

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

Christina Van Allen, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

Fermented Sciences, Inc.,

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. Fermented Sciences, Inc. (“Defendant”) manufactures, labels, markets, and sells “Hard Seltzer” and “Hard Kombucha,” promoted as containing “Antioxidant Vit[amin] C,” “Antioxidants,” “Real Botanicals,” and “Crafted With Live Probiotics,” among other attributes, under the Flying Embers brand (“Products”).





I. “BETTER FOR YOU” ALCOHOLIC BEVERAGES

2. The past decade has seen the emergence of new alcoholic beverages, such as hard seltzer and kombucha.

3. Hard seltzer is marketed to consumers “at the nexus of convenience and health.”

4. Hard seltzer is based on carbonated water, made from malted barley, or fermented sugar, fruit flavored, with a low alcohol content, and roughly 100 calories or less, compared with beers and wines that have between 100 to 400 calories.

5. Hard kombucha has its roots in regular kombucha, a fermented drink made with sweetened black or green tea and bacteria, often blended with fruit juice.

6. Kombucha is touted for its probiotic properties, believed to promote digestive health.

7. Hard kombucha, which is alcoholic, benefits “from the halo effect of these perceived health benefits.”

8. Hard kombucha and hard seltzer are typically low in calories, sugar, and carbohydrates, organic, non-GMO and gluten-free.

9. These products are sold in similar single-serve aluminum cans.

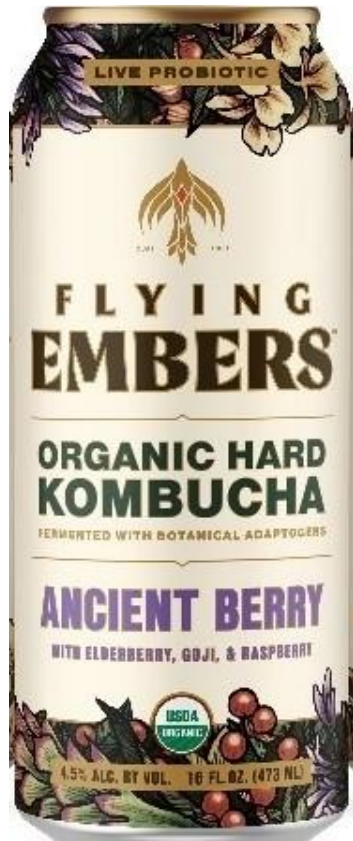
10. The marketing of hard seltzer and hard kombucha reflect the arc of regular beverages, which previously sought to remove negative ingredients, such as sugar and artificial colors.

11. However, these beverages have begun to add back positive components, like vitamins and probiotics.

12. The front labels of Defendant’s hard seltzer and hard kombucha emphasize “Antioxidant Vit[amin] C” and “Live Probiotics.”



13. The front label of the Hard Kombucha Products states, “Fermented With Botanical Adaptogens,” and “Live Probiotic[s],” while the back label lists other attributes and components.



Live Probiotics
Antioxidants
USDA Organic
Adaptogens
Gluten Free
Non-GMO
Vegan
Keto

14. The promotional materials for the Hard Kombucha Products describe them as “Brewed With Benefits,” with a list of their features.



Light and Live

0 Sugar 85 Calories 0 Carbs

ALC 4.5% VOL

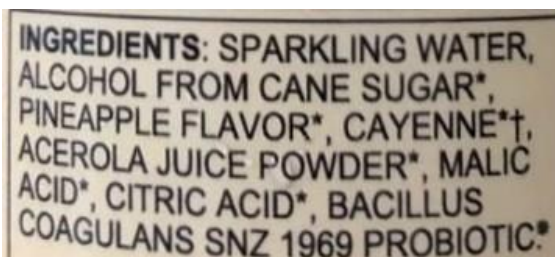
Brewed With Benefits
Always Live • Never Pasteurized

USDA Organic
Probiotics
Antioxidants
Adaptogens
Botanicals
Gluten Free
Vegan
Keto

Contains Alcohol 21+ Please Drink Responsibly

15. The ingredients in the Hard Seltzer and Hard Kombucha Products are shown below.

Hard Seltzer



INGREDIENTS: SPARKLING WATER, ALCOHOL FROM CANE SUGAR*, PINEAPPLE FLAVOR*, CAYENNE*†, ACEROLA JUICE POWDER*, MALIC ACID*, CITRIC ACID*, BACILLUS COAGULANS SNZ 1969 PROBIOTIC*.

Hard Kombucha



INGREDIENTS: KOMBUCHA CULTURE [WATER, SUGAR*, BLACK TEA*, YEAST, BACTERIA (KOMAGATAIEBACTER SPSS., BACILLUS COAGULANS SNZ 1969 PROBIOTIC CULTURE)], ACEROLA JUICE POWDER*, ADAPTOGEN ROOT BLEND (GINGER*, TURMERIC*, GINSENG*), ELDERBERRY*†, STRAWBERRY*†, CHERRY*†, RASPBERRY*†, GOJI*†.

16. Hard seltzer and hard kombucha are markets with over a hundred brands, which forces companies to compete for consumer dollars.

17. To succeed, the products must stand out from the crowd with something different.

A. Consumption of Alcohol is Contrary to Dietary Guidelines

18. In 2004, the National Institute on Alcohol Abuse and Alcoholism (NIAAA) wrote:

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.