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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DAMIEN PATTERSON, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SAZERAC COMPANY, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Damien Patterson (“Plaintiff”) brings this action on behalf of himself and all others
2 similarly situated against Defendant Sazerac Company, Inc. (“Defendant”). Plaintiff makes the
3 following allegations pursuant to the investigation of his counsel and based upon information and
4 belief, except as to the allegations specifically pertaining to himself, which are based on personal
5 knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a putative class action lawsuit on behalf of purchasers of the Fireball
8 Cinnamon malt beverage (the “Malt Product”) against Defendant for manufacturing, marketing,
9 distributing, and selling underfilled and mislabeled alcoholic beverages.

10 2. Sazerac manufactures, markets, and distributes alcoholic beverages under the brand
11 name “Fireball.” Defendant’s Fireball Cinnamon Whisky (the “Whiskey Product”) (together with
12 the Malt Product, Defendant’s “Alcohol Products”) has become “one of the most popular drinks to
13 down – particularly in shot form.”¹ The Whiskey Product is so popular that the brand name
14 “Fireball” has become synonymous with Defendant’s Whiskey Product.²

15 3. Defendant engaged in widespread false and deceptive advertising in connection with
16 its Malt Products. In a practice that runs contrary to reasonable consumer expectations, Defendant
17 employs a classic bait-and-switch scheme that causes unsuspecting consumers to spend more
18 money for less than the advertised amount of alcohol they believe they are purchasing – and
19 induces them to buy a fundamentally different product entirely. Specifically, the packaging and
20 labeling of the Malt Products prominently advertise that they are “Fireball Cinnamon” products,
21 which consumers understand to refer to Defendant’s Whiskey Products. However, “Fireball
22 Cinnamon” is not a whiskey product at all; it is a malt beverage with half the alcohol of whiskey.

23 4. In this case, Plaintiff purchased a Malt Product that prominently advertises on its
24 front labels that it is “Fireball Cinnamon,” and includes the same style of label and logo as
25 Defendant’s Whiskey Products. The Malt Product contains only 16.5% alcohol by volume (ABV),
26 which is half that of Defendant’s more popular Whiskey Product (33% ABV). Thus, the Malt

27 ¹ See <https://whiskeyraiders.com/article/is-fireball-whiskey/>.

28 ² *Id.*

1 Product purchased by Plaintiff contained only half of the alcohol content present in Defendant's
2 Whiskey Product.

3 5. Defendant's Whiskey Product³ is a concoction of whiskey, sweetener, and
4 cinnamon flavoring. Fireball Whisky has been on the market since the 1980s and is one of the
5 most popular whiskey products in the United States. Fireball Whisky is found in nearly every
6 well-stocked bar and liquor store.

7 6. In contrast, the Malt Product has only been offered for sale for several years, and it
8 enjoys nowhere near the success of Fireball Whiskey. The vast majority of reasonable consumers
9 do not know that the Malt Product even exists.

10 7. Fireball Malt is a "malt beverage with natural whisky & other flavors and caramel
11 color." At merely half of the Whiskey Product's ABV (*i.e.*, 16.5% ABV compared to 33% ABV),
12 Defendant's Malt Product features a stark difference in alcohol quantity. This is because, as a malt-
13 based beverage, the Malt Product is not "liquor" in the sense that it is not a distilled spirit such as
14 whiskey – which serves as the base for Defendant's Whiskey Product. Rather, the Malt Product
15 features "malt" as its base, which is boiled like beer and fermented with yeast.⁴ Thus, the Malt
16 Product contains nowhere near the alcohol content of whiskey, and it is not a whiskey product at
17 all.

18 8. Despite these key differences, the front labels of Defendant's Whiskey Product and
19 Malt Product are nearly identical. Both products come in similar clear, plastic bottles. Both
20 products have the same signature red cap. Both products have the same coloring and look the same
21 upon inspection. Both products are labeled "Fireball," with the same font, font size, and
22 placement. Both products have the same logo of a red demon, with similar size and placement.
23 Both products say "Cinnamon" under the logo:

24
25
26 ³ Fireball was developed in Canada, where "whiskey" is spelled "whisky." Accordingly, the brand
27 is formally called "Fireball Whisky," but in the United States such products are generically referred
28 to as "whiskey."

⁴ See <https://thestir.drizly.com/behind-the-bottle/what-is-malt-liquor/#:~:text=Malt%20liquor%20isn't%20%E2%80%9Cliquor,the%20light%20lager%20beer%20style>.



9. The nearly-identical labeling between these two products serves one purpose – an intent to deceive reasonable consumers. Notably, Fireball Malt does not disclose the alcohol percentage (i.e., ABV) anywhere on the front of the packaging. Nor is it evident from the labeling that it is not a whiskey product, but rather a malt product, especially to reasonable consumers who are familiar with Fireball’s vastly-popular whiskey product. Based on the nearly identical labels, logo, and branding, reasonable consumers such as Plaintiff would understand these two Alcohol Products to be the same and therefore expect Fireball Cinnamon to be a whiskey product with the alcohol content as whiskey.

10. In fact, Defendant prepared for reasonable consumers to be confused by its branding, and even included a “How Can I Tell The Difference Between Fireball Cinnamon And Fireball Whisky Products?” question on its website’s FAQ page. Even so, the FAQ does not disclose that Fireball Malt contains only half the alcohol as Fireball Whisky.⁵

HOW CAN I TELL THE DIFFERENCE BETWEEN FIREBALL CINNAMON AND FIREBALL WHISKY PRODUCTS?

There are 2 key differences between the Fireball Cinnamon labels vs the Fireball Whisky label:

- Any package with Fireball ‘Cinnamon Whisky’ on the front label is our whisky-based product
- Any product with Fireball ‘Cinnamon’ on the front label, without ‘Whisky,’ is either our malt-based or wine-based product

11. Despite knowing that its labeling practices were ripe for consumer confusion, Defendant chose to continue to affirmatively misrepresent its Malt Products with labels practically identical to its Whiskey Products.

12. The amount of ABV in the Malt Product is material to consumers who purchase Defendant’s Malt Product. The Malt Products are marketed as alcoholic beverages under the umbrella branding “Fireball,” which is widely known as a whiskey beverage. The alcohol strength and effects that come from drinking a Malt Product are wildly different than those that come from drinking a Whiskey Product. Consumers expecting to enjoy a whiskey product are not expecting to receive a malt product.

13. Thus, reasonable consumers seeking the taste and effects of a Whiskey Product with 33% ABV are harmed by the accidental purchase of a Malt Product at 16.5% ABV. Nor do reasonable consumers expect to receive a malt beverage when they intend to purchase a whiskey product.

14. Plaintiff, the Class, and Subclass Members relied to their detriment on Defendant’s unclear and fraudulent omissions on its Malt Product labels regarding the strength of alcohol present in each bottle. Plaintiff and Class and Subclass Members would not have paid to purchase Defendant’s Malt Products – or would not have paid as much as they did to purchase them – had they known the truth about the Malt Products’ actual alcohol content. As such, Plaintiff and Class

⁵ See <https://www.fireballwhisky.com/faqs.html>.

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