

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

Charles Strow, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

The J. M. Smucker Company,

Defendant

1:21-cv-05104

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. The J. M. Smucker Company (“defendant”) manufactures, labels, markets, and sells “Butter – No-Stick Spray” without any butter under its Crisco brand (“Product”).



2. The largest word is “Butter,” with a sizzling pat of butter atop pancakes in a skillet, causing consumers to expect the Product contains butter.

3. However, the Product contains no butter.

4. Federal and identical state regulations prohibit false and deceptive practices with respect to labeling food and beverages. *See* Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. § 343(a)(1) (a food is misbranded if “its labeling is false or misleading in any particular.”); Illinois Food, Drug and Cosmetic Act (“IFDCA”), 410 ILCS 620/1 et seq.; 410 ILCS 620/21(j) (“[a] federal [food labeling] regulation automatically adopted...takes effect in this State on the date it becomes effective as a Federal regulation.”).

5. The Illinois Consumer Fraud and Deceptive Business Practices Act provides protection for consumers purchasing products like Defendant’s Product, and states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . are hereby declared unlawful

815 ILCS 505/2.

I. CONSUMERS VALUE BUTTER

6. Butter is the only food with a standard of identity codified by Congress, defined as:

the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of milk fat, all tolerances having been allowed for.

21 U.S.C. § 321a

7. Congress established a definition for “butter” because consumers value real dairy foods.

8. In response to the success of real dairy foods, unscrupulous competitors developed

synthetic, butter-like products made from plant and animal fats, known as vegetable oils or margarine.

9. Manufacturers have continually sought to sell foods purporting to contain butter but containing only lower-quality and cheaper vegetable oils.

10. Long established FDA guidance reflects consumer appreciation for butter and dairy.

11. The FDA recommends that where a food is labeled “Butter _____” or uses the word “butter” in conjunction with its name, reasonable consumers will expect that whenever butter could be used in a product, it would be, instead of butter substitutes.¹

12. For numerous reasons, consumers prefer butter to its alternatives.

13. First, butter does not contain the trans fats of vegetable oils.

14. Second, butter is natural, made by churning cow’s milk.

15. Butter substitutes, like vegetable oils, are synthetic.

16. Highly refined vegetable oils are subjected to hydrogenation and interesterification, in the presence of chemical catalysts such as nickel and cadmium.

17. Third, butter is rich in nutrients like calcium and Vitamins A and D.

18. Fourth, butter has a creamy, sweet taste.

19. While vegetable oils are typically “refined, bleached and deodorized,” to supposedly provide a neutral taste, the reality is different.

20. Vegetable oils are highly susceptible to oxidation.

21. The result is “reversion” of the flavor back to that of the original crude oil before it

¹ Compliance Policy Guide (“CPG”), [Sec 505.200, “Butter” Featured in Product Name](#), Center for Food Safety and Applied Nutrition, Office of Regulatory Affairs, March 1988 (“If the product contains both butter and shortening but a sufficient amount of butter to give a characteristic butter flavor to the product, an appropriate name would be ‘butter flavored _____’... if the product contains any artificial butter flavor it would have to be labeled in compliance with 21 CFR 101.22(i)(2).”).

was processed.

22. This flavor is described as “beany, ”“powdery” or “fishy.”

23. Vegetable oils detract from any authentic butter taste.

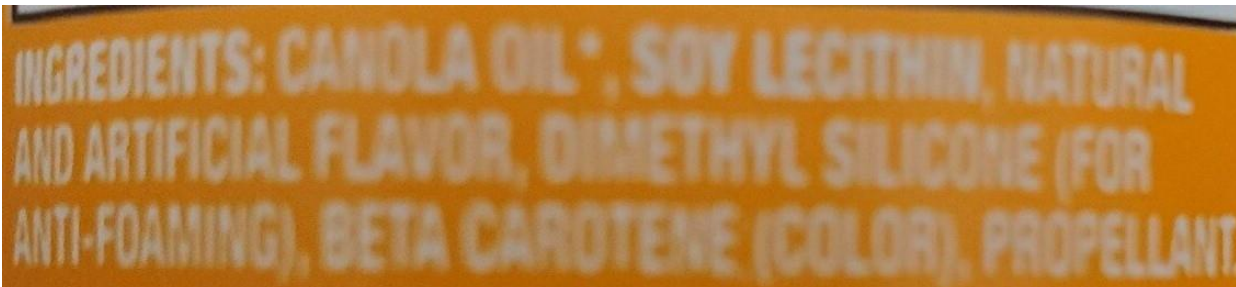
24. Though vegetable oils may be described as “refined, bleached and deodorized,” and purportedly do not affect a food’s taste, the reality is different.

25. To describe a food’s taste as “buttery” is a compliment, which refers to a light and fluffy texture, while vegetable oils contribute to a waxy mouthfeel which leaves an aftertaste.

26. In cooking, butter creates a flaky texture that is softer and less dense than using vegetable oils, because butter is solid at room temperature.

II. “BUTTER – NO STICK SPRAY” IS MISLEADING BECAUSE IT LACKS BUTTER

27. The name “Butter – No-Stick Spray” is misleading because the Product does not contain any butter, as shown on the ingredient list.



INGREDIENTS: CANOLA OIL*, SOY LECITHIN, NATURAL AND ARTIFICIAL FLAVOR, DIMETHYL SILICONE (FOR ANTI- FOAMING), BETA CAROTENE (COLOR), AND PROPELLANT

28. Given the absence of any butter, the Product is required to be identified as an artificially butter flavored no-stick spray.

29. While the front label contains a statement of “natural and artificial flavor,” this is insufficient to disclose to consumers the Product has no butter.

30. First, the statement is smaller than what is required by FDA regulations.

31. Second, the font does not contrast with the background color, making it difficult to notice, and if noticed, to read.

32. Third, the “natural and artificial flavor” statement is not linked to the Product’s characterizing flavor, which appears to be butter.

33. Consumers are not told by this statement the Product does not contain butter, especially in light of the pat of butter in the skillet in the center of the label.

34. Fourth, the Product contains beta carotene, to make it look like the golden hue of butter.

35. This tactic is as old as butter’s competitors, who dyed margarine yellow, so as to confuse the harried consumer at the local dry goods store.

III. THE PRODUCT IS AN IMITATION OF BUTTER

36. The Product is marketed as an alternative to butter in the form of a no-stick spray.

37. Consumers are misled because the front label fails to disclose – as required by law – that the purported butter spray is an imitation because “it is a substitute for and resembles another food [butter] but is nutritionally inferior to that food.” 21 C.F.R. § 101.3(e)(1).

38. Nutritional inferiority includes a reduction in a measurable amount of 2% or more of any vitamin or mineral listed under 101.9(c)(9). *See* 21 C.F.R. § 101.3(e)(4)(ii) (“Nutritional inferiority”).

39. According to the Nutrition Facts, the Product has no calcium, compared to a serving size of butter, which has three percent of the daily recommended value (“DRV”) of calcium.

40. The Product has none of the ingredients required by the standard of identity for butter but has similar physical properties to butter such as being used to prevent food from sticking to a

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