

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

LINDA JAWAD INDIVIDUALLY	)	
AND ON BEHALF OF ALL OTHERS	)	
SIMILARLY SITUATED,	)	
	)	
	)	
Plaintiff,	)	CIVIL ACTION CASE NUMBER:
	)	(CLASS ACTION)
v.	)	
	)	
DISTRIBUIDONA LIMENA, INC.,	)	
A Tennessee Corporation,	)	
	)	
Defendant.	)	

**INDIVIDUAL AND CLASS ACTION  
COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Plaintiff, Linda Jawad (“Plaintiff”), files this Individual and Class Action Complaint against Defendant, Distribuidona Limena, Inc. (hereinafter “Defendant” or “Limena”) and alleges as follows:

**I. INTRODUCTION**

1. Plaintiff brings this action individually and on behalf of a class of similarly situated persons as a result of Defendant marketing its grocery goods (sometimes referred to as “Ducal” or “product(s)”) in violation of federal and Alabama law regarding the packaging and marketing of said products. Plaintiff thus files this Complaint for violation of law respecting express and limited warranty requirements, for breach of implied agreement, negligence and wantonness.

## **II. THE PARTIES**

2. Plaintiff, Linda Jawad, is a resident citizen of St. Clair County, Alabama. Plaintiff purchased the subject products at a grocery store in Jefferson County, Alabama within the statutory period.

3. Upon information and belief the Defendant is a foreign corporation organized and existing under the laws of the State of Tennessee.

## **III. JURISDICTION AND VENUE**

4. This court has original jurisdiction over this civil action under the Class Action Fairness Act of 2005. The amount in controversy exceeds the sum or value of Five Million Dollars (\$5,000,000), exclusive of interest and costs, and there is minimal diversity because named Plaintiff and certain members of the class are citizens of a different state than Defendant, as required by 28 U.S.C. § 1332(d)(2).

5. Venue is proper in this judicial district because Defendant conducts substantial business in this district and the events giving rise to Plaintiff's claim occurred in this district, since the unlawful conduct complained of herein occurred in this district.

## **IV. STATEMENT OF FACTS**

6. Within the statutory period, Plaintiff visited a grocery store located in Birmingham, Jefferson County, Alabama. On said occasion, the Plaintiff purchased several grocery items including the following Ducal brand juice drink.



7. Fully expecting that the product was being produced and sold as required by regulations of Alabama and federal food law. After Plaintiff got home a family member noticed that said drink containers were fully not in the English language as required by law (see infra page 5). Plaintiff and her household required the nutrition labeling to be in English. Plaintiff had no expectation that Defendant had taken part in receiving, shipping and marketing in interstate commerce illegally imported food products.

8. Upon information and belief as well as Plaintiff's counsel's research and investigation, Plaintiff alleges that the Defendant as a pattern and practice, ships and markets grocery items in States other than Tennessee which are labeled not in the English language.

9. Except for minor and irrelevant exclusions, pursuant to Ala. Admin. Code r. 420-3-20-.02 (Ala. Admin. Code [2021 Ed.]), Alabama has adopted as law in Alabama the federal food related CFRs (Code of Federal Regulations) referenced hereafter. All of the following references to the CFR and Federal Food, Drug and Cosmetic Act (FDA) are thereby law in Alabama. All references to federal law and standards are thus Alabama law and standards, which is the legal basis for this Complaint.

10. The said product is in violation of a number of federal, and thus Alabama, food regulations. The product is misbranded under federal law and regulations (and thus Alabama law);<sup>1</sup>

11. Under FDA regulations, the "front" of a food package including the subject

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<sup>1</sup> A food shall be deemed to be misbranded – (a) If (1) its labeling is false or misleading in any particular, ... 21 U.S. Code § 343, Misbranded Food.

product, according to federal (thus Alabama) regulations, is referred to as the principal display panel (PDP). See 21 CFR 101.1. According to the federal Food and Drug Administration (FDA), it is that portion of the package label that is most likely to be seen and depended upon by the consumer at the time of purchase. The PDP is to be a correct statement of the products' contents. See 21 CFR 101.3(a) and 101.105(a).

12. Under federal food regulations, the contents in their entirety are to be listed on the "information panel" which is immediately to the right of the PDP. See 21 CFR 101.2 through 101.9 and 21 CFR 101.105.

13. The Code of Federal Regulations respecting food labeling sets forth the extraordinary lengths that federal law expects no ounce of deception in food labeling.

(a) The common or usual name of a food (appearing on the container's front), which may be a coined term, shall accurately identify or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients. The name shall be uniform among all identical or similar products and may not be confusingly similar to the name of any other food that is not reasonably encompassed within the same name. Each class or subclass of food shall be given its own common or usual name that states, in clear terms, what it is in a way that distinguishes it from different foods.

The above-mentioned "clear terms" must be in the English language (21 CFR 101.15(c)(1)). Defendant thus violates this provision by selling the products not in the English language. Such violation is taken seriously by the federal government as well as the State of Alabama authorities. As an example, below is an excerpt from a Compliance Policy Guide that the FDA has published for all of its field personnels' use.

## **COMPLIANCE POLICY GUIDE (cpg)**

### **CPG Sec 110.900 Imported Products – Lack of English Labeling**

**August 1996**

Issued by:  
Office of Regulatory Affairs  
Center for Food Safety and Applied Nutrition

#### Background:

Violative imported products should preferably be handled at the port of entry.

. . .

On occasion, violative imported products that are labeled solely in a foreign language [violation of 21 CFR 101.15(c)(1)] are able to enter into the United States commerce without being detained when they are in import status. At some point later, these foreign labeled products may be brought to the agency's attention by a complaint. When this occurs, the most desirable solution is voluntary correction (e.g. relabeling or destruction). Failing voluntary correction, the action of choice is seizure of the misbranded lot.

. . .

#### Regulatory Action Guidance:

(W)here products labeled solely in a foreign language gain entry without examination, district offices are authorized to refer for direct reference seizure to the \*Office of Chief Counsel (GCF-1)\* through the Division of Compliance Management and Operations (HFC-210), seizable size lots (\$1,000 or more) of foods, drugs, animal feeds or drugs, cosmetics and medical devices, which are labeled solely in a foreign language when the owner or other party controlling the lot refuses to voluntarily correct the violation. In instances where this occurs, the district should take appropriate steps to assure that future import shipments either comply with our laws or are detained at the port of entry. This may entail intensive coverage of FDA regulated commodities imported by that firm.

14. Simply put, foreign language labeling only on food products is subject to seizure, condemnation and destruction; plus such could lead to the FDA regulators' conducting intensive study of all other of the importer's, supplier's and grocer's products.

15. Under federal regulations and thus Alabama, a food shall be deemed to be misbranded if (a) its labeling is false or misleading in any particular (emphasis added). SEC. 403, *Food, Drug and Cosmetics Act* (FDC) [21 U.S.C. 343].

16. Clearly, Defendant is guilty of marketing misbranded products which are deceptively labeled with only foreign language labeling in violation of federal and Alabama law.

17. Under federal food law (and thus, Alabama law), the following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise. (Emphasis added). See Sec. 301, FDC [21 U.S.C. 331]

Defendant violates the above section(s) by marketing products with foreign language labeling only in interstate commerce which is an obvious violation of federal regulations and therefore a violation of Alabama's food regulations. Defendant receives

said misbranded product via interstate commerce and offers same for sale in interstate commerce in Alabama and presumably in other states. . . all in violation of law.

18. Because the Product is not as reasonably expected and as required by law and by Plaintiff and other consumers, Defendant's marketing of such misbranded Products was and continues to be misleading and deceptive.

19. Federal law (and thus, Alabama law) leaves little room to argue against the importance that the FDA places on proper food labeling. In fact and in law, by Defendant marketing its misbranded groceries as above stated, FDA regulations confirms that Defendant is misleading consumers by marketing misbranded food.

Section 403(a)(1) of the Federal Food, Drug, Cosmetic Act (FD&C Act) deems a food is misbranded, if the labeling is false or misleading "in any particular." What does "in any particular" mean?

"Misleading" covers not just false claims but also when ambiguity or inference [a label] create(s) a misleading impression." In addition, a label may be deemed misleading for what it fails to disclose. That is, a label can be literally true but still be misleading when it does not disclose an important fact that is "material" to consumers.

**FD&C Act § 201(n)**

(n) If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under



the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.<sup>2</sup>

20. Each consumer, by the marketing of foreign language only goods by Defendant, has thus been exposed to the same or substantially similar deceptive practice by Defendant, since each container of same portrays the same misbranded statements concerning its contents. That means that under federal law, and thus under Alabama law, Defendant's foreign language labeling is unquestionably misleading and misbranded, subjecting said goods to impoundment or destruction.

21. As a result of its illegal and misleading marketing practice, and the harm caused to Plaintiff and putative class members, Defendant should be enjoined from receiving, storing and selling such misbranded products in Alabama.

#### **V. CLASS ALLEGATIONS**

22. Plaintiff individually, and for the Class, incorporates by reference all preceding paragraphs as though fully set forth herein.

23. The Tennessee/Alabama class: Plaintiff brings this case individually, and as a class action, pursuant to R. 23, Fed. R. Civ. Proc., on behalf of all persons who have purchased Defendant's products in the State of Alabama, and the State of Tennessee where said products were labeled totally in non-English language during the statutory period.

24. Plaintiff seeks to also represent the following Class:

- **Nationwide Class: All persons residing in the United States who**

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<sup>2</sup> Quoted from Food Regulation, Law, Science, Policy and Practice, 2d Ed., Fortin, pp. 46 and 47.

**purchased said non-English labeled products.**

Excluded from the Class are the following:

- i. Any and all state or local governments, including but not limited to their department, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions;
- ii. Individuals, if any who timely opt out of this proceeding using the correct protocol for opting out;
- iii. Current or former employees of Defendant;
- iv. Individuals, if any, who have previously settled or compromised claim(s) relating to Defendant's foreign language labeling; and
- v. Any currently sitting federal judge and/or person within the third degree of consanguinity to any such judge.

25. Defendant violated the rights of each Member of the Class in the same fashion based upon Defendant's uniform actions in its marketing, storing, selling and distributing of said Defendant's foreign language labeled products in Tennessee, Alabama and the United States.

26. Plaintiff should be approved to maintain this action as a class action for the following reasons:

27. **Numerosity:** Members of the Class are so numerous that individual joinder is impracticable. The proposed Class contains thousands of Members. The Class is therefore sufficiently numerous to make joinder impracticable, if not impossible.

28. **Common Questions of Fact and Law Exist:** Common questions of fact and

law exist as to all Members of the Class, including whether Defendant marketed, designed, produced and distributed the subject Product with its implied and express representations and breaches of implied and express agreement.

29. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Defendant's breach of implied and express agreement and breach of implied and express warranty relative to FDA regulations and the Alabama Food Code has affected and damaged Plaintiff and all Class Members alike. Furthermore, Plaintiff and all Members of the Class sustained monetary and economic injuries arising out of Defendant's unlawful, deceptive conduct. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent Class Members.

30. **Adequacy:** Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class – all seek redress and prevention for the same unlawful conduct. Plaintiff has retained Counsel who is competent and highly experienced in complex class action litigation, and she intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and her counsel. Plaintiff's claims, like those of the Class, are antagonistic to Defendant.

31. **Predominance:** Common questions of fact and law predominate over any questions affecting individual Class Members.

32. **Superiority:** A class action is superior to other available means of fair and efficient adjudication. The injury suffered by each individual Class Member is very small in comparison to the burden and expense of individual prosecution of the complex and

extensive litigation necessitated by Defendant's conduct. It would be impossible for all Members of the Class to effectively redress the wrongs done to them on an individual basis. Therefore, a class action is the only reasonable means by which Plaintiff and the Class may pursue their claims. Moreover, even if the Members of the Class could pursue such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties, and to the court system, by the complex legal and factual issues of this case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

33. Plaintiff brings this action for herself and on behalf of a class of individuals in the United States and in the States of Alabama and Tennessee who purchased said Defendant's foreign language labeling as above stated; such class to include all persons henceforward who purchase said product from Defendant.

**COUNT I**

**BREACH OF CONTRACT**

**(On Behalf of the Classes)**

34. Plaintiff realleges and incorporates by reference all previous paragraphs of this Complaint as if fully set forth herein.

35. Plaintiff and the class members entered into implied agreement with Defendant.

36. The agreements provided that Plaintiff and the class members would pay Defendant a premium price for Defendant's said grocery products.

37. The contracts further provided that Defendant would provide Plaintiff and the

class members products with English language labeling as represented and required by law.

38. Plaintiff and the class members paid Defendant for the Products that they purchased and satisfied all other conditions of the agreements.

39. Defendant breached the implied agreements with Plaintiff and the class members by failing to comply with the material terms of providing English language labeling as required by law and as represented.

40. As a direct and proximate result of Defendant's breach, Plaintiff and the class members have been injured and have suffered actual damages in an amount to be established at trial.

## **COUNT II**

### **BREACH OF WARRANTY**

#### **(On Behalf of the Classes)**

41. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

42. Plaintiff and the class members formed agreements with Defendant at the time they purchased items from Defendant. The terms of such agreements included implied and express promises and affirmations of fact by Defendant that said product labeling was being marketed as represented and in compliance with applicable law; i.e., that the product was English language labeling.

43. The implication of said marketing is that a requirement of law became part of the basis of the bargain and is part of the contracts between Defendant on the one hand

and Plaintiff and the class members on the other hand.

44. The implied and express affirmation of fact and law made by Defendant was made to induce Plaintiff and the class members to purchase said goods from Defendant.

45. Defendant intended that Plaintiff and the class members would rely on said affirmations in making their purchases, and Plaintiff and the class members did so.

46. All conditions precedent to Defendant's liability under the implied and express warranties have been fulfilled by Plaintiff and the class members in terms of paying for the goods at issue. Further, Defendant has been provided (via UPS overnight delivery) letter correspondence notice by Plaintiff to Defendant on June 20, 2023, of Defendant's illegal sales practices but to date Defendant has taken no action to remedy its breaches of implied and express warranty.

47. Defendant breached the terms of the warranty because the products purchased by Plaintiff and the class members did not conform to the implied agreement and implied and express warranties by Defendant, not fit for the purpose intended.

48. As a direct and proximate result of Defendant's breaches of warranty and implied contract, Plaintiff and the class members have been injured and have suffered actual damages by Plaintiff and the classes not receiving what they paid for.

### **COUNT III**

#### **VIOLATIONS OF ALABAMA'S FOOD AND DRUG LAW**

#### **(On Behalf of the Classes)**

49. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint

as if fully set forth herein.

50. In addition to adopting federal regulations, Alabama's statute regarding proper labeling of food items within the State of Alabama is set out at § 20-1-1 through 20-1-154, Code of Alabama.

51. The applicable code sections regarding the violations by Defendant are as follows:

- § 20-1-20 defines misbranded of food as, "(s)uch term shall apply to all drugs or foods or articles which enter into the composition of food, the package or label of which shall bear or contain any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular and to any food or drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced."
- § 20-1-27 expresses Alabama's prohibition against misbranded or adulterated food products: "No person within this state shall manufacture for sale herein, have in his possession with intent to sell, offer or expose for sale, sell or deliver any article of food or drugs which is adulterated or misbranded within the meaning of this division."

52. Thus, without question, Defendant has sold and continues to sell, its foreign language labeled product in the States of Alabama and Tennessee in violation of Alabama's food laws.

#### **COUNT IV**

#### **UNJUST ENRICHMENT**

53. Plaintiff brings this claim individually and on behalf of the classes.

54. To the extent required by law, this cause of action is alleged in the alternative to legal claims, as permitted under Fed. R. Civ. P. 8.

55. Plaintiff and Class Members conferred benefits on Defendant by Purchasing the product.

56. Defendant was unjustly enriched in retaining the revenues derived from Plaintiff and Class Members' purchases of the product. Retention of those moneys under these circumstances is unjust and inequitable because Defendant failed to disclose that the product was unfit for its intended purpose. These omissions caused damage to Plaintiff and Class Members because they would not have purchased the Products if the true facts were known.

57. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class Members is unjust and inequitable. Defendant has been unjustly enriched in an amount to be determined at trial.

58. Here, equitable relief is appropriate because Plaintiff may lack an adequate remedy at law, if, for instance damages resulting from his purchase of the products is determined to be an amount less than the premium price of the products. Without compensation for the full premium price of the products, Plaintiff and the Class would be left without the parity in purchasing power to which they are entitled.

59. Restitution may also be more certain, prompt, and efficient than other legal remedies requested herein. The return of the full premium price will ensure that Plaintiff and the Classes are in the same place they would have been had Defendant's wrongful conduct not occurred, i.e., the position to make an informed decision about the purchase of the products absent omissions and misrepresentations with the full purchase price at their disposal.



**COUNT V**

**NEGLIGENCE**

**(On Behalf of the Plaintiff and the Classes)**

60. Plaintiff repeats and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

61. Plaintiff alternatively claims that Defendant in a negligence manner marketed and sold to Plaintiff and the classes the product heretofore mentioned.

62. Plaintiff claims that said marketing of the Products without regard to the legal requirements, and in violation of law (amounting to negligence per se) was done and is presently continuing in a negligent manner and as a proximate result thereof, the Plaintiff and the classes were damaged as herein claimed.

63. Plaintiff further alleges that said marketing of the Products in a negligent manner is violative of Alabama and federal legal requirements and should be restrained and be caused to cease.

64. Plaintiff prays that due to the damage proximately caused by Defendant to Plaintiff and the classes that relief is demanded as hereinafter requested.

**COUNT V**

**WANTONNESS**

**(On Behalf of the Plaintiff and the Classes)**

65. Plaintiff repeats and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

66. Plaintiff claims that Defendant in a wanton manner has marketed and is

marketing to Plaintiff and the classes the products heretofore mentioned.

67. Plaintiff claims that said marketing of the subject products without regard to the legal requirements was done and is presently continuing in a wanton manner and as a proximate result thereof, the Plaintiff and the classes were damaged as herein claimed.

68. Plaintiff further alleges that said marketing by Defendant of said misbranded Products in a wanton manner, is violative of legal requirements throughout the United States and should be restrained and be caused to cease, as hereinafter claimed.

69. Plaintiff prays that due to the damage proximately caused by Defendant to Plaintiff and the classes that punitive monetary relief is also demanded as hereinafter requested.

## **COUNT VII**

### **INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

70. Plaintiff repeats and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

71. Plaintiff and the class need, and are entitled to, an order for injunctive and declaratory relief declaring that Defendant's marketing and sales practice as alleged herein violate applicable law and regulations, and enjoining Defendant from continuing such practices with its foreign language labeling.

72. Upon information and belief, Defendant is presently continuing each of its complained-of practices.

73. Plaintiff and unknown putative class members have a significant interest in this matter in that each has been, and will again in the future, be subjected to the unlawful

practices alleged herein.

74. Until a change is required, Plaintiff and the class members will be regularly subjected to Defendant's unlawful conduct alleged herein and will be subject to such conduct in the future and otherwise. If not terminated, Defendant will continue its illegal and deceptive marketing.

75. Based on the foregoing, a justiciable controversy is presented in this case, rendering declaratory judgment appropriate.

76. In addition, because the unlawful uniform policies of Defendant are on-going, Plaintiff and the class members also need, and are entitled to, an order for injunctive relief, enjoining Defendant from continuing these complained-of practices in retail stores in Alabama.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this case be certified and maintained as a class action and that judgment be entered in favor of Plaintiff and the class members against Defendant as follows:

A. Enter an order certifying the proposed class, designating Plaintiff as the representative for the class members that she seeks to represent, and designating the undersigned as class counsel;

B. Declare that Defendant is financially responsible for notifying all class members of Defendant's illegal receipt, storage, sales, and marketing practices alleged herein;

C. Find that Defendant's conduct alleged herein be adjudged and decreed in

violation of applicable Alabama and federal food labeling law;

D. Grant declaratory relief as above requested;

E. Cause Defendant to compensate Plaintiff and the class by Defendant paying through this Court a sum in excess of \$5,000,000 (five million dollars) (with any and all other legal expenses, attorney fees and charges to be first deducted therefrom) due to Plaintiff and the classes having overpaid Defendant for subject product(s) causing Plaintiff and the classes to receive less value due to said product being deceptively misbranded thus being breaches of implied and agreement and warranty as aforesaid;

F. Compensate Plaintiff for his time and expense in prosecuting this action;

G. Grant reasonable attorneys' fees pursuant to law to the undersigned and as otherwise permitted by statute, with reimbursement of all costs incurred in the prosecution of this action; and

H. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

BY: /s/ Charles M. Thompson  
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**PLAINTIFFS DEMAND TRIAL BY STRUCK JURY**

/s/ Charles M. Thompson  
Charles M. Thompson  
Attorney for Plaintiff

**SERVE DEFENDANT via certified mail at this address:**

**Distribuidora Limena, Inc.**

1188 Antioch Pike  
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