

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

Lacie Davis, individually and on behalf of all  
others similarly situated,

Plaintiff,

- against -

Ricola USA, Inc.,

Defendant

3:22-cv-03071

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. Ricola USA, Inc. (“Defendant”) manufactures, labels, markets, and sells cough suppressant and oral anesthetic lozenges “Made With Swiss Alpine Herbs” under the Ricola brand (“Product”).



2. The other representations include “Ricola,” “Original Herb Cough Drops,” “Great Tasting,” “Effective Relief,” pictures of peppermint, elder, wild thyme, horehound, hyssop, mallow, sage, linden flowers, lemon balm and thyme, and a picture of an amber lozenge.

## **I. HERBAL PRODUCTS MARKET**

3. The past thirty years has seen a steep increase in consumer consumption and usage of products containing herbal extracts.

4. During this time, eighty percent of adults have used over-the-counter (“OTC”) drug products containing herbal ingredients at some point for their healthcare needs over pharmaceutical alternatives.

5. According to Mintel, the herbal remedies market is over \$10 billion per year and growing at over four percent per year.

6. Almost half of Americans report using herbal remedies in the prior twelve months.

7. Sixty-five percent of younger parents regularly select products with herbal ingredients for themselves and their children.

8. This has caused the pharmaceutical industry to investigate more ways to use herbal ingredients in OTC products.

9. Herbal ingredients are increasingly incorporated into OTC categories, including external pain relieving rubs, cough suppressants, muscle relaxants, digestive aids, and oral care.

10. Herbal products are used by consumers to address the same issues traditional OTC products are, including common colds, coughs, muscle soreness and aches, sleep issues, and stress.

## **II. REASONS FOR INCREASE IN DEMAND FOR HERBAL PRODUCTS**

11. The reasons for increased usage of herbal products are several.

12. First, numerous consumers are better able to tolerate products based on herbal

ingredients than synthetic ones.

13. Second, the resurgence in popularity of alternative medicine systems like Ayurveda, which rely heavily on herbal ingredients, has made consumers seek out products made with similar ingredients.

14. Third, a growing number of consumers believe that the American medical and pharmaceutical system overuse traditional medications and seek to reduce their usage of standard prescriptions.

15. Fourth, many consumers believe that herbal ingredients are more potent and less harmful than man-made ingredients.

16. The Coronavirus pandemic further increased consumer adoption of products containing herbal ingredients as another layer of protection from this disease.

### **III. REPRESENTATIONS THAT EFFECTIVENESS IS DUE TO HERBAL INGREDIENTS IS MISLEADING**

17. Despite the front label representations including “Cough Suppressant,” “Oral Anesthetic,” “Effective Relief,” “Made With Swiss Alpine Herbs,” and pictures of ten herbs, the Product’s therapeutic effect is not provided by any of the herbs pictured on the front label.

18. This is shown through a review of the Drug Facts on the back label, which identify menthol as the only active ingredient.

<b>Drug Facts</b>	
<b>Active Ingredient (in each drop)</b>	<b>Purposes</b>
Menthol, 4.8 mg.....	Cough suppressant, Oral anesthetic
<b>Uses</b> temporarily relieves:	
<ul style="list-style-type: none"> <li>cough due to a cold or inhaled irritants</li> <li>occasional minor irritation and pain due to sore throat or sore mouth</li> </ul>	
<b>Warnings</b>	
<b>Sore throat warnings:</b> <ul style="list-style-type: none"> <li>if sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, swelling, nausea, or vomiting, consult a doctor promptly. These may be serious.</li> <li>do not use in children under 6 years of age unless directed by a doctor.</li> </ul>	
<b>Ask a doctor before use if you have</b> <ul style="list-style-type: none"> <li>persistent or chronic cough such as occurs with smoking, asthma, or emphysema</li> <li>cough accompanied by excessive phlegm (mucus)</li> </ul>	
<b>Stop use and ask a doctor if</b> <ul style="list-style-type: none"> <li>cough persists for more than 1 week, tends to recur, or is accompanied by fever, rash, or persistent headache. These could be signs of a serious condition.</li> <li>sore mouth does not improve in 7 days</li> <li>irritation, pain, or redness persists or worsens</li> </ul>	
<b>Keep out of reach of children.</b>	
<b>Directions</b>	
<ul style="list-style-type: none"> <li>adults and children 6 years and older: dissolve 2 drops (one at a time) slowly in the mouth. Do not bite or chew. Repeat every 2 hours as needed or as directed by a doctor</li> <li>children under 6 years: ask a doctor</li> </ul>	
<b>Other Information</b> protect from heat and moisture	
<b>Inactive Ingredients</b> color (caramel), extract of a Ricola herb mixture (elder, horehound, hyssop, lemon balm, linden flowers, mallow, peppermint, sage, thyme, wild thyme), natural flavor, starch syrup, sugar	

**Active Ingredient (in each drop)**

Menthol, 4.8 mg

**Inactive Ingredients** color

(caramel), extract of a Ricola herb mixture (elder, horehound, hyssop, lemon balm, linden flowers, mallow, peppermint, sage, thyme, wild thyme), natural flavor, starch syrup, sugar

19. An active ingredient means any component intended to provide a pharmacological or direct effect in the mitigation or treatment of any condition. 21 C.F.R. § 210.3(b)(7).
20. However, the herbs promoted on the front label are exclusively “Inactive Ingredients.”
21. Inactive ingredients are defined as any component other than active ingredients. 21 C.F.R. § 210.3(b)(8).
22. Consumers seeing the Product’s front label will expect its cough suppressant and oral anesthetic functionality will be provided by its herbal ingredients.
23. It is false, deceptive and misleading to claim or imply that the Product’s inactive ingredients provide a therapeutic benefit.
24. Competitor products contain substantially similar ingredients to the Product.
25. However, only Defendant’s Product conveys the message that its herbal ingredients are responsible for the cough suppressant and oral anesthetic properties it provides.

26. Competitor herbal lozenges from Meijer, Target, Dollar General, and Walmart, do not represent to consumers that their herbal ingredients are responsible for its therapeutic effects, by disclosing the presence of menthol on their front labels, i.e., “4.8 mg Menthol Per Drop” and “Menthol Cough Suppressant.”





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