

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

GABRIELLE STUVE and JESSICA
NICODEMO, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

THE KRAFT HEINZ COMPANY a/k/a
KRAFT HEINZ FOODS COMPANY,

Defendant.

) Case No.

) Judge:

) **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiffs Gabrielle Stuve and Jessica Nicodemo (“Plaintiffs”), by and through their counsel, on their own behalf and on behalf of all others similarly situated, bring this Class Action Complaint against Defendant The Kraft Heinz Company a/k/a Kraft Heinz Foods Company (“Kraft” or “Defendant”) and allege the following facts in support of their claims against Defendant based upon personal knowledge, where applicable, information and belief, and the investigation of counsel:

I. INTRODUCTION

1. The ubiquitous boxed macaroni and cheese has long been a staple meal in many U.S. households for children and adults alike. Defendant has profited from this fact with massive sales of its popular Kraft boxed macaroni and cheese products (the “Kraft Mac & Cheese Products” or the “Products”). By some reports, approximately a million boxes of Kraft Mac & Cheese Products are sold every day.¹ But Defendant has improperly and misleadingly packaged and marketed its Products to reasonable consumers, like Plaintiffs, by failing to disclose on the Products’ packaging that they contain (or are at a risk of containing) “ortho-phthalates,” also known as “phthalates,” which are harmful chemicals that carry a real risk of health impacts if consumed.

2. There is increasing scientific evidence linking phthalate exposure with harmful health outcomes and dairy has been found to be a major source of exposure. For most people, food is generally the greatest exposure to phthalates and fattier and more processed foods tend to have the highest phthalate levels. The cumulative effect of phthalates is concerning, particularly

¹ See <https://www.insider.com/things-you-didnt-know-about-kraft-macaroni-and-cheese-2020-5#today-roughly-a-million-boxes-of-kraft-mac-and-cheese-are-sold-every-day-5> (Jan. 20, 2021) (last accessed April 2, 2021).

because studies show that one in five American adults eats 81 percent of their calories from ultra-processed foods, including foods such as powdered macaroni and cheese products.

3. Phthalates are classified as endocrine-disrupting chemicals and have been linked to adverse health effects. For example, studies have found that in adult populations, there is an association between phthalate exposure and markers of testicular function in men, particularly decreased semen quality. There is also evidence linking endometriosis in women with high phthalate metabolite levels and increases in waist circumference and body mass index (BMI) have been linked to exposure in men and adolescent and adult females.

4. Moreover, scientific findings have shown that pre-natal exposure to phthalates is highly dangerous to the fetus and leads to multiple harms once the children are born, including neurodevelopmental problems such as ADHD, anti-social behavior, learning and memory problems, and genital birth defects in boys. In fact, according to a press release dated February 19, 2021, announcing a recent peer-reviewed study published in the American Journal of Public Health, “[p]renatal exposure to the widely used plasticizer chemicals called phthalates can lead to learning, attention and behavioral disorders in children.” The press release noted that the “study reviewed data from the past decade measuring prenatal exposure to phthalates or environmental estimates of exposures from 11 countries or territories. It found consistent associations between phthalates and behaviors typically linked to ADHD and impaired cognitive development, including lower IQ, reduced psychomotor development and impaired social communication.” In fact, in 2008, Congress banned several phthalates from children’s toys and childcare articles.

5. Reasonable consumers, like Plaintiffs, trust manufacturers like Defendant to sell food that is healthy, nutritious, and free from harmful toxins, contaminants, and chemicals.

Reasonable consumers, like Plaintiffs, certainly expect the food they eat and feed their family to be free from phthalates, substances known to have health consequences.

6. Consumers lack the scientific knowledge necessary to determine whether the Products do in fact contain (or have a risk of containing) phthalates, or other undesirable toxins or contaminants, or to ascertain the true nature of the ingredients and quality of the Products. Reasonable consumers therefore must and do rely on Defendant to be transparent and properly disclose on the packaging all material information and not misrepresentation the true quality of the Products. However, public reports and articles, including in the recesses of Defendant's own website, reveal that the Kraft Mac & Cheese Products contain (or are at risk of containing) phthalates.

7. Despite this, the consumer-facing message on the packaging that Defendant chose failed to reference anything on phthalates. Indeed, nowhere on the Products' packaging or labeling is there any disclosure on the inclusion (or possible inclusion) of phthalates. Instead, the Kraft Mac & Cheese Products' packaging represents that its Products are wholesome and healthy. The package promises that the Products are "The Taste You Love" as they have "NO Artificial Flavors" and "NO Artificial Preservatives" and "NO Artificial Dyes." This leads reasonable consumers to believe the product is wholesome and healthy and does not contain dangerous chemicals like phthalates.

8. But phthalates are toxic industrial chemicals that are far from wholesome or healthy. On the "Frequently Asked Questions" section of the kraftmacandcheese.com website, under the question, "Should I be concerned about food and phthalates?," Defendant states that it "know[s] moms and dads trust Kraft Mac & Cheese as a quality, tasty, and safe food for the

family.”² Thus, it acknowledges reliance by its customers on its representations that the Kraft Mac & Cheese Products are healthy and safe to eat and free from dangerous chemicals. Defendant further acknowledges that phthalates are found in many food products and states that Defendant is seeking to learn how “phthalates may be introduced into certain products and if there is anything else we can do to reduce or eliminate them.”³ While the statements on the kraftmacandcheese.com website are buried in the Frequently Asked Questions section, they are nonetheless an admission by Defendant that it is information a reasonable consumer would consider important. Yet no information about the presence (or risk) of phthalates in the Kraft Mac & Cheese Products is disclosed anywhere on the packaging.

9. Plaintiffs bring this class action against Defendant for deceptive business practices, including misrepresentations and omissions, as well as breach of warranty and unjust enrichment, regarding the presence (or risk) of dangerous phthalates in the Kraft Mac & Cheese Products, including those that Plaintiffs purchased. Plaintiffs seek injunctive and monetary relief on behalf of the proposed Class including (i) requiring full disclosure of all such substances and ingredients in Defendant’s marketing, advertising, and labeling; (ii) requiring testing of all ingredients and final products for such substances; and (iii) restoring monies to the members of the proposed Class. Through this action, Plaintiffs assert claims for breach of warranty and unjust enrichment, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, the Illinois Food, Drug and Cosmetic Act, 410 ILCS 620/1 *et seq.*, the Florida Deceptive and Unfair Trade Practices Act § 501.201, New York Consumer Law for Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349, and the New York Consumer Law for False Advertising,

² <https://www.kraftmacandcheese.com/faq> (last accessed April 2, 2021).

³ *Id.*

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