

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

1:21-cv-05964

Plaintiff,

- against -

Class Action Complaint

KSF Acquisition Corporation,

Jury Trial Demanded

Defendant

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. KSF Acquisition Corporation (“defendant”) manufactures, packages, labels, markets, and sells meal replacement foods such as shakes, bars, and snacks, promising “Clinically Proven – Lose Weight & Keep It Off,*” and “4hr Hunger Control,” under the SlimFast brand (“Product”).



2. The back and side labels of the Product describe the SlimFast Plan as “Clinically Proven,” consisting of:

1. ONE SENSIBLE MEAL – enjoy your favorite foods
2. REPLACE TWO MEALS A DAY – with shakes, smoothies or bars
3. ONE SENSIBLE MEAL – enjoy your favorite foods



3. The above claims – and Satisfies hunger” “Energy for hours” “4-hour hunger control” and control blood sugar – appear on over fifty (50) SlimFast items.

4. Weight loss appeals to the many Americans who are considered overweight.

5. Consumers who view the Clinically Proven claims will expect the Product and Plan is proven to achieve the results indicated.

6. Consumers will expect that (1) the Products on which the claim appears has been clinically proven to achieve and maintain weight loss and (2) the Products have been clinically proven to promote weight loss and keep it off when used as part of the SlimFast plan.

7. A claim that something is “clinically proven” requires clinical studies.

8. Defendant's clinically proven claims are false, because it does not possess evidence to support them, such as randomized and relevant controlled studies.

9. The studies relied upon to support the clinically proven claim are from products introduced many years ago, which are no longer sold.

10. Defendant has not clinically tested the weight-loss efficacy of the Products.

11. Defendant's clinical trials are of discontinued SlimFast products, as part of a high carbohydrate diet with no resemblance to today's products, which are higher in fat, protein, and contain fewer carbohydrates.

12. Defendant's clinically proven claims are false because the products and plan upon which the claims are based have not been offered for many years.

13. Defendant's studies about the SlimFast plan being clinically proven are not even entirely relevant to weight loss.

14. For instance, one study required only two snacks per day, and did not involve the participants exercising, nor adjust for higher calories consumed by men.

15. Another study failed to indicate whether any specific eating plan was required.

16. Another study involved subjects being advised to eat various servings of fruits and vegetables per day, in addition to meal replacements and meals.

17. No current SlimFast plan requires consumption of a set number of fruits and vegetables.

18. Other studies involve adherence to a low-calorie diet using SlimFast products to achieve a calorie deficit.

19. Studies relied upon for the "Keep It Off" part of the claim are not supportive of the clinically proven claims because they show that over 20% participants' weight was regained at the

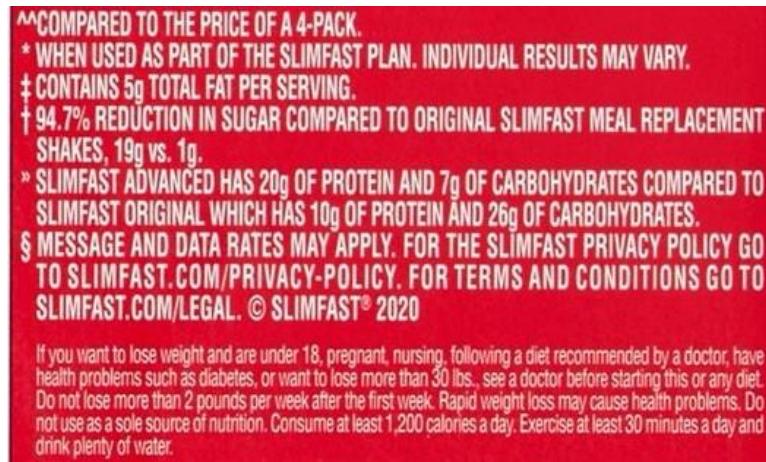
end of one-year.

20. Guidelines provided by the government indicate that longer term evidence of continued weight loss advantage of meal replacement programs is lacking.

21. Defendant's back label seeks to disclaim the unqualified front label claim.



22. The text, “*When Used as Part of the SlimFast Plan,” is small and difficult to read.



23. The other claims – regarding hunger control, satiety, and blood sugar, are false and misleading.

24. Defendant's hunger control claim is misleading because the studies relied upon had limited consumer relevance because the subjects were not given food during the test period, so

whether or not they could control their hunger was not actually evaluated.

25. Reasonable consumers must and do rely on a company to honestly identify and describe the components, attributes, and features of a Product, relative to itself and other comparable products or alternatives.

26. The value of the Product that plaintiff purchased was materially less than its value as represented by defendant.

27. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

28. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for it.

29. The Product is sold for a price premium compared to other similar products, no less than \$12.79 for eight 11 oz bottles, a higher price than it would otherwise be sold for, absent the misleading representations and omissions.

Jurisdiction and Venue

30. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

31. The aggregate amount in controversy exceeds \$5 million, including any statutory damages, exclusive of interest and costs.

32. Plaintiff Debbie Kuciver is a citizen of Illinois.

33. Defendant KSF Acquisition Corporation is a Delaware corporation with a principal place of business in Palm Beach Gardens, Palm Beach County, Florida.

34. Defendant transacts business within this district by selling its Products to thousands of retailers in this district, and directly shipping the Products to persons in this district.

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