, and the Nationwide Class members reasonably and justifiably relied, were intended to induce and actually did induce Plaintiff, the New York Class members, and the Nationwide Class members to purchase Foster's Beer.

76. Plaintiff, the New York Class members, and the Nationwide Class members would not have purchased Foster's Beer, at the price they did, if they had known the true facts.

77. The negligent actions of Defendant caused damage to Plaintiff, the New York Class members, and the Nationwide Class members, who are entitled to damages and other legal and equitable relief as a result.

78. THEREFORE, Plaintiff prays for relief as set forth below.

FIFTH CAUSE OF ACTION
(Fraud– on Behalf of the New York Class and Nationwide Class)

79. Plaintiff incorporates by reference the allegations set forth above.

80. As discussed above, Defendant provided Plaintiff, the New York Class members, and the Nationwide Class members with false or misleading material information and failed to disclose material facts about Foster’s Beer, including, but not limited to the claims regarding the country of origin of Foster’s Beer. These misrepresentations and omissions were made with knowledge of their falsehood.

81. The misrepresentations and omissions made by Defendant, upon which Plaintiff, the New York Class members, and the Nationwide Class members reasonably and justifiably relied, were intended to induce and actually did induce Plaintiff, the New York Class members, and the Nationwide Class members to purchase the Products.

82. The fraudulent actions of Defendant caused damage to Plaintiff, the New York Class members, and the Nationwide Class members, who are entitled to damages and other legal and equitable relief as a result.

83. THEREFORE, Plaintiff prays for relief as set forth below.

SIXTH CAUSE OF ACTION
(Breach of Express Warranty – By the Multi-State Class)

84. Plaintiff incorporates by reference the allegations set forth above.

85. Plaintiff and the Multi-State Class members formed a contract with Defendant at the time they purchased Foster’s Beer. As part of that contract, Defendant represented that Foster’s Beer was of Australian origin. These representations constitute express warranties and became part of the basis of the bargain between Plaintiff and the Multi-State Class members, on one hand, and Defendant, on the other.

86. Defendant made the above-described representations to induce Plaintiff and the Multi-State Class members to purchase Foster's Beer, and Plaintiff and the Multi-State Class members relied on the representations in purchasing Foster's Beer.

87. All conditions precedent to Defendant's liability under the above-referenced contract has been performed by Plaintiff and the other Multi-State Class members.

88. Defendant breached the express warranties about Foster's Beer because, as alleged above, Foster's Beer is not of Australian origin. Defendant breached the following state warranty laws:

- A. Alaska Stat. section 45.02.313;
- B. A.R.S. section 47-2313;
- C. A.C.A. section 4-2-313;
- D. Cal. Comm. Code section 2313;
- E. Colo. Rev. Stat. section 4-2-313;
- F. Conn. Gen. Stat. section 42a-2-313;
- G. 6 Del. C. section 2-313;
- H. D.C. Code section 28:2-313;
- I. O.C.G.A. section 11-2-313;
- J. HRS section 490:2-313;
- K. Idaho Code section 28-2-313;
- L. 810 ILCS 5/2-313;
- M. Ind. Code section 26-1-2-313;
- N. K.S.A. section 84-2-313;
- O. KRS section 355.2-313;

- P. 11 M.R.S. section 2-313;
- Q. Mass. Gen. Laws Ann. ch. 106 section 2-313;
- R. Minn. Stat. section 336.2-313;
- S. Miss. Code Ann. section 75-2-313;
- T. R.S. Mo. Section 400.2-313;
- U. Mont. Code Anno. Section 30-2-313;
- V. Neb. Rev. Stat. section 2-313;
- W. Nev. Rev. Stat. Ann. section 104.2313;
- X. RSA 382-A:2-313;
- Y. N.J. Stat. Ann. section 12A:2-313;
- Z. N.M. Stat. Ann. section 55-2-313;
- AA. N.Y. U.C.C. Law section 2-313;
- AB. N.C. Gen. Stat. section 25-2-313;
- AC. N.D. Cent. Code section 41-02-30;
- AD. ORC Ann. section 1302.26;
- AE. 12A Okl. St. section 2-313;
- AF. Or. Rev. Stat. section 72-3130;
- AG. 13 Pa.C.S. section 2313;
- AH. R.I. Gen. Laws section 6A-2-313;
- AI. S.C. Code Ann. section 36-2-313;
- AJ. S.D. Codified Laws, section 57A-2-313;
- AK. Tenn. Code Ann. section 47-2-313;
- AL. Tex. Bus. & Com. Code section 2.313;

- AM. Utah Code Ann. section 70A-2-313;
- AN. 9A V.S.A. section 2-313;
- AO. Va. Code Ann. section 59.1-504.2;
- AP. Wash. Rev. Code Ann. section 62A.2-313;
- AQ. W. Va. Code section 46-2-313;
- AR. Wyo. Stat. section 34.1-2-313.

89. As a result of Defendant's breaches of express warranty, Plaintiff and the other Multi-State Class members were damaged in amounts to be proven at trial.

90. Within a reasonable time after they knew or should have known of such breach, Plaintiff, on behalf of himself and other Multi-State Class members, placed Defendant on notice thereof.

91. THEREFORE, Plaintiff prays for the relief set forth below.

SEVENTH CAUSE OF ACTION
(Unjust Enrichment, in the Alternative, - By the Nationwide Class)

92. Plaintiff incorporates by reference the allegations set forth above.

93. Defendant received from Plaintiff and Class members benefits in the form of inflated profits related to Defendant's misrepresentations of Foster's Beer as imported and Australian, when it is in fact brewed in Fort Worth, Texas.

94. Defendant implemented procedures to mislead consumers into believing that Foster's Beer was imported from Australia, and that the ingredients used in Foster's Beer have remained the same. However, Foster's Beer is now brewed in Fort Worth, Texas, and Defendant has changed ingredients to cut costs.

95. Defendant collected money from Plaintiff and consumers, in excess of what Plaintiff would have paid for beer that was brewed domestically.

96. This money directly benefited Defendant and was taken to the detriment of the consumers. Plaintiff believed he were paying for high quality Australian ingredients and increased transportation and importation costs, when in reality Defendant was cutting costs and keeping the difference. Therefore, Defendant had the incentive to charge and collect unreasonably inflated prices for the Foster's Beer.

97. Further, Defendant received financial benefits in the form of increased profits.

98. As a result, Plaintiff and the Class members have conferred a benefit on Defendant.

99. Defendant had knowledge of this benefit and voluntarily accepted and retained the benefit conferred on them.

100. Defendant will be unjustly enriched if allowed to retain the aforementioned benefits, and each Class member is entitled to recover the amount by which the Defendant was unjustly enriched at his or her expense.

101. THEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment against Defendant as follows:

- A. An order enjoining Defendant from continuing the unlawful practices set forth above;
- B. An order requiring Defendant to disgorge and make restitution of all monies Defendant acquired by means of the unlawful practices set forth above;
- C. Compensatory damages according to proof;
- D. Reasonable attorneys' fees and costs of suit;
- E. Pre-judgment interest; and
- F. Such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff and the Class members request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated: February 9, 2016

By: **REESE LLP**

/s/ Michael R. Reese

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Counsel for Plaintiff

EXHIBIT A



EXHIBIT B

FOSTER'S
AUSTRALIAN FOR BEER

FOSTER'S LEGACY
THE BEER

HOW TO SPEAK AUSTRALIAN

FAN US, MATE

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FOSTER'S LEGACY

CLOSE X

HISTORY

William and Ralph Foster created Foster's in 1887. They were so dedicated to delivering Foster's the way it should be enjoyed, they even sold it with ice to keep Australia's warm environment at bay. More than 120 years later, the bold, refreshing taste of Foster's is available in more than 150 countries, making it the largest-selling Australian beer brand in the world.

THE OIL CAN

Foster's 25.4 oz. cans arrived in the U.S. in 1972. They resembled motor oil cans so, naturally, Americans nicknamed them "Foster's Oil Cans." And the name's stuck ever since. Truth is, we quite like it. Almost as much as we like what's inside.

BREWING PROCESS

Pride of Ringwood hops are only grown by Hop Products Australia in Bushy Park, Tasmania and Ovens River, Victoria and by Ellerslie Hop Estates in Myaree. And unlike other beers, they're added at the end of the brewing process to preserve their freshness. These hops and an exclusive Foster's yeast are what give Foster's its bold, refreshing taste. The "secret" yeast doesn't produce sulfur harshness that other beers can exhibit, which means that Foster's taste is never skunky and always Australian.



FOSTER'S LEGACY

THE BEER



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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York [dropdown icon]

LEIF NELSON, individually and on behalf of all others)
similarly situated,)

Plaintiff(s)

v.

MILLERCOORS, LLC and
MILLERCOORS' OIL CAN BREWERIES

Defendant(s)

Civil Action No. 1:15-cv-07082-JG-RML

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MILLERCOORS, LLC
250 South Wacker Drive
Chicago, Illinois 60606

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:

Michael R. Reese
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025

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

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York [dropdown icon]

LEIF NELSON, individually and on behalf of all others)
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Plaintiff(s)

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MILLERCOORS, LLC and
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Defendant(s)

Civil Action No. 1:15-cv-07082-JG-RML

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Chicago, Illinois 60606

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Michael R. Reese
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025

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