

Hearing Date: 6/20/2024 9:30 AM
Location: Court Room 2305
Judge: Mclean Meyerson, Pamela

12-Person Jury

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

FILED
2/20/2024 6:39 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2024CH01053
Calendar, 11
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MICHAEL DALY, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

DANONE WATERS OF AMERICA, LLC

Defendant.

Case No. **2024CH01053**

**CLASS ACTION
COMPLAINT**

JURY DEMANDED

Now come the Plaintiff, MICHAEL DALY (“Plaintiff”), individually and on behalf of all others similarly situated, by and through their attorneys, and for their Class Action Complaint against the Defendant, DANONE WATERS OF AMERICA LLC, (“Defendant”), Plaintiff alleges and states as follows:

PRELIMINARY STATEMENT

1. This is an action for damages, injunctive relief, and any other available legal or equitable remedies, for violations of Illinois Consumer Fraud and Deceptive Businesses Practices Act (“ILCFA”), 815 ILCS 505/1 *et seq.*, common law fraud, and unjust enrichment, resulting from the illegal actions of Defendant, in intentionally labeling its Products as Natural Spring Water, when they contain microplastics. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

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PARTIES

2. Plaintiff Michael Daly is an individual who resides in Evergreen Park, Illinois.

3. Defendant is a Delaware limited liability company, whose principal place of business is located in Denver, Colorado.

4. At all times relevant hereto, Defendant was engaged in the marketing and sale of bottled water.

FACTS COMMON TO ALL COUNTS

5. Defendant advertises, markets, sells, and distributes bottled water throughout Illinois and the United States.

6. During the Class Period Defendant sold Evian bottled water (the “Products”) labeled, marketed, and advertised as “Natural Spring Water” but which actually contained microplastics.

7. Microplastics are small sized plastic particles that originate from manufacturing and physical degradation of plastics. Microplastics encompass a variety of different molecules with different structures, shapes, sizes, and polymers.

8. Microplastics are not naturally occurring. Instead, microplastics are typically made from polypropylene, polyethylene, polystyrene, and other synthetic polymers.¹

9. Microplastics can leach into the water from the bottle, and consumers are exposed to additives, processing aid, and unreacted monomers.²

¹ Md. Iftakharul Muhib, Md. Khabir Uddin, Md. Mostafizur Rahman, and Guilherme Malafaia, "Occurrence of microplastics in tap and bottled water, and food packaging: A narrative review on current knowledge," *Science of The Total Environment* (2022), <http://dx.doi.org/10.1016/j.scitotenv.2022.161274>.

² *Id*; Winkler, A., Santo, N., Ortenzi, M.A., Bolzoni, E., Bacchetta, R., Tremolada, P., 2019. Does mechanical stress cause microplastic release from plastic water bottles? *Water Res.* 166, 115082

10. In 2018 Orb Media commissioned a global study on synthetic microplastic contamination in bottled water.³ The study was performed at the Mason lab at State University of New York at Fredonia, Department of Geology & Environmental Sciences. The study tested 259 individual bottles from 27 different lots across 11 brands purchased from 19 locations in 9 countries. Ninety-three percent, (“93%”), of bottled water showed signs of microplastic contamination.

11. A study conducted in 2019 found the origin of bottled microplastics in drinking water due to mechanical stress.⁴ They proposed that the main mechanical reason for bottled water contamination originated from releasing microplastic particles from the bottleneck and plastic cap by frequent opening and closing.

12. Microplastic contamination in the Products is possible at various manufacturing levels and as a result of usage by reasonable consumers.⁵

13. Toxic effects of microplastics on the physiology and behavior of marine invertebrates have been extensively documented.⁶ Similar effects have also been observed in larger marine vertebrates such as fish. Furthermore, recent studies using mouse models have reported potential effects of Microplastics on mammalian gut microbiota, as well as cellular and metabolic

³ Orb Media, "Plus Plastic," Orb Media (2023), available at <https://orbmedia.org/plus-plastic>.

⁴ Winkler, A., Santo, N., Ortenzi, M.A., Bolzoni, E., Bacchetta, R., Tremolada, P., 2019. Does mechanical stress cause microplastic release from plastic water bottles? *Water Res.* 166, 115082.

⁵ See Md. Iftakharul Muhib, Md. Khabir Uddin, Md. Mostafizur Rahman, and Guilherme Malafaia, "Occurrence of microplastics in tap and bottled water, and food packaging: A narrative review on current knowledge," *Science of The Total Environment* (2022), <http://dx.doi.org/10.1016/j.scitotenv.2022.161274>.

⁶ Damià Barceló, Yolanda Picó, & Ahmed H. Alfarhan, *Microplastics: Detection in human samples, cell line studies, and health impacts*, *Environmental Toxicology and Pharmacology* (2023), <https://doi.org/10.1016/j.etap.2023.104204>; Grote, K., Brüstle, F., Vlácil, A.K., 2023. Cellular and systemic effects of micro- and nanoplastics in mammals—what we know so far. *Materials* 16, 3123. <https://doi.org/10.3390/ma16083123>;

toxicity in the host.⁷ However, the pathophysiological consequences of acute and chronic exposure to microplastics in mammalian systems, particularly in humans, are not yet fully understood.⁸

14. After being absorbed, Microplastics have the potential to be transported through the circulatory system and subsequently accumulate in various organs, including the kidney, gut, and liver.⁹ Thus, the effects on several blood and the immune system cell lines have been widely reported for several Microplastics. Moreover, Microplastics exhibit a "Trojan Horse" effect by absorbing and transporting various environmental pollutants.¹⁰

15. Studies indicate that exposure to microplastics through ingestion can lead to gastrointestinal problems such as irritable bowel syndrome; endocrine disruption such as adverse effects on hormonal balance and reproductive function; and cardiovascular problems such as increase of oxidative stress and impaired regular heart function.¹¹

16. Microplastics contamination is a material concern to Plaintiff and other reasonable consumers.

17. Bottled water that is contaminated with microplastics is not natural.

18. The Food and Drug Administration ("FDA") has not officially defined the term "natural" and has not promulgated an official rule regarding the use of the term "natural."

⁷ Yong, C.Q.Y., Valiyaveetil, S., Tang, B.L., 2020. Toxicity of microplastics and nanoplastics in mammalian systems. *Int. J. Environ. Res. Public Health* 2020 Vol. 17, 1509. <https://doi.org/10.3390/IJERPH17051509>.

⁸ Damià Barceló, Yolanda Picó, & Ahmed H. Alfarhan, *Microplastics: Detection in human samples, cell line studies, and health impacts*, *Environmental Toxicology and Pharmacology* (2023), <https://doi.org/10.1016/j.etap.2023.104204>

⁹ *Id.*

¹⁰ *Id.*

¹¹ Ebuka Chizitere Emenike et al., *From Oceans to Dinner Plates: The Impact of Microplastics on Human Health*, Volume 9, issue 10, *Heliyon*, 2023, <https://www.sciencedirect.com/science/article/pii/S240584402307648X>

19. Furthermore, FDA has considered the term "natural" to mean that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in that food.¹²

20. Microplastics are not expected to be in food or water.

21. Plaintiff, and reasonable consumers, do not expect "Natural" water products to contain microplastics.

22. The following picture includes an example of Defendant's fraudulent labeling:



¹² U.S. Food and Drug Administration, "Use of the Term 'Natural' on Food Labeling," FDA (2023), available at <https://www.fda.gov/food/food-labeling-nutrition/use-term-natural-food-labeling>.

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23. Yet, when consumers drink Defendant's Products, they are consuming synthetic plastic particles.

24. On December 13, 2023, Plaintiff purchased one case of Products labeled, marketed, and sold as "Natural Spring Water", from a Pete's Fresh Market in Evergreen Park, IL.

25. Plaintiff's Products contained microplastics despite being labeled Natural Spring Water.

26. Persons, like Plaintiff herein, have an interest in purchasing products that do not contain false and misleading claims with regards to the contents of the Products.

27. By making false and misleading claims about the contents of its Products, Defendant impaired Plaintiff's ability to choose the type and quality of products he chose to buy.

28. Therefore, Plaintiff has been deprived of his legally protected interest to obtain true and accurate information about their consumer products as required by law.

29. As a result of Defendant's fraudulent labeling, Plaintiff and the Class have been misled into purchasing Products that did not provide them with the benefit of the bargain they paid money for, namely that the Products were Natural Spring Water.

30. As a result of Defendant's fraudulent labeling, Plaintiff and the Class paid a price premium for premium Products, but instead received non-premium Products.

31. Plaintiff and the Class purchased Defendant's Products because Defendant's advertising claimed that the Products were Natural Spring Water.

32. Due to Defendant's intentional, deceitful practice of falsely labeling the Products as Natural Spring Water, Plaintiff could not have known that the Products contained microplastics.

33. Plaintiff was unaware that the Products contained microplastics when he purchased them.

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34. Worse than the lost money, Plaintiff, the Class, and Sub-Class were deprived of their protected interest to choose the type and quality of products they ingest.

35. Defendant, and not Plaintiffs, the Class, or Sub-Class, knew or should have known that labeling, marketing, and selling the Products as Natural Spring Water was false, deceptive, and misleading, and that Plaintiff, the Class, and Sub-Class members would not be able to tell the Products they purchased contained microplastics unless Defendant expressly told them.

36. Defendant knew that the Products contained microplastics but chose to label the Products with Natural Spring Water labeling anyway to induce consumers to purchase the Products.

37. Furthermore, copious research has shown the deleterious effects of plastic bottles on both the environment and human health, yet Defendant continues to bottle its water in plastic and continues to label the Products as Natural.¹³

38. As a result of Defendant's acts and omissions outlined above, Plaintiffs have suffered concrete and particularized injuries and harm, which include, but are not limited to, the following:

- a. Lost money;
- b. Wasting Plaintiffs' time; and
- c. Stress, aggravation, frustration, loss of trust, loss of serenity, and loss of confidence in product labeling.

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¹³ ABC7 News, "Nanoplastics found in bottled water and the bloodstream, study says," ABC7 News (2023), available at <https://abc7news.com/nanoplastics-bottled-water-bloodstream-plastic/14302293/>.

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CLASS ALLEGATIONS

39. Plaintiff brings this action on behalf of himself and all others similarly situated, as a member of the proposed class (the “Class”), defined as follows:

All persons within the United States who purchased the Products within five years prior to the filing of the Complaint through the date of class certification.

40. Plaintiff also brings this action on behalf of himself and all others similarly situated, as a member of the proposed sub-class (the “Sub-Class”), defined as follows

All persons within the State of Illinois who purchased the Products within five years prior to the filing of the Complaint through the date of class certification.

41. The Class and the Sub-Class satisfy all of the requirements of the Illinois Code of Civil Procedure for maintaining a class action, specifically:

- a. Upon information and belief, the Class and the Sub-Class are so numerous that joinder of all members is impracticable. On information and belief there are hundreds, if not thousands of individuals in the United States and the State of Illinois who purchased the products within the applicable statute of limitations period.
- b. There are questions of fact and/or law which are common to the Class and the Sub-Class, and which predominate over questions affecting any individual Class or Sub-Class members. These common questions of fact and law include, but are not limited to:
 - i. Whether Defendant disseminated false and misleading information by claiming the Products are “Natural Spring Water”;

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- ii. Whether the Class and Sub-Class members were informed that the Products contained microplastics;
 - iii. Whether the Products contained microplastics;
 - iv. Whether Defendant's conduct was unfair and deceptive;
 - v. Whether Defendant unjustly enriched itself as a result of the unlawful conduct alleged above;
 - vii. Whether there should be a tolling of the statute of limitations; and
 - viii. Whether the Class and Sub-Class members are entitled to restitution, actual damages, punitive damages, and attorneys' fees and costs.
- c. Plaintiff's claims are typical of the Class and the Sub-Class, which all arise from the same operative set of facts and are based on the same legal theories
 - d. Plaintiff have no interests adverse or antagonistic to the interests of the other members of the Class and the Sub-Class.
 - e. Plaintiffs will fairly and adequately protect the interests of the Class and the Sub-Class and Plaintiffs have retained experienced and competent attorneys to represent the Class and the Sub-Class.
 - f. This class action is a fair and efficient adjudication of the controversy alleged herein. Plaintiffs anticipate that no unusual difficulties are likely to be encountered in the management of this class action.
 - g. This class action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. This class action will also permit the adjudication

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of relatively small claims by many Class and Sub-Class members who would not otherwise be able to afford to seek legal redress for the wrongs complained of herein. Absent a class action, Class and Sub-Class members will continue to suffer losses of legally protected rights, as well as monetary damages. If Defendants' conduct is allowed proceed to without remedy, Defendants will continue to benefit financially from such conduct.

- h. Defendants have acted on grounds generally applicable to the entire Class and Sub-Class, thereby making it appropriate for the Court to order final monetary, injunctive, and declaratory relief with respect to the Class and the Sub-Class as a whole.

42. Defendant, its employees and agents are excluded from the Class and Sub-Class. Plaintiff does not know the number of members in the Class and Sub-Class, but believes the members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

43. The size and definition of the Class and Sub-Class can be identified by Defendant's own records, and the records of retailers of Defendant's Products.

COUNT I
VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, et seq.

44. Plaintiffs incorporate all of the allegations and statements made in Paragraphs 1 through 43 above as if fully reiterated herein.

45. Plaintiffs are both a "person" as defined in 815 ILCS 505/1(c), as they are both natural persons.

46. Defendant is a “person” as defined in 815 ILCS 505/1(c), as it is a company and a business entity and/or association.

47. 815 ILCS 505/2 states:

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.

48. Through its representation of the Products as Natural Spring Water, Defendant made false promises, misrepresentations, concealments, suppressions, and omissions of material facts, with the intent that Plaintiffs rely upon said false promises, misrepresentations, concealments, suppressions, and omissions of material facts.

49. 815 ILCS 505/10a states:

(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper...

(c) [T]he Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney’s fees and costs to the prevailing party.

50. In taking the actions and omissions set forth above, and making the false promises, misrepresentations, concealments, suppressions, and omissions of material facts set forth above, Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act, including, but not limited to, 815 ILCS 505/2.

51. Defendant failed to comply with the requirements of the ILCFA, including, but not

limited to, 815 ILCS 505/2 as to the Class and Sub-Class members with respect to the above-alleged transactions

52. By reason thereof, Plaintiffs are entitled to a judgment against Defendant, declaring that Defendant's conduct violated 815 ILCS 505/2, enjoining Defendant from engaging in similar conduct in the future, and awarding actual damages, punitive damages, injunctive relief, costs, and attorneys' fees.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiffs' attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

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COUNT II
COMMON LAW FRAUD

53. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 43 above as if fully reiterated herein.

54. Through its false statements that the Products contained “Natural Spring Water”, Defendant made false statements of material fact.

55. At the time Defendant made its statements to Plaintiffs that the Products contained “Natural Spring Water”, it knew, or reasonably should have known, that the statements described above were false.

56. At the time Defendant made the statements to Plaintiff, Defendant intended to induce Plaintiff to purchase the Products.

57. Plaintiff relied upon the truth of the statements described above and purchased the Products, only to find that the Products he purchased contained microplastics.

58. As a result of their reasonable reliance upon Defendant’s false statements of material fact as set forth above, Plaintiffs and other members of the Class and Sub-Class have suffered concrete and particularized injuries, harm, and damages which include, but are not limited to, the loss of money spent on products that did not provide them with the benefit of the bargain they paid money for, and stress, aggravation, frustration, inconvenience, emotional distress, mental anguish, and similar categories of damages.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiffs as Representative of the Class and the Sub-Class;

- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiffs' attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

COUNT III
UNJUST ENRICHMENT

59. Plaintiffs incorporate all of the allegations and statements made in Paragraphs 1 through 43 above as if fully reiterated herein.

60. Plaintiff conferred monetary benefits to Defendant by purchasing the Products.

61. Defendant has been unjustly enriched by retaining the revenues derived from Plaintiff's purchase of the Products based on the false statements that the Products contained "Natural Spring Water".

62. Defendant's retention of the revenue it received from Plaintiff, and the Class and Sub-Class members, is unjust and inequitable because Defendant's false statements caused injuries to Plaintiffs, and the Class and Sub-Class members, as they would not have purchased the Products, or would not have paid a premium price, if they knew the Products contained

microplastics.

63. Defendant's unjust retention of the benefits conferred on it by Plaintiffs, and the Class and Sub-Class members, entitles Plaintiffs, and the Class and Sub-Class members, to restitution of the money they paid to Defendant for the Products.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment against Defendant as follows:

- h. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- i. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- j. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- k. Judgment against Defendant in an amount to be determined at trial;
- l. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- m. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- n. Any other relief deemed just and proper by this Court.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues in this action so triable, except for any issues relating to the amount of attorneys' fees and costs to be awarded should Plaintiff prevails on any of their claims in this action.

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RESPECTFULLY SUBMITTED,

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