

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

Rabia Hamidani, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Bimbo Bakehouse LLC,

Defendant

1:22-cv-01026

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. Bimbo Bakehouse LLC (“Defendant”) manufactures, labels, markets, and sells “Brown Bread” under The Cheesecake Factory brand (the “Product”).



2. The representations include “The Cheesecake Factory At Home,” “Our Famous ‘Brown Bread,’” “Wheat Sandwich Loaf,” “No Artificial Preservatives or Flavors,” and a dark-colored loaf of bread with visible pieces of grains on the crust.

I. CONSUMERS VALUE WHOLE GRAINS

3. Consumers increasingly prefer whole grains to non-whole grains.

4. Whole grains are nutritionally superior to non-whole grains because they include the entire grain seed, consisting of the endosperm, bran, and germ.

5. The bran and germ contain important nutrients like fiber, vitamins, minerals, and antioxidants, such as iron, zinc, folate, magnesium, thiamin, niacin, selenium, riboflavin, manganese, copper, vitamin A, and vitamin B6.

6. The bran also gives whole grains their distinctive brown coloring.

7. In contrast, “non-whole grains” or “refined grains” have been processed to remove the bran and germ, thereby removing the fiber and most other nutrients.

8. Most refined grains are enriched, a process that adds back some of the previously removed iron and B vitamins, such as thiamin, riboflavin, niacin, and folic acid.

9. Other nutrients, including fiber, vitamin E, vitamin B6, vitamin K, magnesium, manganese, potassium, phosphorus, copper, calcium, and selenium, are not added back.

10. Where flour is made of refined grains, which only contains the endosperm and mainly starch, it is white in color (“white flour”).

11. The 2015-2020 Dietary Guidelines for Americans recommend that at least half of all grains eaten be whole grains.

12. The Dietary Guidelines recommend consuming 48g of whole grains per day.

A. Consumers Expect Fiber From Products Represented as Whole Grain

13. The average person needs 28 grams of fiber per day.
14. Dietary Guidelines promote whole grains as an important source of fiber.
15. 87% of consumers try to consume more whole grains and 92% try to get more fiber.
16. Research proves that consumers seek whole grains because they want more fiber.
17. In surveys, more than 60% of consumers stated they want to consume more whole grains to improve their digestive health, which is reflective of a desire to increase fiber intake.
18. Almost 75% of consumers who are presented representations which contain express and implied representations that a product is made with, or contains whole grains, will expect that food to be at least a good source of fiber – 10% of the daily value.
19. Almost 70% of consumers agree with the statement that whole grains are one of the best sources of fiber.
20. 62% of consumers agree that foods made from whole grains are one of the best sources of fiber.
21. 46% of consumers rely on foods with whole grains for their daily fiber needs.
22. Based on the proven connection with fiber, consumers expect foods represented – directly or indirectly – as whole grain, do more than tell consumers a product contains a type of grain ingredient.
23. At least half of consumers expect that such foods will be a good source of fiber.

B. Brown Color and Visible Grains

24. Almost half of participants in a recent study incorrectly estimated the whole grain content of grain products, and about the same number overstated the whole grain content of actual whole grain foods.

25. According to a food economist and professor at Tufts University, manufacturers have many ways to persuade consumers about a product's whole grain content.

26. Studies have shown that consumers seeking whole grain look for products darker in color with visible grains.

27. This is logical, because refined grains are associated with white bread, which is smooth and even.

28. In contrast to white bread, made from refined grain, bread that is brown with visible grain pieces is expected to be made mainly from whole grains.

29. In a recent study, participants stated, "For me I like to look at the color," and "I like to be able to see the grains" to find out if a bread is mainly whole grain.

30. One of these methods is the addition of coloring from molasses or caramel.

31. Companies also mix distinct pieces of whole grains to their bread, which creates the impression it contains more whole grain flour than it does.

32. One food and nutrition professor stated, "Even people with advanced degrees cannot figure out how much whole grain" is in products represented to consumers as whole grain.

33. The FDA cautioned companies against misleading consumers as to whole grain content of foods, through statements, representations, and omissions.

34. The Food and Drug Administration ("FDA") has established standards of identity for various flours, including a standard of identity for whole wheat flour. 21 C.F.R. § 137.200.

35. However, the FDA recognized that companies could find many ways to mislead consumers as to the amount of whole wheat flour used in grain products.

36. The FDA stated that depending on the context in which a product was represented, directly or indirectly, as whole grain, consumers could likely understand a product is "100 percent

whole grain.”

37. The Federal Trade Commission (“FTC”) agreed and recognized that many reasonable consumers will likely understand whole grain representations, direct or implied, to mean that all, or virtually all, of the food product is whole grain, or that all of the grain ingredients in the product are whole grains.

38. The recommendation of the FDA was that products marketed as “whole grain,” either by representations, omissions, or other methods, not contain non-whole grains.

39. The FDA has warned companies against making misleading whole grain representations, even where the actions merely take advantage of common consumer assumptions, such as through product names, like “HiHo Deluxe WHOLE WHEAT Crackers” and “Krispy WHOLE WHEAT Saltine Crackers,” and added coloring to bread to make it look “brown.”

II. PRODUCT NOT WHOLE GRAIN

40. Despite the labeling of the Product as “Brown Bread,” with a dark brown color, and visible pieces of grain, the Product is not made mainly whole grains.

41. This is revealed in part from the fiber content shown on the Nutrition Facts as 1g per serving, or 4% of the Daily Value.

Nutrition Facts	
8 servings per container	
Serving size	1 slice (29g)
Amount per serving	
Calories	80
% Daily Value*	
Total Fat 1g	1%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 120mg	5%
Total Carbohydrate 15g	6%
Dietary Fiber 1g	4%
Total Sugars 3g	
Includes 3g Added Sugars	5%
Protein 3g	
Vit. D 0mcg	0%
Calcium 30mg	2%
Iron 1mg	4%
Potas. 40mg	0%
*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.	

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