

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

Laura Harmon, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

Pharmavite LLC,

Defendant

3:22-cv-50091

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. Pharmavite LLC (“Defendant”) manufactures, labels, markets, and sells fruit flavored gummy vitamins under the Nature Made brand (“Product”).



- ✓ No Artificial Flavors - Natural Fruit Flavors
- ✓ No Synthetic Dyes - Colors Derived from Natural Sources
- ✓ No High Fructose Corn Syrup
- ✓ No Artificial Sweeteners
- ✓ Gluten Free

2. The relevant representations include “Orange, Cherry & Mixed Berry With Other Natural Flavors,” “No Artificial Flavors – Natural Fruit Flavors” and images of an orange, raspberry, cherry and strawberry.

3. The representations cause consumers to expect only natural fruit flavors.

4. However, the representations are false, deceptive, and misleading because the Product contains artificial flavoring ingredients.

## **I. CONSUMER DEMAND FOR NATURAL FLAVORS**

5. Consumers have been increasingly concerned about the ingredients added to what they eat and drink.

6. This is especially so when it comes to vitamins because this is a unique class of food designed to improve well-being and health.

7. Consumers value fruit and natural fruit flavors, especially in the context of vitamins.

8. Surveys have shown that consumers are less likely to buy vitamins which have artificial ingredients.

9. According to the Wall Street Journal, “As consumer concern rises over artificial ingredients, more food companies are reconstructing recipes” to remove artificial flavors.<sup>1</sup>

10. According to Paul Manning, chief executive officer and president of Sensient Technologies, “Consumer desire for naturally flavored products is an emerging trend.”<sup>2</sup>

11. According to Consumers Union, over 80% of consumers expect that the word “natural,” in almost any context, and its variations, i.e., “nature,” on a label means that a food,

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<sup>1</sup> Lauren Manning, How Big Food Is Using Natural Flavors to Win Consumer Favor, Wall Street Journal.

<sup>2</sup> Keith Nunes, [Using natural ingredients to create authentic, fresh flavors](#), Food Business News, Sept. 20, 2018.

beverage, vitamin or dietary supplement does not contain artificial ingredients.<sup>3</sup>

12. Explanations for why consumers prefer foods containing natural, instead of artificial ingredients, are varied.

13. A recent survey reported that over 82% of US respondents believe that foods with artificial flavors are less healthy than those promoted as containing natural flavors and/or not containing artificial flavors.

14. Consumers seek to avoid artificial flavors because they are weary of ingredients which are highly processed with chemical additives and synthetic solvents in laboratories.

15. According to Nielsen, the absence of artificial flavors is very important for over 40% of respondents to their Global Health & Wellness Survey.

16. One scholar theorized “the preference for natural products appeals to a moral ideology and offers a moral satisfaction.”<sup>4</sup>

17. The trade journal, *Perfumer & Flavorist*, described “The Future of Artificial Flavors & Ingredients” as bleak, given consumer opposition to these synthetic ingredients.<sup>5</sup>

18. Mintel announced that consumer avoidance of artificial flavors is just as strong as their desire for natural flavors, in its Report, “Artificial: Public Enemy No. 1.”<sup>6</sup>

19. About half of Americans say they seek out natural flavors at least some of the time.

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<sup>3</sup> “Food” shall refer to food, beverages, vitamins and dietary supplements.

<sup>4</sup> Rozin, P., Spranca, M., Krieger, Z., Neuhaus, R., Surillo, D., Swerdlin, A., & Wood, K. (2004). Preference for natural: Instrumental and ideational/moral motivations, and the contrast between foods and medicines. *Appetite*, 43(2), 147–154. doi:10.1016/j.appet.2004.03.005.

<sup>5</sup> Jim Kavanaugh, [The Future of Artificial Flavors & Ingredients](#), *Perfumer & Flavorist*, June 12, 2017.

<sup>6</sup> Alex Smolokoff, [Natural color and flavor trends in food and beverage](#), *Natural Products Insider*, Oct. 11, 2019; Thea Bourianne, [Exploring today’s top ingredient trends and how they fit into our health-conscious world](#), March 26-28, 2018; Nancy Gagliardi, [Consumers Want Healthy Foods – And Will Pay More For Them](#), *Forbes*, Feb 18, 2015.

20. In contrast, artificial flavors were sought out by only about one in 10 consumers, with approximately half saying they avoid each of them at least some of the time.

21. Nielsen reported that 62% of consumers try to avoid artificial flavors.

22. New Hope Network concluded that 71% of consumers avoid artificial flavors.

23. Label Insight determined that 76% of consumers avoid artificial flavors.

24. A recent survey shows more than three in four people worldwide are convinced that artificial flavors have no place on their ingredient lists.<sup>7</sup>

25. According to Forbes, 88% of consumers consider foods without artificial flavors to be more natural and healthier than foods with artificial flavors and would pay more for such foods.

## **II. PRODUCT REPRESENTED AS ONLY CONTAINING NATURAL FLAVORS**

26. Defendant markets the Product with the prominent statement, “No Artificial Flavors – Natural Fruit Flavors.”

27. The representation that the Product has “No Artificial Flavors” appeals to the more than seven out of ten consumers who avoid artificial flavors.

28. This conveys to consumers that the Product will get its fruit taste from only natural flavoring ingredients.

29. Though the ingredients listed include “Natural Flavors,” they also include “Malic Acid.”

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<sup>7</sup> What ‘Natural’ Really Means to Consumers GNT Group’s Guide to Global Consumer Demands attests importance of natural colors for future-proof products, July 13, 2017.

**OTHER INGREDIENTS:** Glucose Syrup, Sugar, Water, Gelatin, Citric Acid, Malic Acid, Palm Oil, Natural Flavors, Colors Added (Including Carmine), Carnauba Wax.

**Other Ingredients:** Glucose Syrup, Sugar, Water, Gelatin, Citric Acid, Malic Acid, Palm Oil, Natural Flavors, Colors Added (Including Carmine), Carnauba Wax.

30. The Product contains more malic acid than natural flavors, shown by its listing ahead of natural flavors.

31. Unbeknownst to consumers, the ingredient list does not inform consumers that this malic acid is an artificial flavoring ingredient which provides flavoring to the Product.

32. Instead of listing DL-Malic Acid, Defendant lists “Malic Acid,” in violation of regulations that ingredients must be listed by their specific, and not general name.

### III. MALIC ACID

33. A flavor is a substance the function of which is to impart taste. See 21 C.F.R. § 101.22(a)(1) and (3).

34. Taste is the combination of sensations arising from specialized receptor cells located in the mouth.<sup>8</sup>

35. Taste can be defined as sensations of sweet, sour, salty, bitter, and umami.

36. However, limiting taste to five categories suggests that taste is simple, which is not true.

37. For example, the taste of sour includes the sourness of vinegar (acetic acid), sour milk (lactic acid), lemons (citric acid), apples (malic acid), and wines (tartaric acid).

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<sup>8</sup> Gary Reineccius, Flavor Chemistry and Technology § 1.2 (2d ed. 2005).

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