

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

Latonya Jackson, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Kraft Heinz Foods Company,

Defendant

1:21-cv-05219

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. Kraft Heinz Foods Company (“defendant”) manufactures, labels, markets, and sells pizza bagels, purporting to contain mozzarella, cheddar and Monterey Jack cheese and tomato sauce under its Ore Ida brand (“Product”).



Mini Bagels with Mozzarella,
Cheddar, Monterey Jack
Cheeses and Tomato Sauce

2. Relevant front label representations include “Three Cheese,” “Mini Bagels with Mozzarella, Cheddar, Monterey Jack Cheeses and Tomato Sauce,” “Made With Real Cheese,” the “Real” dairy seal, “No High Fructose Corn Syrup,” and “No Artificial Flavors.”

3. Consumers are misled by the representations because the front label omits that (1) starch, nonfat milk, and whey are added to the “real” mozzarella cheese, and (2) tomatoes are replaced with non-tomato thickeners including cornstarch.

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. THE FRONT LABEL OMITTS THAT THE “MOZZARELLA CHEESE” INCLUDES STARCH, NONFAT MILK, AND WHEY

6. While consumers are promised “Three Cheese[s],” the ingredient list shows they receive a “Topping,” consisting of a “Cheese Blend,” cheddar cheese and Monterey Jack cheese.

INGREDIENTS: BAGEL HALVES (ENRICHED FLOUR [WHEAT FLOUR, ENZYME, ASCORBIC ACID, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID], WATER, SALT, INVERT CANE SYRUP, YEAST, SOYBEAN OIL) **TOPPING** (CHEESE BLEND [(CHEESE [MOZZARELLA CHEESE (CULTURED MILK, SALT, ENZYMES), MODIFIED FOOD STARCH, NONFAT MILK, WHEY PROTEIN CONCENTRATE]), CHEDDAR CHEESE (CULTURED MILK, SALT, ENZYMES, ANNATTO COLOR), MONTEREY JACK CHEESE (CULTURED MILK, SALT, ENZYMES)]) **SAUCE** (WATER, TOMATO PASTE, INVERT CANE SYRUP, MODIFIED CORN STARCH, SALT, METHYLCELLULOSE, CITRIC ACID, POTASSIUM CHLORIDE, AMMONIUM CHLORIDE, SPICE, YEAST EXTRACT, NATURAL FLAVOR, CALCIUM LACTATE), INVERT CANE SYRUP, WATER.

INGREDIENTS: BAGEL HALVES (ENRICHED FLOUR [WHEAT FLOUR, ENZYME, ASCORBIC ACID, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID] , WATER, SALT, INVERT CANE SYRUP, YEAST, SOYBEAN OIL) **TOPPING** (CHEESE BLEND [(CHEESE [MOZZARELLA CHEESE (CULTURED MILK, SALT, ENZYMES), MODIFIED FOOD STARCH, NONFAT MILK, WHEY PROTEIN CONCENTRATE]), CHEDDAR CHEESE (CULTURED MILK, SALT, ENZYMES, ANNATTO COLOR), MONTEREY JACK CHEESE (CULTURED MILK, SALT, ENZYMES)]) **SAUCE** (WATER, TOMATO PASTE, INVERT CANE SYRUP, MODIFIED CORN STARCH, SALT, METHYLCELLULOSE, CITRIC ACID, POTASSIUM CHLORIDE, AMMONIUM CHLORIDE, SPICE, YEAST EXTRACT, NATURAL FLAVOR, CALCIUM LACTATE), INVERT CANE SYRUP, WATER.

7. The representations that the Product contains “Real Cheese,” and “Mozzarella Cheese” are misleading because the front label omits that “Modified Food Starch, Nonfat Milk, [and] Whey Protein Concentrate” are added to the mozzarella cheese to form a “cheese blend.”

8. There are four varieties of mozzarella cheese, which differ in fat and moisture content: (1) mozzarella, (2) low-moisture mozzarella, (3) part-skim Mozzarella, and (4) low-moisture part-skim mozzarella. 21 C.F.R. § 133.155; 21 C.F.R. § 133.156; 21 C.F.R. § 133.157; 21 C.F.R. § 133.158.

9. Mozzarella cheese is made chiefly from milkfat with a small amount of permitted optional ingredients. 21 C.F.R. § 133.155(a).

10. The optional ingredients include additional milk or cream, clotting enzymes, vinegar, coloring, and salt. 21 C.F.R. § 133.155(b)(1)-(3).

11. The reason optional ingredients are restricted is to prevent addition of lower quality ingredients in place of high-quality dairy ingredients.

12. Defendant promises “mozzarella cheese,” with no less than 45 percent milkfat. 21 C.F.R. § 133.155(c).

13. Though the Product contains mozzarella cheese, the front label omits that this is blended with starch, nonfat milk, and whey.

14. Through adding these ingredients, the most valuable component of milk – milkfat – is reduced and substituted with cheaper, filler ingredients. 21 U.S.C. § 342(b)(1) (deeming a food adulterated “If any valuable constituent has been in whole or in part omitted or abstracted therefrom”).

15. Starch is a lower quality ingredient compared to dairy, and especially to milkfat.

16. Starch also holds up to ten times its own weight in water.

17. By adding one unit (by weight) of starch to a batch of food means that up to ten units (by weight) of extra water may also be added to the mix, and the resulting product will maintain its consistency.

18. Therefore, by adding starch, Defendant uses less cheese and milkfat.

19. The typical consumer will not be aware of the functionality played by starch in a complex food matrix, and know it is used to replace cheese.

20. The addition of nonfat milk lowers the overfall fat content of the “mozzarella cheese” or “cheese blend.”

21. Whey is the liquid remaining after milk has been curdled and strained, and a byproduct of the manufacture of cheese or casein.

22. Whey is used to replace milkfat and is lower in quality compared to the whole milk expected in mozzarella cheese.

23. Reasonable consumers do not expect a cheese blend with starch, whey, and nonfat

milk where the front label promises “Mozzarella Cheese” and “REAL” cheese.

24. Consumers expect mozzarella cheese to mean cheese from milkfat, not a “cheese blend” containing some mozzarella, added starch, nonfat milk, and whey.

25. Consumers value mozzarella cheese for (1) its soft, moist texture, (2) its milky, yet tangy taste and (3) its high protein and relatively low calories and sodium compared to other cheeses.

II. “REAL” DAIRY SEAL IS MISLEADING

26. Consumers value independent, third-party seals as a shorthand way to establish whether a product has been vetted by an accredited, independent entity.

27. Obtaining approval from an independent third-party allows companies to obtain a marketplace advantage, to sell more products at higher prices.

28. Recognizing the value of independent certification, the Federal Trade Commission (“FTC”) has warned companies against making misleading representations regarding independent certification. *See* 16 C.F.R. § 260.1.

29. As stated in the FTC guidelines against deceptive marketing regarding “Certifications and Seals of Approval”:

It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party.

16 C.F.R. § 260.6(a) (emphasis added).

30. Defendant’s front label (left) makes prominent use of the “REAL” dairy seal (right), owned by the National Milk Producers Federation (“NMPF”), which authorizes its use to third parties.

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