

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

KENNETH MEYERS,)	
on behalf of Plaintiff and the)	
class members described herein,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ARIZONA BEVERAGES USA LLC,)	
)	
Defendant.)	

COMPLAINT -- CLASS ACTION

INTRODUCTION

1. Plaintiff Kenneth Meyers brings this action to secure redress for the misrepresentation by Defendant AriZona Beverages USA LLC ("AriZona") of the calorie content of its Arnold Palmer zero calorie drink.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. §1332(d). The classwide amount in controversy exceeds \$5 million, exclusive of interest and costs. There are more than 100 class members. Plaintiff is of diverse citizenship to the Defendant.

3. Venue and personal jurisdiction are proper because Plaintiff purchased Defendant's mislabeled product in Chicago, Illinois.

PARTIES

4. Plaintiff Kenneth Meyers is a citizen of Michigan and a resident of Lawrence, Michigan. He formerly resided in Illinois and frequently visits Illinois, Indiana, and Wisconsin.

5. Defendant AriZona is a limited liability company organized under the law of New York with its principal offices at 60 Crossways Park Dr. W., Woodbury, NY 11797. It does business in Illinois. Its registered agent and office is 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

6. On information and belief, the owner of AriZona is Hornell Brewing Co., Inc., doing business as Vultaggio & Sons. This is a New York corporation with its principal offices at 60 Crossways Park Dr. W., Woodbury, NY 11797.

7. AriZona is therefore a citizen of New York.

8. AriZona develops and markets beverage products throughout the United States. The products are available at numerous retail and online outlets, including its own website, www.drinkarizona.com. Defendant has sales of about \$3 billion per year.

9. Defendant is able to identify many purchasers of its products, such as those made through its website.

FACTS

10. Defendant AriZona makes and sells, through its website and otherwise, the Arnold Palmer drink, consisting of ½ tea and ½ lemonade.

11. The Arnold Palmer drink was sold in zero calorie, lite and regular versions.

12. During the three years prior to the filing of this action, Plaintiff made numerous purchases of zero calorie Arnold Palmer drink, mainly in the 23 fl. oz size.

13. Plaintiff purchased the zero calorie Arnold Palmer drink at the Walgreens at 189 N. Northwest Hwy, Barrington, IL 60010 on September 20, 2019; the Shell gas station at 106 N. Northwest Highway, Barrington, IL 60010 on April 8, 2019, and April 9, 2019, and the Shell gas

station at 100 W. Northwest Hwy, Barrington, IL 60010 on July 13, 2019.

14. Plaintiff purchased the zero calorie Arnold Palmer drink at the BP gas station at 112 S. Main Street, Walworth, WI 53184, on June 14, 2019, June 15, 2019, and September 22, 20219.

15. Plaintiff purchased the zero calorie Arnold Palmer drink at the Walgreens at 580 Indian Boundary Rd., Chesterton, IN 46304, on July 12, 2019; and the BP gas station at 525 Indian Boundary Rd., Chesterton, IN 46304, on April 10, 2019, April 22, 2019, July 12, 2019, and September 23, 2019.

16. Plaintiff purchased the zero calorie Arnold Palmer drink at the Shell gas station at 7000 Westnedge, Portage, MI 49002.

17. Plaintiff purchased the zero calorie drink at many other times and locations as well.

18. Plaintiff is health conscious and specifically chose the zero calorie Arnold Palmer drinks instead of one of the other varieties because of its zero calories. Had he known it was not zero calories he would have purchased another product.

19. The representation that the product had zero calories was prominently featured on the front of the can, on the panel on the back, and in advertising.

20. On information and belief, the zero calorie drink did not qualify for labeling as such and was renamed “diet.”

21. Exhibit A depicts the zero calorie version of the drink next to a can of the diet version.

22. Under Food & Drug Administration regulations, a product cannot be labeled or

represented as having zero calories unless a standard serving has no more than five calories.

23. In fact, the zero calorie version of the drink did not have less than five calories.

24. Recently, the Food & Drug Administration required AriZona to relabel the "zero calorie" product as a "diet" product with 15 calories per can.

25. Because of the multiple versions of the product, the reason why a person would purchase the zero calorie version is to get a product with zero calories. Had Plaintiff known it was not zero calories he would have purchased another product.

26. Plaintiff was damaged by paying money in reliance on the representations.

27. Defendant's representations gave it an unfair competitive advantage over products that were honestly labeled.

**COUNT I – BREACH OF EXPRESS WARRANTY;
UNIFORM COMMERCIAL CODE**

28. Plaintiff incorporates paragraphs 1-27.

29. Under Uniform Commercial Code §2-313, in force throughout the United States except Louisiana and Puerto Rico (the Illinois citation is 810 ILCS 5/2-313), the representations on Defendant's packaging created an express warranty that the contents shall conform to the representations.

30. The representation was conveyed directly to the retail purchaser.

31. Defendant's representations became a part of the basis of the bargain.

32. Defendant breached those representations, as described above.

CLASS ALLEGATIONS

33. Plaintiff brings this claim, pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3), on behalf of a class.

34. The class consists of all persons who purchased in the United States (except Louisiana and Puerto Rico) Arnold Palmer zero calorie drink on or after a date four years prior to the filing of this action.

35. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member, of such officer or director.

36. The members of the class are so numerous that joinder of all members is impracticable. There are thousands of persons in the class.

37. There are questions of law and fact common to the members of the classes, which predominate over any questions that affect only individual class members. The predominant common questions include:

- a. Whether the Arnold Palmer zero calorie drink had zero calories.
- b. Whether Defendant made and breached an express warranty that the Arnold Palmer zero calorie drink had zero calories.

38. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

39. Plaintiff will fairly and adequately represent the interests of the class members. Plaintiff has retained counsel experienced in consumer class action litigation.

40. A class action is superior to other alternative methods of adjudicating this

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