

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JACQUELINE WILLARD,  
an individual, and  
AMIE BLACKMAN, an individual,  
on behalf of themselves individually,  
and on behalf of all others similarly  
situated, and the general public,

Plaintiffs,

v.

TROPICANA MANUFACTURING  
COMPANY, INC.,

Defendant.

No. 20-cv-01501  
Judge Franklin U. Valderrama

**MEMORANDUM OPINION AND ORDER**

This case is about fruit juice. Plaintiffs Jacqueline Willard (Willard) and Amie Blackman (Blackman) (collectively, Plaintiffs), bring claims on behalf of themselves and all other similarly situated against defendant Tropicana Manufacturing Company, Inc. (Defendant or Tropicana), alleging that Defendant misbrands and falsely advertises ten Tropicana juice products, in Illinois, California, and throughout the United States, in violation of federal and state unfair competition, false advertising, and consumer protection laws. R. 1, Compl.<sup>1</sup> Defendant moves to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). R. 23, Mot.

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<sup>1</sup>Citations to the docket are indicated by “R.” followed by the docket number or filing name, and where necessary, a page or paragraph citation.

Dismiss. For the reasons below, the Court grants in part and denies in part Defendant's motion.

### **Background**

Defendant manufactures, packages, labels, advertises, markets, and sells numerous fruit juice products in California, Illinois, and throughout the United States. Compl. ¶¶ 7, 9.<sup>2</sup> Plaintiffs challenge the labeling of ten Tropicana juice products: “Trop 50 Farmstand Apple,” “Tropicana 100% Juice Apple Juice,” “Trop 50 No Pulp,” “Trop 50 Orange Mango,” “Trop 50 Orange Peach,” “Trop 50 Pomegranate Blueberry,” “Trop 50 with Calcium & Vitamin D,” “Trop 50 with Vitamin C & Zinc,” “Tropicana Grape Drink,” and “Tropicana Fruit Medley” (collectively, the Products). *Id.* ¶¶ 34–36.

All of the Products contain an ingredient called dl-malic acid, which Plaintiffs claim is an artificial flavoring agent, which confers a “tart, fruity” flavor to the Products. *Id.* ¶¶ 37, 50–51. Plaintiffs allege that the Products’ labels violate federal and states law by: (1) failing to include an “artificially flavored” label on the front and back of the Products’ packaging, despite containing malic acid; (2) deceiving consumers into believing the Products are “all natural” based on the inclusion of the characterizing fruit flavor; and (3) misleadingly identifying “dl-malic acid” only as generic “malic acid” in the ingredient list. *Id.* ¶¶ 14, 17, 19, 20, 25, 41, 42, 44, 52, 59, 60, 61, 68, 72, 73, 75. Plaintiffs allege that they justifiably relied upon and were deceived by the Products’ deceptive labeling when they purchased one or more of the

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<sup>2</sup>The Court accepts as true all of the well-pleaded facts in the Complaint and draws all reasonable inferences in favor of Plaintiffs. *Platt v. Brown*, 872 F.3d 848, 851 (7th Cir. 2017).

Products. Compl. ¶¶ 79–83. Plaintiffs allege that the following photograph is a true and accurate copy of the front label of the “Trop 50 Farmstand Apple” Product:



*Id.* ¶ 23. Similarly, Plaintiffs allege that the following photograph is a true and accurate copy of the front label of the “Tropicana 100% Juice Apple Juice” Product:



*Id.* ¶ 30. Plaintiffs do not include photographs of the other eight Products in the Complaint.

Based on these allegations, Plaintiffs filed a class action complaint against Defendant, bringing six claims under Illinois and California law, specifically: (1) violation the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.* (ICFA); (2) violation of the “unlawful” and “unfair” prongs of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (UCL); (3) violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750 (CLRA); (4) violation of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 (FAL); (5) fraud by omission under 815 ILCS 505/2 and Cal. Civ. Code §§ 1709-1710; and (6) negligent misrepresentation under Illinois common law and Cal. Civ. Code §§ 1709–1710. Compl. ¶¶ 114–94. Plaintiffs seek to represent a nationwide class of consumers, as well as Illinois and California sub-classes. *Id.* ¶¶ 93–95. Defendant now moves to dismiss the Complaint pursuant to Rule 12(b)(6), arguing that

Plaintiffs' claims are preempted, implausible, and inadequately pled. Mot. Dismiss. Defendant also argues that Plaintiffs lack standing to bring their claims under Article III. *Id.*

### Standard of Review

A Rule 12(b)(1) motion tests whether the court has subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). *Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Standing is an “essential component of Article III’s case-or-controversy requirement,” and the plaintiff “bears the burden of establishing standing . . . in the same way as any other matter on which the plaintiff bears the burden of proof . . . .” *Apex Digit., Inc. v. Sears Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009). In order to survive a Rule 12(b)(1) motion, the plaintiff bears the burden of establishing subject matter jurisdiction. *Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588–89 (7th Cir. 2014). When deciding a facial challenge to subject matter jurisdiction—that is, when the defendant argues that the plaintiff’s *allegations* as to jurisdiction are inadequate—“the court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff.” *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015) (citing *Apex Digit.*, 572 F.3d at 443–44).

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint. *Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). To survive a motion to dismiss, a complaint need only contain factual allegations, accepted as true, sufficient to “state a claim to relief that is

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