

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

CHARLES STROW, individually and)	
on behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No. 21-cv-5104
)	
v.)	Hon. Steven C. Seeger
)	
B&G FOODS, INC.,)	
)	
Defendant.)	
_____)	

MEMORANDUM OPINION AND ORDER

Butter is magic on a stick. As this Court’s grandmother used to say, butter makes nothing worse, and makes almost everything better. Spread on a fresh baguette, melted over mashed potatoes, or baked into a flaky croissant, butter makes everything it touches turn to golden goodness. It’s the Midas of condiments.

Few words in the English language are more alluring than “butter,” and for good reason. Most of us have a hard time resisting anything associated with butter. And, when it comes to promoting food, marketers want to be on Team Butter. Sex sells, but butter is a close second.

This case is about the allure of butter, and the deception of fake butter products. Charles Strow bought “Butter No-Stick Spray,” sold under the Crisco brand by B&G Foods. To his surprise, the product – a non-stick cooking spray – did not contain any butter. He bought a can of butterless butter spray.

Instead of going back to the grocery store and getting his money back, Strow went to the federal courthouse. He sued B&G for deceptive advertising. B&G, in turn, moved to dismiss. B&G thinks that it was obvious that the butter spray was butterless.

For the following reasons, the Court denies Defendant’s motion to dismiss.

Background

At the motion to dismiss stage, the Court must accept as true the well-pleaded allegations of the complaint. *See Lett v. City of Chicago*, 946 F.3d 398, 399 (7th Cir. 2020). The Court “offer[s] no opinion on the ultimate merits because further development of the record may cast the facts in a light different from the complaint.” *Savory v. Cannon*, 947 F.3d 409, 412 (7th Cir. 2020).

Before getting into Strow’s purchase of a butterless butter spray, the Court will start with the legal landscape for the protection of consumers when it comes to labeling.

Consumers want to know that they are getting what they think they’re buying. That’s especially important when consumers put the products inside their bodies.

To that end, federal and state regulations prohibit false and deceptive practices when labeling food and beverages. *See Am. Cplt.*, at ¶ 4 (Dckt. No. 7). The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) also protects consumers when they buy products like B&G’s spray. *Id.* at ¶ 5.

The integrity of butter is heavily guarded with regulations. People have a love affair with butter. And people want to know if they’re getting the real thing. Congress established a definition of butter because consumers value it so much. *Id.* at ¶ 7. It’s the only food with its own statutory definition. *Id.* at ¶ 6; *see also* 21 U.S.C. § 321a.

Butter is so popular that it has inspired imposters. Food companies have developed synthetic, butter-like products made from plants and animal fats, hoping to expropriate the allure of butter. *See Am. Cplt.*, at ¶ 8 (Dckt. No. 7). The knock-offs include familiar kitchen staples like vegetable oils and margarine. *Id.* at ¶ 9. Manufacturers continually try to sell imitation

products by giving consumers the impression that they contain butter. *Id.* But in reality, the products contain lower-quality and cheaper vegetable oils, not butter. *Id.*

The FDA wants a readily navigable butter landscape. It has long provided guidance to reflect consumer appreciation for butter and dairy. *Id.* at ¶ 10. Agency compliance guidelines state that the FDA considers false and misleading any product labeled “Butter _____” or using the word “butter” in conjunction with its name “unless all of the shortening ingredient is butter.” *See* Food & Drug Admin., Compliance Policy Guide (CPG) § 505.200: “Butter” Featured in Product Name (Mar. 8, 1988); *see* Am. Cplt., at ¶ 11 (Dckt. No. 7).

The Complaint alleges that consumers prefer butter to phony alternatives, for several reasons. *See* Am. Cplt., at ¶ 12 (Dckt. No. 7). For one, butter is natural. It is made from churning cow’s milk, so it is rich in nutrients, like calcium, Vitamin A, and Vitamin D. *Id.* at ¶ 17. We’re mammals – we’re hard-wired to like dairy – and butter comes from mammals.

Substitute products rely on ingredients that are not cow-made. Substitutes require processes called fat hydrogenation (which helps solidify oils) and interesterification (which can turn oils into solid and semi-solid products by combining them with other solid fats). *Id.* at ¶¶ 14–16. The processes are as unnatural as the words sound. But butter is all natural, and “does not contain the trans fats of vegetable oils.” *Id.* at ¶ 13.

Taste matters, too. Butter has a creamy, sweet taste. Vegetable oils, on the other hand, do not. *Id.* at ¶¶ 18–19. And although vegetable oils are “refined, bleached and deodorized” to neutralize their taste, the taste cleansing doesn’t always work. *Id.* at ¶ 19. Sometimes vegetable oils oxidize, which reverts the flavor back to the original crude oil before it was processed. *Id.* at ¶¶ 20–21. Far from buttery, oxidized vegetable oil can taste “beany,” powdery,” or “fishy.” *Id.* at ¶ 22.

People can taste the difference between butter and oil. If there was a “Pepsi Challenge” for butter vs. oil, it wouldn’t be close.

The differences also matter in the kitchen. *Id.* at ¶ 26. In food parlance, the term “buttery” is a compliment. *Id.* at ¶ 25. Think of your favorite breads and pastries. Cooking with butter creates a flaky texture that is softer and less dense than anything vegetable oils can achieve. *Id.* Far from “buttery,” vegetable oils contribute to a waxy mouthfeel and leave an unpleasant aftertaste. *Id.*

Every self-respecting baker knows the difference between butter and oil, in taste and in performance. Butter just tastes different – better – than oil. Butter performs differently, too. Oil is 100% fat and 0% water, but butter is only 80% fat and has 15% water (give or take). The presence of water strengthens the gluten in flour, which impacts the tenderness and density of whatever you take out of the oven. Water also evaporates during the baking process, creating butter’s inimitable flakey texture. The water turns to steam when it heats up in the oven, creating a leavening effect in baked goods. *Watch generally America’s Test Kitchen, How to Make the Flakiest Biscuits Ever*, YouTube (May 15, 2020), <https://youtu.be/oUkmTHA7AEw?t=91>.

This case involves artificial butter. Defendant B&G Foods manufactures, labels, markets, and sells a product called “Butter No-Stick Spray.” *See* Am. Cplt., at ¶ 1 (Dckt. No. 7). Plaintiff Charles Strow bought a can of B&G’s butter spray on more than one occasion between July and August 2021. *Id.* at ¶ 68. He paid at least \$3.49 per 6 ounces. *Id.* at ¶¶ 53, 71. He alleges that B&G’s representations on the label are misleading because the product contains no butter and instead uses artificial butter ingredients.

To understand Strow’s allegations, the Court turns to B&G’s Butter No-Stick Spray. The product looks like this:



As the reader can see, the largest word on the label is “Butter.” *Id.* at ¶ 2. It is front and center, in big font. And notice the stacking of the text. “Butter” appears on top (as it often does), above “No-Stick Spray.” “Butter” is bigger, in a different font. It pops.

Notice that the label uses a noun, not an adjective. The front of the spray can says “Butter,” not “Buttery.” The noun communicates that it *is* butter, not that it has a butter-like attribute.

Not far away is the image of a pancake, sizzling in a skillet, with a pat of butter plopped right on top. *Id.* at ¶ 3. It’s a yellow can, too, shaped kind of like a stick of butter. It doesn’t take too much imagination to think that the good people at Crisco have somehow figured out how to put a nozzle on a stick of butter itself.

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