

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

Misha Leshchiner, individually and on behalf
of all others similarly situated,

Plaintiff,

- against -

Kellogg Sales Company,

Defendant

1:22-cv-03464

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. Kellogg Sales Company (“Defendant”) manufactures, markets, labels and sells cranberry almond chewy nut bars depicted with pictures of whole almonds and cranberries under the Special K brand (“Product”).



2. The labeling is misleading because it gives consumers the impression it has a greater absolute and relative amount of cranberries and almonds than it does.

3. Almonds and cranberries are valued by consumers because they are rich in nutrients not available from other foods of their type.

I. INCREASED POPULARITY OF ALMONDS

4. Americans' almond consumption has grown several hundred percent in the past two decades, overtaking peanuts as the most consumed nut.¹

5. One of the reasons is because almonds contain "healthy fats," which science and nutrition have concluded are beneficial to health.

6. Almonds are a good source of protein, which studies show contributes to decline in overall mortality and improvement of heart health.

7. A handful of almonds contains roughly 10 percent of the recommended intakes for protein and fiber, and macronutrients such as vitamins and minerals.

8. Almonds are widely considered the gold standard by many nutrition experts.

9. One prominent consultant declared that "Almonds are better [than other nuts] due to their greater percentage of minerals, vitamin E and phytonutrients," with "[fewer] calories, more fiber and a better glycemic score than peanuts making them better for weight loss, diabetics and sustained energy throughout the day."

10. Companies have responded to consumer demand and growing evidence of benefits of almonds by making them the key ingredients in packaged foods.²

¹ Roberto A. Ferdman [The rise of the American almond craze in one nutty chart](#), Washington Post, Aug. 6, 2014. The Peanut Board has questioned the statistics used to conclude almond consumption exceeds peanuts.

² Jill Russell Qualizza, [Almonds Win 2013 Popularity Contest](#), Nov. 5, 2013; Joshua Minchin, [Why are Consumers and Manufacturers Choosing Almonds](#), New Food, Feb. 18, 2022.

11. Consumers associate almonds with health over other nut varieties.
12. Almonds are the most expensive nut, several times more expensive than peanuts.
13. Consumers are willing to pay more for products with almonds based on these factors.

II. POPULARITY OF CRANBERRIES

14. The past two decades have seen an increase in consumer consumption of cranberries, classified as a “superfruit” by nutrition experts, due to the high antioxidant content.

15. Cranberries are very high in antioxidants, compounds that reduce free radicals and contribute to prevention of chronic diseases such as cardiovascular disease.

16. One of these is Vitamin E, an essential fat-soluble vitamin which plays a role in skin and hair health.

17. Other antioxidants in cranberries include quercetin, myricetin, peonidin, ursolic acid, and A-type proanthocyanidins, or tannins.

18. Proanthocyanidins are proven to prevent urinary tract infections (“UTIs”).

19. Cranberries contain a relatively greater amount of polyphenols than other fruits.

20. Studies indicate these bioactive plant compounds have numerous health benefits, such as promoting circulation, improving blood pressure, and maintaining cardiovascular health.

21. Cranberries are a good source of fiber, with 4.6 grams per cup, which is beneficial to digestive health.

22. Based on having fewer calories and carbohydrates, and more fiber, consumers are increasingly choosing cranberries over raisins.

23. Though cranberries are more expensive than raisins, consumers are willing to pay higher prices due to the numerous benefits this fruit provides.

III. “CRANBERRY ALMOND – CHEWY NUT BAR” MISLEADS CONSUMERS

24. The front label representations of “Cranberry Almond – Chewy Nut Bars,” pictures of whole cranberries and almonds, and picture of the bar are misleading because (1) the amount of cranberry ingredients is almost equivalent to the amount of raisin ingredients and (2) the amount of peanut ingredients exceeds the amount of almond ingredients.

25. The ingredient list shows peanuts are the first ingredient, while almonds are listed fifth, after raisins and corn syrup.

Ingredients: Peanuts, dried cranberries (cranberries, sugar, vegetable glycerin), **raisins, corn syrup, almonds, sugar, whole grain oats, crisp rice** (rice flour, sugar, salt), **date paste, fructose, toasted coconut** (coconut, sugar, dextrose, salt).
Contains 2% or less of palm oil, vegetable glycerin, salt, soy lecithin, rosemary extract for freshness, soy protein isolate, nonfat milk.

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Contains 2% or less of palm oil, vegetable glycerin, salt, soy lecithin, rosemary extract for freshness, soy protein isolate, nonfat milk.

26. The front label fails to show pictures of peanuts and shows only almonds as a visible nut ingredient in the bar, noticeable by their shape and brown skin.

27. In other countries, Defendant sells a near-identical version of the Product where the front label contains pictures of peanuts in addition to almonds.

28. Based on laboratory analysis and/or review of the Product’s formulation, the approximate percentage of the Product that is peanuts is 20%, while almonds are 9%.

29. While dried cranberries are listed second, ahead of raisins, the amount of these two ingredients is approximately the same.

30. This is based upon laboratory analysis and/or review of the Product's formulation, which reveal that if cranberries constitute 15% of the Product, raisins constitute 14%.

31. The front label does not contain pictures of raisins next to cranberries nor contain the word "raisin."

32. The picture of the bar on the label does not visibly reveal any fruit component other than cranberries.

33. The Product's name of "Cranberry Almond – Chewy Nut Bar" is misleading because it gives the impression of a greater relative and absolute amount of cranberries and almonds.

34. The name does not comply with federal and identical state requirements that foods be given a "common or usual name" that is truthful and not misleading. 21 C.F.R. § 102.5(a).

35. A common or usual name must "identify or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients." 21 C.F.R. § 102.5(a).

36. Where the characterizing ingredients (1) have a material bearing on the food's price or its acceptance by consumers or (2) creates an erroneous impression they are present in a greater amount than it is, the common or usual name should include these percentages or otherwise inform consumers. 21 C.F.R. § 102.5(b).

37. The label could have stated, "Contains ____ % Cranberry [and] Contains ____ % Almonds" beneath "Chewy Nut Bars," or disclosed the use of raisins and peanuts on the front label. 21 C.F.R. § 102.5(b)(2).

38. The name, "Cranberry and Almond – Chewy Nut Bars," does not tell consumers the Product contains a significantly greater relative amount of peanuts and raisins compared to almonds and cranberries.

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