

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

Katie Kuciver, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Fermented Sciences, Inc.,

Defendant

1:21-cv-05668

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. Fermented Sciences, Inc. (“defendant”) manufactures, labels, markets, and sells “Hard Seltzer” and “Hard Kombucha,” promoted as containing “Antioxidant Vit[amin] C,” “Antioxidants,” “Real Botanicals,” and “Crafted With Live Probiotics,” among other attributes, under the Flying Embers brand (“Product”).





I. “BETTER FOR YOU” ALCOHOLIC BEVERAGES

2. The past decade has seen the emergence of new alcoholic beverages, such as hard seltzer and kombucha.

3. Hard seltzer is marketed to consumers “at the nexus of convenience and health.”

4. Hard seltzer is based on carbonated water, made from malted barley, or fermented sugar, with a low alcohol content, fruit flavored, and roughly 100 calories or less, compared with beers and wines that have from 100 to 400 calories.

5. Hard kombucha has its roots in regular kombucha, a fermented drink made with sweetened black or green tea, bacteria, and often blended with fruit juice.

6. Kombucha is touted for its probiotic properties, believed to promote digestive health.

7. Hard kombucha, which is alcoholic, benefits “from the halo effect of these perceived health benefits.”

8. Hard kombucha and hard seltzer are typically low in calories, sugar, and carbohydrates, organic, non-GMO and gluten-free.

9. These products are sold in similar single-serve aluminum cans.

10. The marketing of hard seltzer and hard kombucha reflect the arc of regular beverages, which previously sought to remove negative ingredients, such as sugar and artificial colors.

11. However, these beverages have begun to add back positive components, like vitamins and probiotics.

12. The front label of Defendant's hard seltzer and hard kombucha emphasize "Antioxidant Vit[amin] C" and "Live Probiotics."



13. The front label of the Hard Kombucha Products states, "Fermented With Botanical Adaptogens," and "Live Probiotic[s]," while the back label lists other attributes and components.



Live Probiotics
Antioxidants
USDA Organic
Adaptogens
Gluten Free
Non-GMO
Vegan
Keto

14. The promotional materials for the Hard Kombucha Products describe it as “Brewed With Benefits,” with a list of its features.



Light and Live

0 sugar 0 carbs 85 Calories

ALC 4.5% VOL

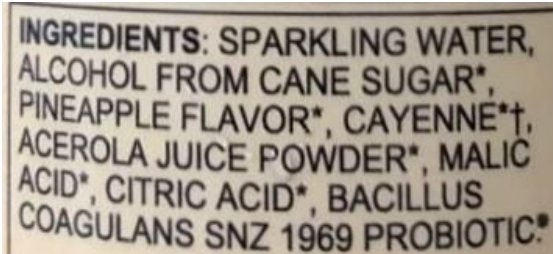
Always Live • Never Pasteurized

USDA Organic
Probiotics
Antioxidants
Adaptogens
Botanicals
Gluten Free
Vegan
Keto

21+ Please drink responsibly

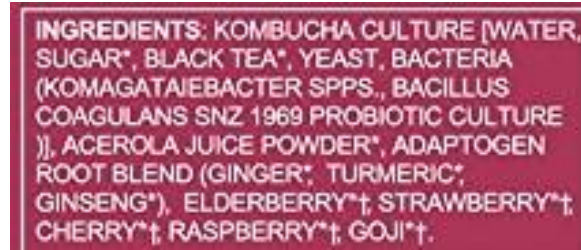
15. The ingredients in the Hard Seltzer and Hard Kombucha Products are shown below.

Hard Seltzer



INGREDIENTS: SPARKLING WATER,
ALCOHOL FROM CANE SUGAR,
PINEAPPLE FLAVOR, CAYENNE,
ACEROLA JUICE POWDER, MALIC
ACID, CITRIC ACID, BACILLUS
COAGULANS SNZ 1969 PROBIOTIC.

Hard Kombucha



INGREDIENTS: KOMBUCHA CULTURE
[WATER, SUGAR*, BLACK TEA*, YEAST,
BACTERIA (KOMAGATAIEBACTER SPPS.,
BACILLUS COAGULANS SNZ 1969
PROBIOTIC CULTURE)], ACEROLA JUICE
POWDER*, ADAPTOGEN ROOT BLEND
(GINGER*, TURMERIC*, GINSENG*),
ELDERBERRY*†, STRAWBERRY*†,
CHERRY*†, RASPBERRY*†, GOJI*†.

16. Hard seltzer and hard kombucha are markets with over a hundred brands, which forces companies to compete for consumer dollars.

17. To succeed, the products must stand out from the crowd with something different.

A. Consumption of Alcohol is Contrary to Dietary Guidelines

18. In 2004, the National Institute on Alcohol Abuse and Alcoholism (NIAAA) wrote:

Alcoholic beverages primarily consist of water, pure alcohol (chemically known as ethanol [ethyl alcohol]), and variable amounts of sugars (i.e., carbohydrates); their content of other nutrients (e.g., protein, vitamins, or minerals) is usually negligible.

19. Ethyl alcohol contains seven calories per gram, which means alcoholic beverages are

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