

EXHIBIT B

IN THE CIRCUIT COURT, SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.:
DIVISION:

ASTORRIA SASSANO,

Plaintiff,

CLASS REPRESENTATION

vs.

PETSMART, INC., a Foreign
For-Profit Corporation

Defendant.

CLASS ACTION COMPLAINT

Plaintiff, ASTORRIA SASSANO individually, and on behalf of all others similarly situated in Florida, by and through her undersigned counsel, hereby files this Class Action Complaint, against Defendant, PETSMART, INC. (hereinafter referred to as "PetSmart" or "Defendant"), and in support thereof alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1. This is a class action for damages pursuant to Florida Rule of Civil Procedure 1.220(b) in excess of Thirty Thousand Dollars (\$30,000.00) exclusive of interest, costs and attorney's fees.

2. Plaintiff is an individual consumer over the age of eighteen, who resides in Broward County Florida. Plaintiff seeks injunctive relief and damages on behalf of Plaintiff and the Class, and respectfully requests a jury trial on damage claims.

3. Defendant is a foreign for-profit corporation, doing business in Broward County, Florida.

4. Venue for this action properly lies in Broward County, Florida, pursuant to

the provisions of Section 47.051, Fla. Stat. and Chapter 501.207 et seq. Fla. Stat. because Defendant transacts business in Broward County, Florida and the transactions out of which this action arose occurred in Broward County, Florida.

5. There is not federal jurisdiction of this Action under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. The issue at hand does not exceed this requisite amount.

IV. FACTUAL ALLEGATIONS

6. On or about April 19, 2020, Plaintiff purchased Only Natural Pet Hemp Seed Oil with Krill and Cod Liver 8.0 FL OZ/237 ML bottle (hereinafter also referred to as “Product”), from PETSMART located at 1700 N. Federal Highway, Fort Lauderdale, Florida. A copy of the receipt is attached hereto as **Exhibit “A.”**

7. The Product had not been altered between manufacture and point of sale. A photograph of the Product’s packaging is attached hereto as composite **Exhibit “B.”**

8. The back of the Product’s packaging states “Only Natural Pet Hemp Seed Oil with Krill & Cod Liver provides a concentrated source of Omega 3 & 6’s to support the immune system, cardiovascular health and vitality. **Hemp seed is packed with phytonutrients and antioxidants** while krill & cod liver oil delivers a healthy dose of phospholipids and astaxanthin, **all which work together to support overall health and wellness.**” See Exhibit “B.”

Astorria Sassano v. Petsmart, Inc.

9. The product is also advertised on Defendant's website at: <https://www.petsmart.com/dog/dental-care-and-wellness/vitamins-and-supplements/only-natural-pet-hemp-seed-dog-oil-immunity-skin-and-coat-support---krill-and-cod-liver-57057.html>.

10. Screenshots of Defendant's website advertising and marketing the Product to consumers is attached hereto as composite **Exhibit "C."**

11. Defendant's website also advertises and represents that the Product "[h]elps support a healthy inflammatory response and immune system" and also [h]elps support cardiovascular health, healthy brain development & function." See Ex. "C."

12. Defendant's website also advertises and represents that the "**Health Consideration**" for which the Product is designed and intended for are "Immune system, Skin & Coat." See Ex. "C."

13. The Product's packaging, as well as Defendant's advertising and marketing of the Product, makes clear that the Product's contents are intended to treat, mitigate, or prevent disease and/or are intended to affect the structure or any function of the body; specifically, to support the immune system, cardiovascular system, and brain development or function.

14. At all material times, Defendant, Petsmart, was a retailer selling, marketing, and distributing the Product.

15. The Product, according to its explicit advertising, marketing, labeling and packaging, is clearly intended mitigate, treat, or prevent disease in animals, and therefore are drugs within the meaning of section 201(g)(1)(B) of the FD&C Act, 21 U.S.C. 321(g)(1)(B).

Astoria Sassano v. Petsmart, Inc.

16. Additionally, the Product, according to its explicit advertising, marketing, labeling and packaging, is a “new animal drugs” under section 201(v) of the FD&C Act, 21 U.S.C. 321(v), because it is not the subject of a final FDA regulation published through notice and comment rulemaking finding that the drug has been generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling.

17. To be legally marketed, a new animal drug must have an approved new animal drug application, conditionally approved new animal drug application, or a listing on the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species (“index listing”) under section 512, 571, or 572 of the FD&C Act [21 U.S.C. § 360b, 360ccc, or 360ccc-1], respectively

18. New animal drugs that lack the required approval or index listing are “unsafe” and “adulterated” under sections 512(a) and 501(a)(5) of the FD&C Act [21 U.S.C. §§ 360b(a) and 351(a)(5)]. Introduction of an adulterated animal drug into interstate commerce is prohibited under section 301(a) of the FD&C Act [21 U.S.C. § 331(a)].

19. The Product is not approved by the FDA or indexed and therefore the Product is considered unsafe under section 512(a) of the FD&C Act, 21 U.S.C. 360b(a), and adulterated under section 501(a)(5) of the FD&C Act, 21 U.S.C. 351(a)(5).

20. The FDA has sent numerous warning letters to companies manufacturing, advertising and marketing products that are intended mitigate, treat, or prevent disease in animals and/or “new animal drugs” Examples of some of these warning letters can be

Astoria Sassano v. Petsmart, Inc.

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.