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CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
PAIGE SMITH, CLERK

**IN THE CIRCUIT COURT OF BARBOUR COUNTY
STATE OF ALABAMA**

GEORGIA ANN HARRIS, individually)
and on behalf of a class of similarly situated)
persons as defined herein,)

Plaintiff,)

v.)

TOPCO ASSOCIATES, LLC,)

Defendant.)

CIVIL ACTION NO. _____

CLASS ACTION COMPLAINT

COMES NOW, Plaintiff Georgia Ann Harris (“Plaintiff”), individually and on behalf of all others similarly situated as defined herein, and files this Class Action Complaint against Defendant Topco Associates, LLC (hereafter referred to as “Defendant”), and alleges on personal knowledge, investigation of her counsel, and on information and belief, as follows:

I. NATURE OF THE CASE

1. This action stems from Defendant’s false labeling, false advertising, and deceptive practices surrounding its “Food Club”[®] brand ground coffee products. Defendant distributes, markets, and sells their own brand of ground coffee products under the “Food Club” label, including the Food Club “Classic Roast Ground Coffee” purchased by Plaintiff as shown herein.

2. This action challenges the manner by which Defendant markets, labels, and sells their Food Club ground coffee products. Defendant’s marketing representations and product

~~labeling of the Food Club coffee products in retail stores are misleading, untrue, and deceive~~
~~reasonable consumers, just as Plaintiff was deceived.~~

3. Specifically, Defendant engaged in a bait-and-switch false advertising scheme by mislabeling its Food Club coffee products as containing more servings of coffee than the products actually contain. Defendant's Food Club coffee canisters contain a prominent label on the front informing the consumer that the coffee canister contains enough ground coffee to make a certain specified number of six-fluid ounce cups of coffee. For example, the Food Club "Classic Roast Ground Coffee" canister purchased by Plaintiff contains a prominent label on the front informing the consumer that it "Makes up to 90 cups." This representation on the front of Defendant's Food Club coffee canisters is false and misleading.

4. Defendant's Food Club coffee product canisters contain express instructions on it for making a six-fluid ounce serving of coffee. For example, the directions on the Food Club "Classic Roast Ground Coffee" purchased by Plaintiff state as follows: "Brewing Instructions: Brew using one and a half tablespoons of ground coffee for each 6 fluid ounces of water and adjust to taste." However, if the consumer were to follow Defendant's express "Brewing Instructions," it is impossible for the canister to "Make up to 90 cups" of coffee as prominently labeled by Defendant. Post-purchase testing, measurements, and due diligence demonstrate that Defendant's Food Club coffee product canisters cannot make anywhere close to the specified number of cups of coffee as prominently displayed on the front label.

5. These representations lead consumers, like Plaintiff, to believe that the Food Club coffee product contains enough coffee grounds to make a specified number of cups of coffee, in accordance with the "Brewing Instructions" contained on Defendant's coffee canister. These

representations were intended to induce consumers, like Plaintiff, to purchase Defendant's Food Club ground coffee products. Plaintiff, like other consumers, relied to her detriment on these misrepresentations in purchasing the Food Club coffee products described in this action. Defendant's labels and representations were false, deceptive, and misleading.

6. Accordingly, Plaintiff asserts claims in this action for Breach of Express Warranty (Count I) and Breach of Implied Warranty (Count II).

II. JURISDICTION AND VENUE

7. Jurisdiction and venue are properly vested in this Court. Defendant has substantial business contacts with the State of Alabama, or otherwise avails itself of the markets within Alabama, through promotion, sale, marketing and distribution of the Products in Alabama, to render the exercise of jurisdiction by this Court proper and necessary. Further, venue is proper in this Court in that Plaintiff resides in this district and Defendant regularly conducts business in this district.

III. PARTIES

8. Plaintiff is an adult resident citizen of Barbour County, Alabama. At all relevant times, Plaintiff purchased Defendant's Food Club coffee products challenged herein near her residence in Eufaula, Barbour County, Alabama.

9. Defendant is a Delaware limited liability company with its principal place of business in Elk Grove Village, Illinois.

IV. FACTUAL ALLEGATIONS

10. Defendant is a nearly \$14 billion, privately held company that provides aggregation, innovation and knowledge management solutions for its leading food industry

~~member-owners and customers, including grocery retailers, wholesalers and food service companies. <https://www.topco.com/Who-We-Are/About>~~

11. Defendant has nearly 47 member-owners that collectively represent nearly \$180 billion in retail sales and thousands of stores. The membership includes supermarket retailers, wholesale distributors, foodservice and pharmacy companies. <https://www.topco.com/Members>

12. Defendant, develops, designs, formulates, manufactures, packages, labels, advertises, markets, distributes ground coffee. Defendant and sells its own brand of ground coffee. Defendant sells its Food Club ground coffee products in its stores throughout Georgia and across the nation.

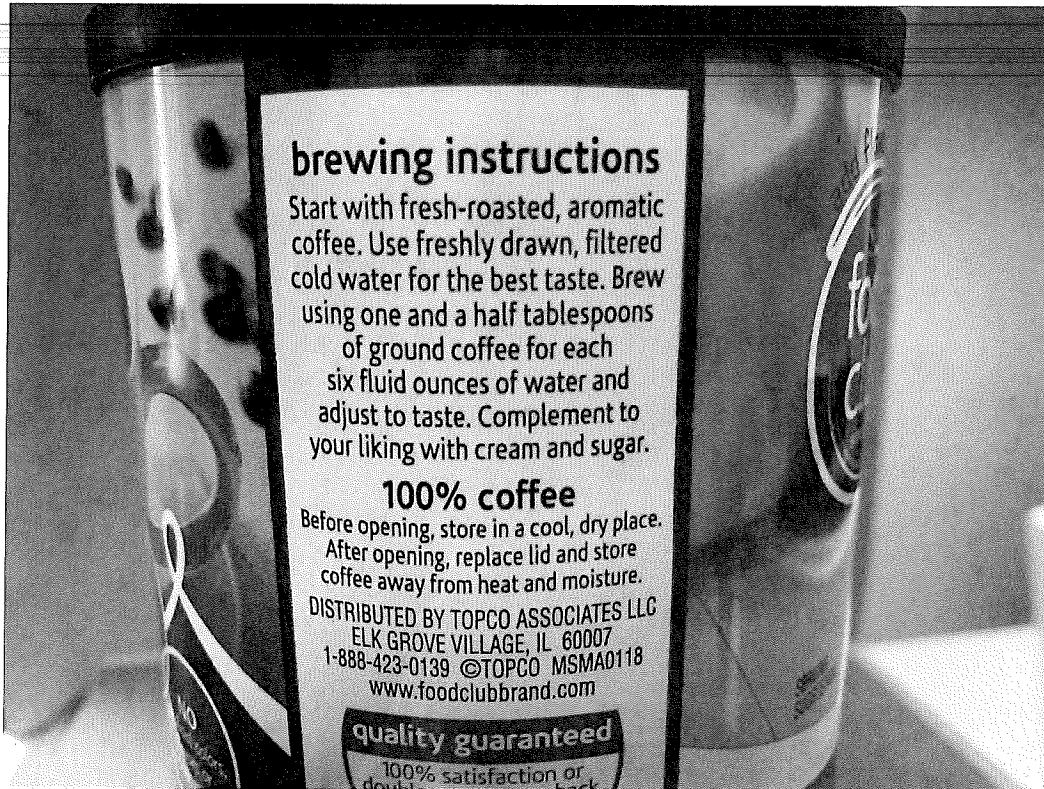
13. Defendant's Food Club ground coffee products at issue are packaged, labeled, and sold in different size canisters including 11.3 oz. canisters and include flavors "Food Club Classic Roast Ground Coffee" with each canister purporting to contain 320 grams of ground coffee.

14. Defendant's Food Club coffee product canisters contain a prominent label on the front stating that the canister makes a specified number of cups of coffee. For example, a prominent label on the front of the canister purchased by Plaintiff informs the consumer that it "Makes up to 90 cups." An image from the canister purchased by Plaintiff is depicted below:



15. Defendant places a materially identical representation in a prominent label on the front of each of their Food Club coffee canister products identified above.

16. Defendant's Food Club coffee product canisters contain express instructions for making a six-fluid ounce serving of coffee. For example, the directions on the Food Club "Classic Roast Ground Coffee" purchased by Plaintiff state as follows: "Brewing Instructions: Brew using one and a half tablespoons of ground coffee for each 6 fluid ounces of water and adjust to taste." An image of the "Brewing Instructions" found on the canister purchased by Plaintiff is depicted below:



17. The representation on the front of Defendant's Food Club coffee products that the canister contains enough coffee grounds to make a specified number of cups of coffee is false and untrue. If the consumer were to follow Defendant's express "Brewing Instructions," it is impossible for the canister to contain enough coffee grounds to "Make up to 90 cups" as prominently labeled by Defendant. Plaintiff's post-purchase testing, measurements, and due diligence demonstrate that Defendant's Food Club coffee product canisters cannot make anywhere close to the specified number of cups of coffee as prominently displayed on the front label.

18. Based on Plaintiff's own post-purchase testing and due diligence, each tablespoon and one half of Food Club's "Ground Coffee" weighs approximately 7.5 grams. Thus, to make

~~90 six-fluid ounce cups of coffee in accordance with Defendant's Brewing Instructions, the~~
canister should contain at least 675 grams of coffee grounds:

1 ½ tablespoons = 7.5 grams per 6 fluid ounce cup

7.5 x 90 cups = 675 grams of coffee needed

The 320 grams in the cannister Plaintiff purchased would instead make only 42.67 cups, less than one half of the promised cups of coffee.

19. The product labeling and representations by Defendant leads consumers, like Plaintiff, to believe that the coffee product canister contains enough coffee grounds to make up to 90 cups of coffee, in accordance with Defendant's Brewing Instructions. Plaintiff, like other consumers, relied to her detriment on these representations when purchasing Defendant's Food Club coffee products.

20. Defendant's marketing representations and labeling of its Food Club coffee products in its stores are misleading, untrue, and deceive reasonable consumers, as was the case with Plaintiff. Defendant distributes, markets, labels, and sells the Food Club coffee products in a manner which deceives reasonable consumers into believing that the canisters contain enough coffee grounds to make a specified number of cups of coffee when, in truth, such labels and representations are false.

21. While Defendant may claim that the words "adjust to taste" on the directions can justify the claim of how many cups a purchaser can make, no reasonable consumer would expect the coffee cannisters to make less than ½ of the coffee cups claimed, even adjusting for one's taste.

22. Defendant has been engaging in the deceptive and fraudulent practice of manufacturing, labeling, distributing, marketing, and selling the Food Club coffee products as if the canisters contained enough coffee grounds to make a specified number of cups of coffee, such that consumers mistakenly believe that the quantity of coffee grounds contained in canister purchased by the consumer will make a specified number of coffee servings.

23. Defendant's labeling, advertising, and marketing of its Food Club coffee products are false and misleading because a reasonable consumer, like Plaintiff, would expect that the canister contains enough coffee grounds to make the specified number of servings prominently displayed on its front label, in accordance with the express "Brewing Instructions" provided by Defendant. As previously alleged, Plaintiff's due diligence, testing, and investigation demonstrates that it is impossible for the product to make the represented amount of cup servings and, in fact, the number of six-fluid ounce cups of coffee that can be made with the coffee grounds contained in the canister is far below the number specified by Defendant.

24. Defendant made these intentional misrepresentations on the labeling and marketing of the Food Club coffee products that were designed to, and, in fact, did mislead Plaintiff and class members into paying a price premium for Defendant's Food Club coffee products.

25. Defendant made these material misrepresentations, omissions, and non-disclosures for the purpose of inducing Plaintiff and other reasonable consumers to pay a price premium for Defendant's Food Club coffee products based on the belief that the products were of sufficient quantity to make a specified number of cups of coffee.

26. ~~Despite knowing that their canisters did not contain enough coffee grounds to~~ make the specified number of cups, Defendant has engaged in a widespread marketing and advertising campaign to portray its coffee products as containing sufficient quantities to make a specified number of coffee servings which is false and untrue.

27. Because it is not feasible for a reasonable consumer to physically examine, measure, or test the contents of a coffee product prior to sale, consumers must and do rely upon representations, labels, and instructions to determine the quantity and serving ability of the coffee products to purchase among comparable alternatives.

28. Products that are entirely enclosed in packaging, such as Defendant's Food Club coffee products, require the consumer to rely entirely on representations and labels concerning the product. Here, Plaintiff and the other class members reasonably relied to their detriment on Defendant's deceptive representations and omissions. Defendant made the deceptive representations and omissions on the coffee products as described herein with the intent to induce Plaintiff and the other class members' payment for the coffee products.

29. Defendant's false, misleading, and deceptive representations and omissions are likely to continue to deceive and mislead reasonable consumers and the general public, as they have already deceived and misled the other class members.

30. Had Defendant not made the false, misleading, and deceptive misrepresentations and omissions described herein, Plaintiff and the other class members would not have been economically injured.

31. Plaintiff is a regular coffee consumer that purchased Defendant's Food Club "Classic Roast Ground Coffee" as depicted herein near her residence. Plaintiff had previously purchased Food Club coffee products from Defendant.

32. Prior to Plaintiff's purchase of Defendant's Food Club "Classic Roast Ground Coffee" as depicted herein, Plaintiff was exposed to Defendant's labels and representations prominently shown on the canister that the product contained enough coffee grounds to "Make up to 90 cups" of coffee. Plaintiff was directly exposed to Defendant's labels and representations in purchasing the coffee product. Based on Defendant's express labels, directions, and brewing instructions, Plaintiff believed that the canister she was purchasing contained enough coffee grounds to "Make up to 90 cups" of coffee, and Plaintiff relied on these representations in purchasing the product and paying a price premium for it.

33. As shown herein, Defendant's labels and express representations were false and misleading. Plaintiff purchased the coffee product at issue in reliance on Defendant's labels and representations, and was deceived by, and harmed by, Defendant's false advertising. Had Plaintiff known that Defendant's labels and advertising were false, she would not have paid the price premium for Defendant's Food Club coffee products.

34. The quantity and availability of serving amounts is an important factor for consumers of coffee products. As previously alleged, consumers of enclosed products of this nature must fully rely upon the representations and labeling on the product addressing its quantity and available servings.

35. Plaintiff purchased the Food Club coffee product because she believed that it contained enough coffee grounds to make a specified number of cups of coffee based on the

labeling and instructions contained on the product's canister. If Plaintiff had known that the product would not make the specified number of cups, she would not have paid a price premium for the product.

36. Plaintiff purchased Defendant's Food Club "Classic Roast Ground Coffee" as shown herein in reliance on Defendant's representations about the number of servings per the product's packaging. Plaintiff did not know, and had no reason to know, that the product's labeling overstates the number of servings of coffee it is able to make. Indeed, Plaintiff was unable to measure or calculate how many servings the coffee product could make at the time of purchase. Unbeknownst to Plaintiff at the time of her purchase, the canister did not contain enough coffee grounds to produce the number of servings promised on the product's front label.

37. Plaintiff would not have paid as much as she did for the coffee product, had Plaintiff known that Defendant misrepresented the amount of servings the product could produce.

38. In this action, Plaintiff makes no challenges or complaints surrounding the quality of Defendant's Food Club coffee products; rather, Plaintiff's action challenges the false labels surrounding the quantity and serving amounts of Defendant's Food Club coffee products. As previously alleged, the coffee canister purchased by Plaintiff makes less than $\frac{1}{2}$ of the number of six-fluid ounce cups as represented and advertised on the front label. Accordingly, Plaintiff failed to receive over $\frac{1}{2}$ of the product that she purchased and paid for. The compensatory damages sought by Plaintiff and class members in this action consist not of the full purchase price of the coffee products falsely advertised, but rather consist of the amount overpaid for the product that did not contain the quantities represented.

V. CLASS ACTION ALLEGATIONS

39. Pursuant to Pursuant to Ala R. Civ. Pro 23, Plaintiff respectfully seeks certification of the following class:

All persons in the state of Alabama who, in the two (2) years preceding the filing of this action, purchased one or more of Defendant's Food Club coffee canisters referenced herein for personal use and not for resale.

40. Excluded from the proposed class are Defendant, any of Defendant's affiliated corporations or agents, any entity in which Defendant has a controlling interest, and any agents, employees, officers, and/or directors of Defendant or any other such entities and its representatives, heirs, successors, and/or assigns.

41. **Numerosity.** The class is so numerous that it would be impracticable to join all effected class members in a single action.

42. **Existence and Predominance of Common Questions of Law and Fact.** There are common questions of law and fact common and of general interest to the class. These common questions of law and fact predominate over any questions effecting only individual members of the class. Said common questions include, but are not limited to, the following:

a. Whether Defendant made material misrepresentations and/or omissions surrounding the amount of cups of coffee its canisters could produce;

b. Whether Defendant's packaging and labeling for their Food Club coffee products are deceptive and misleading;

c. Whether Defendant's misrepresentations and omissions as outlined herein were material to reasonable consumers;

~~d. Whether Defendant's labeling, marketing, and sale of the Food Club coffee products as described herein constitutes false advertising;~~

e. Whether Plaintiff is entitled to maintain her action on behalf of the class as defined herein;

f. Whether Plaintiff and class members are entitled to compensatory damages as requested herein.

43. **Typicality.** The claims of the named Plaintiff are typical of the claims of the class. The claims arise out of the same standard form improper conduct perpetrated on members of the class.

44. **Adequate Representation.** Plaintiff will fairly and adequately protect the interests of the members of the class and has no interest antagonistic to those of other class members. Plaintiff has retained class counsel competent to prosecute class actions, and is financially able to represent the class.

45. **Superiority.** The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. The interest of judicial economy strongly favor adjudicating the claims as a class action rather than on an individual basis because the amount of any individual's damages is too small to make it practicable to bring individual lawsuits.

46. Class action treatment is proper, and this action should be maintained as a class action pursuant to Ala R. Civ. Pro 23 because questions of law and fact predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

COUNT I

Breach of Express Warranty

47. Plaintiff adopts and incorporates all previous allegations in full.

48. Defendant manufactured, marketed, distributed, labeled, and sold the Food Club coffee products at issue as part of their regular course of business. Plaintiff and class members purchased the coffee products directly through Defendant's member/owners in the food industry including grocery retailers like the Food City where the Plaintiff purchased the Defendant's product.

49. Defendant has been provided reasonable and sufficient written notice of this warranty breach and claim before the filing of this action.

50. As described herein, Defendant made express representations and warranties to consumers, which became the basis of the bargain between Plaintiff, class members, and Defendant, thereby creating express warranties that the coffee products contained enough coffee grounds to conform with Defendant's affirmations of fact, representations, and descriptions; specifically, that the product contained enough coffee grounds to make the specified number of six-fluid cups of coffee in accordance with the canister's labels and brewing instructions.

51. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff and class members are entitled to those compensatory damages available to them for not receiving the benefit of their bargain.

COUNT II

Breach of Implied Warranty

52. Plaintiff adopts and incorporates all previous allegations in full.

53. Section 2-314 of the Uniform Commercial Code provides that, unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. To be “merchantable,” goods must, among other things, “pass without objection in the trade under the contract description,” “run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved,” be “adequately contained, packaged, and labeled as the agreement may require,” and “conform to the promise or affirmations of fact made on the container or label.”

54. Defendant marketed, labeled, promoted, distributed, and sold the Food Club coffee products as having certain quantities as described herein, including to Plaintiff and class members who purchased the coffee products.

55. Defendant implicitly warranted the coffee products to be of merchantable quantities as represented by Defendant.

56. Plaintiff and class members reasonably relied on the express affirmations of fact by Defendant, particularly since consumers have no way of testing or measuring the quantities in Defendant’s coffee canisters prior to purchase.

57. Defendant’s Food Club coffee products did not conform with the quantities and representations made on the containers or labels for the products. Rather, the canisters do not contain enough coffee grounds to make the specified number of cups of coffee as labeled and represented by Defendant.

58. Defendant breached its implied warranties because the coffee products do not have the quantities and characteristics as promised, and because the products do not conform to the promises made on their labels.

59. Defendant has been provided reasonable and sufficient written notice of this warranty breach and claim before the filing of this action.

60. As a direct and proximate result of one or more of these wrongful acts or omissions by Defendant, Plaintiff and class members have suffered damages and would not have purchased the products if they had known the true facts.

61. As a direct and proximate result of Defendant's breach of implied warranties, Plaintiff and class members are entitled to those compensatory damages available to them.

COUNT III
BREACH OF CONTRACT

62. Plaintiff adopts and incorporates all previous allegations in full.

63. By failing to fully and adequately perform its contractual obligations owed to Plaintiff, including, without limitation, the failure to properly label its coffee canisters with the correct amount of servings provided by each canister as described herein, Defendant materially breached its contract with Plaintiff.

64. As a result, Plaintiff is entitled to those compensatory damages as described herein available to her and class members.

JURY DEMAND

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY ON ALL ISSUES IN THIS CASE.

Dated this 4th day of August, 2022.

/s/ Brent Irby

R. Brent Irby (ASB-2773-R79R)

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