

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**WILLIAM MIGNIN, III, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED,**

Plaintiff,

v.

MARS, INC.,

Defendant.

Case No.:

Judge:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff William Mignin, III (“Plaintiff” or “Mr. Mignin”) brings this action on behalf of himself, and all others similarly situated against Mars, Inc. (“Defendant” or “Mars”). Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to himself, which are based on personal knowledge.

NATURE OF THE ACTION

1. Plaintiff brings this class action lawsuit on behalf of himself and similarly situated consumers (“Class Members”) who purchased for personal, family, or household consumption, Defendant’s candies sold under the brand name “Skittles®” (the “Products”),¹ which are unfit for human consumption because they contain titanium dioxide (“TiO₂”), a known toxin. Defendant has long known of the health problems posed by TiO₂. In fact, in February 2016, Defendant

¹ This includes Skittles® Original, Skittles® Wild Berry, Sour Skittles®, Tropical Skittles®, and Smoothies Skittles®, among others.

publicly committed to phasing out TiO₂. Defendant has flouted its own promise to consumers. More than six years later, Defendant continues to sell the Products with TiO₂.

2. Interestingly, in its February 2016 press release, Defendant indicated that its planned phase out of TiO₂ was called for simply because “consumers today are calling on food manufacturers to use more natural ingredients in their products.” Incredibly, Defendant even claimed that “[a]rtificial colors pose no known risks to human health or safety.” In doing so, Defendant concealed from consumers material information it knew. Namely, that numerous of its competitors and other food manufacturers had long removed the toxin from their product lines because of scientific research showing that the toxin is unsafe for consumption.

3. Several nations have banned the harmful toxin, TiO₂. For example, in 2019, TiO₂ was banned in France, where Defendant maintains offices and announced that it could and would comply with France’s law requiring TiO₂ no longer be allowed in food products.

4. In May 2021, the European Food Safety Authority (“EFSA”) released its report on the health concerns associated with TiO₂, determining that TiO₂ could not be considered safe for consumption. Professor Maged Younes, Chair of EFSA’s expert Panel on Food Additives and Flavourings (“FAF”) underscored these findings, stating that: “Taking into account all available scientific studies and data, the Panel concluded that titanium dioxide can no longer be considered safe as a food additive. A critical element in reaching this conclusion is that we could not exclude genotoxicity concerns after consumption of titanium dioxide particles.”²

5. Building on EFSA’s research, the European Commission (“EC”) announced that it too would adopt a ban on the use of TiO₂ as a food additive. Under that plan, the ban would apply

² EFSA, “Titanium dioxide: E171 no longer considered safe when used as a food additive,” (May 6, 2021) <https://www.efsa.europa.eu/en/news/titanium-dioxide-e171-no-longer-considered-safe-when-used-food-additive>.

following a six-month transition period, and beginning summer 2022, the additive should no longer be added to food products. That plan was adopted unanimously by Member States.

6. Defendant – with offices in Netherland, Denmark, Ireland, Italy, Portugal, Germany, Norway, Czech Republic, Romania, Belgium, Switzerland, Austria, Slovakia, Hungary, France, Greece, and Spain³ - and with sales in each of those Member States was reminded of the scientific findings concerning TiO₂ and was required to comply with the EC’s ban.

7. Nonetheless, in the United States, Defendant maintains sales with TiO₂ as an additive, failing to inform consumers of the implications of consuming the toxin. Instead, Defendant relies on the ingredient list which is provided in minuscule print on the back of the Products, the reading of which is made even more challenging by the lack of contrast in color between the font and packaging, as set out below in a way consumers would normally view the product in a store.



³ MARS, “Our Locations,” https://cze.mars.com/en/locations?language_content_entity=en.

8. Consequently, consumers who purchase Defendant's Products are at heightened risk of a host of health effects for which they were unaware stemming from genotoxicity – the ability of a chemical substance to change DNA.

9. Based on Defendant's omissions, a reasonable consumer would expect that the Products can be safely purchased and consumed as marketed and sold. However, the Products are not safe and pose a significant health risk to unsuspecting consumers. Yet, neither before nor at the time of purchase does Defendant notify consumers like Plaintiff that the Products are unsafe to consumers, contain heightened levels of titanium dioxide, and should otherwise be approached with caution.

10. Accordingly, Plaintiff brings his claims against Defendant individually and on behalf of a class of all others similarly situated for (1) violation of the Uniform Deceptive Trade Practices Act, 815 ILCS 510, *et seq.*; (2) violation of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, *et seq.*; (3) Fraud; (4) Fraudulent Inducement; (5) Fraudulent Omission or Concealment; (6) Quasi-Contract/Unjust Enrichment; and (7) Breaches of Express Warranty, Implied Warranty of Merchantability/Fitness for a Particular Purpose and Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*

PARTIES

11. Plaintiff William Mignin, III is a natural person and citizen of Illinois who resides in Batavia, Illinois. Mr. Mignin regularly purchases Defendant's Products. Mr. Mignin's most recent purchase of the Products was on or around July 21, 2022, when he purchased Sour Skittles® from a brick-and-mortar 7-Eleven located at 336 E. Wilson Street, Batavia, Illinois. Prior to his purchase, Mr. Mignin reviewed the labeling, packaging, and marketing materials of the Products and saw the false and misleading claims that, among other things, the Products are safe for human

consumption. Mr. Mignin understood these claims to be representations and warranties by Mars, Inc., that the Products are free from all traces of harmful ingredients. Mr. Mignin reasonably relied on these representations and warranties in deciding to purchase the Products, and these representations were part of the basis of the bargain in that he would not have purchased the Products or would not have purchased them on the same terms if the true facts about its contents had been known. As a direct result of Mars, Inc.'s material misrepresentations and omissions, Mr. Mignin suffered, and continues to suffer, economic injuries.

12. Mr. Mignin remains interested in purchasing candies from Defendant that are safe for consumption. However, Plaintiff is unable to determine if the Products are actually safe for consumption. Plaintiff understands that the composition of the Products may change over time. But as long as Defendant may market the Products as safe for consumption when the Products are not safe for consumption, then when presented with false or misleading information when shopping, he will be unable to make informed decisions about whether to purchase Defendant's Products and will be unable to evaluate the different prices between Defendant's Products and competitor's Products. Plaintiff is further likely to repeatedly be misled by Defendant's conduct, unless and until Defendant is compelled to ensure that Products marketed and labeled as safe for consumption are, in fact, safe for consumption.

13. Defendant Mars, Inc. is a foreign corporation with its domestic headquarters located at 9885 Elm Street, McLean, Virginia 22101. Defendant Mars, Inc. operates four business segments: Mars Wrigley Confectionary, Petcare, Food, and MARS Edge.⁴ The business segment relevant to Plaintiff's claims herein, is Mars Wrigley Confectionary ("Mars Wrigley"), which manufactures, packages, and distributes its candy products. In 2016, Mars Chocolate and Wrigley

⁴ <https://web.archive.org/web/20130326103541/http://www.mars.com/global/brands.aspx>

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