

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

Lori Gilker, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Chobani, LLC,

Defendant

3:21-cv-00488

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. Chobani, LLC (“defendant”) manufactures, labels and sells low-fat Greek yogurt under the Chobani Complete brand in flavors including vanilla and strawberry (“Product”).



2. The front label statements include nutrition and nutrient claims, ingredient claims and allergen claims (collectively, the “claims”).

3. The nutrition claims include “Chobani Complete” and “Advanced Nutrition Yogurt.”

4. The nutrient claims¹ include:

- 0g Added Sugar*
- 20 Amino Acids
- *Not a low calorie food
- 3g Soluble Fiber
- + Prebiotic [and] Probiotic
- 17g Complete Protein

5. The ingredient claims include:

- Only Natural Ingredients
- pictures of the characterizing flavor ingredient, i.e., vanilla beans and flowers or strawberries
- + Only Real Vanilla (or Other Fruit)
- Vanilla (or other characterizing flavor ingredient)

6. The “allergen” claims include “Lactose-Free” and “Easy to Digest.”

7. The back of the package lists the ingredients.

Ingredients: Cultured lowfat milk, water, chicory root fiber, less than 1.5% of: vanilla extract, lactase*, natural flavors, monk fruit extract, stevia leaf extract (reb m), fruit pectin, locust bean gum, lemon juice concentrate.

6 live and active cultures:
S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus, L. Casei, and L. Rhamnosus.

*Ingredient not found in regular yogurt.

Ingredients: Cultured lowfat milk, water, chicory root fiber, less than 1.5% of: vanilla extract, lactase*, natural flavors, monk fruit extract, stevia leaf extract (reb m), fruit pectin, locust bean gum, lemon juice concentrate.

6 live and active cultures:
S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus, L. Casei, and L. Rhamnosus.

*Ingredient not found in regular yogurt.

¹ The term “nutrient claims” is not used synonymously with “nutrient content claims.” Nutrient claims refers to statements

8. The back panel contains the Nutrition Facts.

| Nutrition Facts | |
|---|-----------------------|
| 4 servings per container | |
| Serving size | 3/4 cup (170g) |
| Amount per serving | |
| Calories | 130 |
| % Daily Value* | |
| Total Fat 3g | 4% |
| Saturated Fat 2g | 10% |
| Trans Fat 0g | |
| Cholesterol 15mg | 5% |
| Sodium 60mg | 3% |
| Total Carbohydrate 11g | 4% |
| Dietary Fiber 3g | 11% |
| Soluble Fiber 3g | |
| Total Sugars 7g | |
| Incl. 0g Added Sugars | 0% |
| Protein 17g | 34% |
| Vit. D 0mcg 0% • Calcium 160mg 10% | |
| Iron 0mg 0% • Potas. 220mg 4% | |
| <small>*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.</small> | |

I. Claims are Misleading

9. The claims are false, deceptive, and misleading for several reasons.

A. Nutrition Claims

10. The Product's name, "Complete Nutrition," is false, deceptive, and misleading because it fails to provide "complete" nutrition as this term is understood by reasonable consumers.

11. Reasonable consumers understand "complete" the same way as defined by the dictionary – "having all the necessary or appropriate parts."

12. The Product does not have all the necessary and appropriate parts related to an average consumer's nutritional needs.

13. The "Advanced Nutrition [Yogurt]" representation is false, deceptive, and misleading because the ingredients and composition are not beyond what others have already introduced into the marketplace.

B. Nutrient Content Claims

14. Illinois incorporates the federal food labeling regulations in the Illinois Food, Drug and Cosmetic Act (“IFDCA”) and its parallel regulations. See 410 ILCS 620/1, et seq.

15. Congress required that the FDA develop and implement nutrient content claims to prevent consumers from being misled by the endless terms and descriptors appearing on foods.

16. Nutrient content claims tell consumers about the level of relevant nutrients in a food.

17. The criteria for nutrient content claims were the result of dozens of meetings held by the FDA with consumers.

18. “Expressed” nutrient content claims are direct statements about the level (or range) of nutrients in a food, e.g., “low sodium” or “contains 100 calories.” 21 C.F.R. § 101.13(b)(1).

19. “Implied” nutrient content claims can describe the food or an ingredient in a manner that suggests that a nutrient is absent or present in a certain amount. 21 C.F.R. § 101.13(b)(2).

20. For example, a claim that a food is “high in oat bran” is understood as a way of saying that food is high in fiber. 21 C.F.R. § 101.13(b)(2)(i).

21. Implied nutrient content claims can also suggest that a food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient e.g., “healthy, contains 3 grams (g) of fat.” 21 C.F.R. § 101.13(b)(2)(ii).

22. Nutrient content claims are restricted to nutrients that have an established Reference Daily Intake (“RDI”) or Daily Reference Value (“DRV”).

23. If this were not the case, companies would be able to promote nutrients and ingredients which were of limited or no value, and consumers would not be able to know if those statements were truthful and meaningful.

24. Probiotics and prebiotics are not recognized by FDA as having an RDI or DRV.

25. Probiotics are defined by the Food and Agriculture Organization and the World Health Organization as “live microorganisms which when administered in adequate amounts confer a health benefit on the host.”

26. The theory is that probiotics – “good bacteria” can affect the “gut microbiome,” which plays an important role in gastrointestinal health and disease.

27. Consumer enthusiasm for probiotics is based on the unregulated messages conveyed by companies which sell these products, which is a multibillion-dollar industry.

28. Most studies on probiotic strains – including those identified as in the Product – *S. Thermophilus*, *L. Bulgaricus*, *L. Acidophilus*, *Bifidus*, *L. Casei*, and *L. Rhamnosus* – reveal no benefit to persons who are already healthy.

29. The only people who *may* benefit from probiotics are those who suffer from a small number of intestinal disorders.

30. Experts have warned that healthy people who consume probiotics may suffer harm.

31. According to Dr. Matthew Ciorba, a gastroenterologist at Washington University in St. Louis, “There is no evidence to suggest that people with normal gastrointestinal tracts can benefit from taking probiotics.”

32. The theory behind probiotics is based on the live bacteria surviving and propagating in the intestinal tract and altering the internal composition of the human body.

33. However, the human gut contains tens of trillions of bacteria.

34. Defendant’s Complete Nutrition yogurt purports to contains “billions.”

35. The probiotics in the Product are “still just a drop in a bucket,” because “The gut always has orders of magnitude more microbes,” states Shira Doron, an infectious disease expert at Tufts Medical Center.

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