

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

Sandra Adams, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

The Kraft Heinz Company,

Defendant.

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to Plaintiff, which are based on personal knowledge:

1. Kraft Heinz Food Company (“Defendant”) manufactures, labels, markets, and sells concentrated flavored liquids that purport to taste like various fruits under the MiO brand of water enhancers (the “Products”).



## **I. CONSUMER DEMAND FOR NATURAL FLAVOR**

2. Consumers are increasingly concerned about the ingredients added to what they eat and drink.

3. Surveys have shown that consumers are less likely to buy beverages which have artificial ingredients.

4. Within the spectrum of artificial ingredients, consumers increasingly strive to avoid artificial flavoring ingredients and seek to consume products with only natural flavors.

5. As reported by the Wall Street Journal, “As consumer concern rises over artificial ingredients, more food companies are reconstructing recipes” to remove artificial flavors.<sup>1</sup>

6. According to Paul Manning, chief executive officer and president of Sensient Technologies, “Consumer desire for naturally flavored products is an emerging trend.”<sup>2</sup>

7. A recent survey reported that over 82% of consumers believe that foods with artificial flavors are less healthy than those promoted as containing natural flavors and/or not containing artificial flavors.

8. Consumers seek to avoid artificial flavors because they are weary of ingredients which are highly processed with chemical additives and synthetic solvents in laboratories.

9. According to Nielsen, the absence of artificial flavors is very important for over 40% of respondents to their Global Health & Wellness Survey.

10. One scholar theorized “the preference for natural products appeals to a moral

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<sup>1</sup> Lauren Manning, How Big Food Is Using Natural Flavors to Win Consumer Favor, Wall Street Journal.

<sup>2</sup> Keith Nunes, Using Natural Ingredients To Create Authentic, Fresh Flavors, Food Business News, Sept. 20, 2018.

ideology and offers a moral satisfaction.”<sup>3</sup>

11. The trade journal, *Perfumer & Flavorist*, described “The Future of Artificial Flavors & Ingredients” as bleak, given consumer opposition to these synthetic ingredients.<sup>4</sup>

12. Mintel announced that American consumers avoidance of artificial flavors is just as strong as their desire for natural flavors, in its Report, “Artificial: Public Enemy No. 1.”<sup>5</sup>

13. Nielsen reported that 62% of consumers try to avoid artificial flavors.

14. New Hope Network concluded that 71% of consumers avoid artificial flavors.

15. Label Insight determined that 76% of consumers avoid artificial flavors.

16. As reported by *Forbes*, 88% of consumers consider foods without artificial flavors to be more natural and healthier than foods with artificial flavors and would pay more for such foods.

## **II. PRODUCTS REPRESENTED AS CONTAINING ONLY NATURAL FLAVORS**

17. Defendant markets and advertises the Products with the standalone representations “NATURAL FLAVOR WITH OTHER NATURAL FLAVOR.”

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<sup>3</sup> Rozin, P., Spranca, M., Krieger, Z., Neuhaus, R., Surillo, D., Swerdlin, A., & Wood, K. (2004). Preference for natural: Instrumental and ideational/moral motivations, and the contrast between foods and medicines. *Appetite*, 43(2), 147–154. doi:10.1016/j.appet.2004.03.005.

<sup>4</sup> Jim Kavanaugh, *The Future of Artificial Flavors & Ingredients*, *Perfumer & Flavorist*, June 12, 2017.

<sup>5</sup> Alex Smolokoff, *Natural Color And Flavor Trends In Food And Beverage*, *Natural Products Insider*, Oct. 11, 2019; Thea Bourianne, *Exploring Today’s Top Ingredient Trends And How They Fit Into Our Health-Conscious World*, March 26-28, 2018; Nancy Gagliardi, *Consumers Want Healthy Foods – And Will Pay More For Them*, *Forbes*, Feb 18, 2015.



18. The representations that the Products contain only “Natural Flavor With Other Natural Flavors” appeals to more than the seven out of ten consumers who seek to avoid artificial flavoring ingredients, as these synthetic ingredients are believed to be associated with detrimental health and environmental effects.<sup>6</sup>

19. By promoting the Products as containing only “Natural Flavor With Other Natural Flavor,” reasonable consumers are led to believe that the Products’ flavoring and flavoring profile comes solely from natural ingredients.

20. The Products, however, contain the artificial and/or synthetic flavoring ingredient “Malic Acid.”

#### Berry Pomegranate

**INGREDIENTS:** WATER, CITRIC ACID, MALIC ACID, GUM ARABIC, POTASSIUM CITRATE, CONTAINS LESS THAN 2% OF NATURAL FLAVOR, SUCRALOSE AND ACESULFAME POTASSIUM (SWEETENERS), SUCROSE ACETATE ISOBUTYRATE, RED 40, BLUE 1, POTASSIUM SORBATE (PRESERVATIVE).

#### Tropical Cherry

**INGREDIENTS:** WATER, MALIC ACID, CITRIC ACID, NATURAL FLAVOR, CONTAINS LESS THAN 2% OF NIACINAMIDE (VITAMIN B3), VITAMIN B6, VITAMIN B12, STEVIA LEAF EXTRACT, SODIUM CITRATE, RED 40, BLUE 1, POTASSIUM SORBATE (PRESERVATIVE).

<sup>6</sup> Alex Smolokoff, Natural Color And Flavor Trends In Food And Beverage, Natural Products Insider, Oct. 11, 2019; Thea Bourianne, Exploring Today’s Top Ingredient Trends And How They Fit Into Our Health-Conscious World, March 26-28, 2018; Nancy Gagliardi, Consumers Want Healthy Foods – And Will Pay More For Them, Forbes, Feb 18, 2015.

**INGREDIENTS:** WATER, CITRIC ACID, **MALIC ACID**, GUM ARABIC, CITRIC ACID, **NATURAL FLAVOR**, POTASSIUM CITRATE, CONTAINS LESS THAN 2% OF **NATURAL FLAVOR**, SUCRALOSE AND ACESULFAME B6, VITAMIN B12, STEVIA LEAF POTASSIUM (SWEETENERS), SUCROSE EXTRACT, SODIUM CITRATE, RED 40, ACETATE ISOBUTYRATE, RED 40, BLUE 1, POTASSIUM SORBATE (PRESERVATIVE).

21. In fact, the Products contain more of the malic acid ingredient than the natural flavoring ingredients, listed as the third and second most predominant ingredients by weight.

22. Unbeknownst to consumers, the ingredient list does not disclose that malic acid is an artificial petrochemical which provides flavoring to the Products.

23. Federal and identical state regulations require ingredients to be designated by their specific name instead of their generic name. 21 C.F.R. § 101.4(b).

24. Defendant only lists “Malic Acid,” the generic name for this ingredient, even though its specific name is “DL-Malic Acid.”

### III. COMPONENTS OF TASTE

25. A flavor is a substance the function of which is to impart taste. See 21 C.F.R. § 101.22(a)(1) and (3).

26. Taste is the combination of sensations arising from specialized receptor cells located in the mouth.<sup>7</sup>

27. Taste can be defined as sensations of sweet, sour, salty, bitter, and umami.

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<sup>7</sup> Gary Reineccius, Flavor Chemistry and Technology § 1.2 (2d ed. 2005).

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