

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW SINATRO, et al.,
Plaintiffs,
v.
BARILLA AMERICA, INC.,
Defendant.

Case No. [22-cv-03460-DMR](#)

**ORDER ON MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Re: Dkt. No. 15

Plaintiffs Matthew Sinatro and Jessica Prost filed this putative class action against Defendant Barilla America, Inc. (“Barilla”) alleging false, misleading, and deceptive marketing practices with respect to the labeling of certain of its Barilla-brand pastas. Barilla moves pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss the amended complaint. [Docket No. 15.] This motion is appropriate for determination without oral argument. Civ. L.R. 7-1(b). For the following reasons, the motion is granted in part and denied in part.

I. BACKGROUND

Plaintiffs make the following allegations in the amended complaint, all of which are taken as true for purposes of the motion to dismiss.¹ Barilla is a corporation headquartered in Illinois. It originated as a bread and pasta shop in Parma, Italy in the nineteenth century. [Docket No. 11 (First Am. Compl, “FAC”) ¶¶ 11, 14.]

At issue in the FAC is the labeling of certain Barilla-brand pastas as “ITALY’S #1 BRAND OF PASTA®.” See FAC ¶ 2. Plaintiffs allege that “authentic Italian products, including pastas, hold a certain prestige and [are] generally viewed as a higher quality product,” and that

¹ When reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all of the factual allegations contained in the complaint.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*) (citation omitted).

1 “the general ‘Italianness’ of a product influences consumers[’] overall evaluation of a product.”
 2 *Id.* at ¶ 12 (citation omitted). According to Plaintiffs, “consumers willingly pay more for Italian
 3 sounding and/or looking products.” *Id.* (citation omitted). Further, they allege, “Italian pasta is
 4 one of the best and most sought after products in the global market,” and “Italian durum wheat is
 5 among some of the ‘best varieties[’]” of wheat. *Id.* at ¶ 13. However, Italy’s production of
 6 durum wheat does not meet worldwide demand. Accordingly, Plaintiffs allege, many companies,
 7 including Barilla, “have scrambled to manufacture, market, and sell purportedly authentic ‘Italian-
 8 made’ pastas, using durum wheat that is not sourced in Italy, in an effort to gain market share and
 9 increase sales.” *Id.*

10 Plaintiffs allege that “[i]n an effort to increase profits and to obtain an unfair competitive
 11 advantage . . . [Barilla] falsely and misleadingly labels certain of its Barilla® brand pastas as
 12 ‘ITALY’S #1 BRAND OF PASTA®,’ deliberately leading reasonable consumers, including
 13 Plaintiffs, to believe that the Products are made in Italy” from ingredients “sourced in Italy.” *Id.* at
 14 ¶¶ 2, 22 (emphasis removed) (the “Challenged Representation”). They further allege that Barilla
 15 reinforces this representation about the origin of the products by replicating the green, white, and
 16 red colors of Italy’s flag surrounding the representation, “further perpetuating the notion that the
 17 Products are authentic pastas from Italy.” *Id.* at ¶ 2. According to Plaintiffs, “contrary to this
 18 labeling, the Products are not made in Italy” and are not manufactured from ingredients from Italy.
 19 *Id.* at ¶ 3. Rather, the products are manufactured in Barilla’s plants in Iowa and New York using
 20 ingredients sourced from countries other than Italy. *Id.* at ¶¶ 3, 14, 25. The FAC includes
 21 examples of the packaging and labeling of several types of Barilla-brand pastas. *Id.* at ¶ 2; Ex. 1.
 22 The front of the packaging of each product contains Barilla’s red and white brand logo, the name
 23 of the product, and the Challenged Representation.

24 According to Plaintiffs, Barilla “deliberately designed and executed a decades long
 25 marketing campaign to identify the Barilla® brand, company, and Products at issue in this case, as
 26 authentic, genuine Italian pastas—made from ingredients sources [sic] in Italy (like durum wheat),
 27 and manufactured in Italy.” FAC ¶ 16. This campaign included websites, a Barilla Historical
 28 Archiving a Barilla Pasta Museum, and Barilla Academy, which Plaintiffs allege were “all designed

1 to promote the brand and company’s Italian identity” and “convince consumers that Barilla®
 2 brand pastas . . . come from Italian ingredients, [are] processed and manufactured in Italian
 3 factories, and then exported for sale to various countries,” including the United States. *Id.*

4 Plaintiffs further allege that “[n]othing on the Products’ labeling or packaging would lead
 5 reasonable consumers to believe that the Challenged Representation—that the Products are made
 6 in Italy, their ingredients are sourced in Italy, and the finished Products are manufactured in
 7 Italy—is not true.” *Id.* at ¶ 22. Specifically, Plaintiffs allege that there is no “clear, unambiguous,
 8 and conspicuously displayed statement, reasonably proximate to the Challenged Representation,
 9 that reasonable consumers are likely to notice, read, and understand to mean that . . . the
 10 Challenged Representation is indeed false as the Products’ ingredients are not sourced in Italy and
 11 the Products themselves are not assembled or manufactured in Italy.” *Id.*

12 Plaintiff Sinatro purchased a box of the Classic Barilla Blue Box Pasta (Angel Hair) for
 13 approximately \$2.00 at a grocery store in San Francisco, California in the winter of 2021. FAC ¶
 14 8. The Challenged Representation on the label led him to believe “that the Product was made in
 15 Italy—to wit, the Products’ ingredients are from Italy and the Products are manufactured in Italy.”
 16 *Id.* Sinatro did not review the side or back panels of the product and did not notice any statements
 17 on the packaging that contradicted the Challenged Representation or otherwise indicated that the
 18 pasta was not made or manufactured in Italy and/or that its ingredients were not from Italy.

19 Plaintiffs allege that Sinatro “would not have purchased the Product, or would not have overpaid a
 20 premium for the Product’s purported Italian origin, had he known that the Challenged
 21 Representation was false.” *Id.* Further, they allege that Sinatro “is not personally familiar with
 22 the location from which the Products’ ingredients are sourced or the location where the Products
 23 are manufactured as he does not possess any personal knowledge regarding where the Products are
 24 made,” and therefore “has no way of determining whether the Challenged Representation on the
 25 Products is true.” *Id.*

26 Plaintiff Prost purchased two boxes of the Classic Barilla Blue Box Pasta (Spaghetti) for
 27 approximately \$2.00 per box at a grocery store in Los Angeles, California in the fall of 2021. *Id.*

1 made in Italy—to wit, the Products’ ingredients are from Italy and the Products are manufactured
 2 in Italy.” *Id.* When she made the purchase, Prost did not review the side or back panels of the
 3 product and did not notice any statements on the packaging that contradicted the Challenged
 4 Representation or otherwise indicated that the pasta was not made or manufactured in Italy and/or
 5 that its ingredients were not from Italy. Plaintiffs allege that Prost “would not have purchased the
 6 Product, or would not have overpaid a premium for the Product’s purported Italian origin, had she
 7 known that the Challenged Representation was false.” *Id.* Prost “is not personally familiar with
 8 the location from which the Products’ ingredients are sourced or the location where the Products
 9 are manufactured as she does not possess any personal knowledge regarding where the Products
 10 are made,” and therefore “has no way of determining whether the Challenged Representation on
 11 the Products is true.” *Id.*

12 Based on these allegations, Plaintiffs assert the following claims for relief: 1) violation of
 13 the Unfair Competition Law (“UCL”), California Business & Professions Code section 17200 et
 14 seq.; 2) violation of the False Advertising Law (“FAL”), California Business & Professions Code
 15 section 17500 et seq.; 3) violation of the Consumers Legal Remedies Act (“CLRA”), California
 16 Civil Code section 1750 et seq.; 4) breach of warranty; and 5) unjust enrichment/restitution.

17 In addition to the particular products Sinatro and Prost purchased (the “purchased
 18 products”), Plaintiffs’ claims also challenge the packaging for 52 additional Barilla-brand pastas
 19 across several sub-brands: Classic Blue Box, Collezione Artisanal, Gluten Free, Veggie, and
 20 Whole Grain. FAC ¶ 4. According to Plaintiffs, these additional products also contain the
 21 Challenged Representation on the front labels of the packaging. *Id.*

22 Plaintiffs seek to represent a nationwide class of allegedly similarly situated persons,
 23 defined as:

24 All residents of the United States who, within the applicable statute
 25 of limitations periods, purchased the Products, containing the
 26 Challenged Representation on the Products’ front packaging, for
 purposes other than resale[.]

27 FAC ¶ 31. They also seek to represent the following California subclass:

28 All residents of California who, within four years prior to the filing of

1 Representation on the Products' front packaging, for purposes other
2 than resale[.]

3 *Id.* Plaintiffs bring claims one through three on behalf of themselves and the California subclass.
4 They bring claims four and five on behalf of themselves, the nationwide class, and the California
5 subclass.

6 Barilla now moves to dismiss the FAC.

7 **II. LEGAL STANDARDS**

8 Barilla moves to dismiss the FAC pursuant to Federal Rules of Civil Procedure 12(b)(1)
9 and 12(b)(6).

10 **A. Rule 12(b)(1)**

11 The question of standing is “an essential and unchanging part of the case-or-controversy
12 requirement of Article III [of the U.S. Constitution].” *Lujan v. Defenders of Wildlife*, 504 U.S.
13 555, 560 (1992). Because standing is a jurisdictional issue, it is properly addressed under a Rule
14 12(b)(1) motion. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004). A court will
15 dismiss a party’s claim for lack of subject matter jurisdiction “only when the claim is so
16 insubstantial, implausible, foreclosed by prior decisions of th[e Supreme] Court, or otherwise
17 completely devoid of merit as not to involve a federal controversy.” *Steel Co. v. Citizens for a*
18 *Better Env’t*, 523 U.S. 83, 89 (1998) (citation and quotation marks omitted); *see* Fed. R. Civ. P.
19 12(b)(1). To satisfy Article III’s standing requirements, a plaintiff must show “(1) it has suffered
20 an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural
21 or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3)
22 it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable
23 decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81
24 (2000).

25 “Where standing is raised in connection with a motion to dismiss, the court is to accept as
26 true all material allegations of the complaint, and . . . construe the complaint in favor of the
27 complaining party.” *In re Facebook, Inc. Internet Tracking Litigation*, 956 F.3d 589, 597 (9th Cir.
28 2020) (quotations omitted).

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