

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

Emma Shelton, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Kraft Heinz Foods Company,

Defendant

3:21-cv-00799

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. Kraft Heinz Foods Company (“defendant”) manufactures, labels, markets and sells Extra Sharp Yellow and Extra Sharp White (Cheese) Bites with Butter Crackers under the Cracker Barrel brand (“Product”).



2. The Product’s name, which includes “Butter Crackers,” is deceptive and misleading because it gives the false impression it contains a non-de minimis amount of butter, made from milk, cream or both.

3. Instead, the crackers have butter substitutes – vegetable oils – and no butter.

I. BUTTER CRACKER

4. When consumers see a food represented as “Butter Crackers,” they will understand it is a type of cracker, and that “butter” is its defining feature.

5. The meaning of compound words is greater than the sum of its parts, such that “butter cracker” does not mean “a cracker made with some butter” but a cracker which is made only or predominantly with butter – where butter is capable of being used.¹

6. Consumers prefer butter to its synthetic substitutes, typically made from “vegetable” oils, i.e., margarine.

7. Long established FDA guidance reflects consumer appreciation for butter.

8. The FDA recommends that where a food is labeled “Butter _____” or uses the word “butter” in conjunction with its name, reasonable consumers will expect that whenever butter could be used in a product, it would be, instead of butter substitutes.²

9. Consumers prefer butter to chemically produced “vegetable” oils for numerous reasons.

10. First, butter does not contain the trans fats of vegetable oils.

¹ Of course, a cracker must contain flour, so the expectation of only or predominantly butter is with respect to the role of butter or fat ingredients in a cracker.

² Compliance Policy Guide (“CPG”), [Sec 505.200, “Butter” Featured in Product Name](#), Center for Food Safety and Applied Nutrition, Office of Regulatory Affairs, March 1988 (“If the product contains both butter and shortening but a sufficient amount of butter to give a characteristic butter flavor to the product, an appropriate name would be ‘butter flavored _____’... if the product contains any artificial butter flavor it would have to be labeled in compliance with 21 CFR 101.22(i)(2).”).

11. Second, butter is natural, made by churning cow's milk.
12. Butter substitutes, like vegetable oils, are synthetic.
13. Highly refined vegetable oils are subjected to hydrogenation and interesterification, in the presence of chemical catalysts such as nickel and cadmium.
14. Third, butter is rich in nutrients like calcium and Vitamins A and D.
15. Fourth, butter has a creamy, sweet taste.
16. While vegetable oils are typically "refined, bleached and deodorized," to supposedly provide a neutral taste, the reality is different.
17. Vegetable oils are highly susceptible to oxidation.
18. The result is "reversion" of the flavor back to that of the original crude oil before it was processed.
19. This flavor is described as "beany, "powdery" or "fishy."
20. Vegetable oils detract from any authentic butter taste.
21. Though vegetable oils are described as "refined, bleached and deodorized," and purportedly do not affect a food's taste, the reality is different.
22. To describe a food's taste as "buttery" is a compliment, which refers to a light and fluffy texture, while vegetable oils contribute to a waxy mouthfeel which leaves an aftertaste.
23. Fifth, butter creates a flaky texture that is softer and less dense than one using vegetable oils, because butter is solid at room temperature.
24. Butter is more expensive than vegetable oils.

II. "BUTTER CRACKERS" MISLEADING BECAUSE NO BUTTER

25. The name "Butter Crackers" is misleading because the Product does not contain any butter and uses vegetable oils – canola and palm oil – in its place.

INGREDIENTS:

EXTRA SHARP CHEDDAR (CHEDDAR CHEESE [PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES, ANNATTO (COLOR)], MODIFIED CORNSTARCH ADDED TO PREVENT CAKING, NATAMYCIN [A NATURAL MOLD INHIBITOR]), **EXTRA SHARP WHITE CHEDDAR** (CHEDDAR CHEESE [PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES], MODIFIED CORNSTARCH ADDED TO PREVENT CAKING, NATAMYCIN [A NATURAL MOLD INHIBITOR]), **BUTTER CRACKERS** (UNBLEACHED ENRICHED FLOUR [WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE (VITAMIN B1), RIBOFLAVIN (VITAMIN B2), FOLIC ACID], CANOLA OIL, SUGAR, PALM OIL, LEAVENING [CALCIUM PHOSPHATE AND/OR BAKING SODA], SALT, SOY LECITHIN).

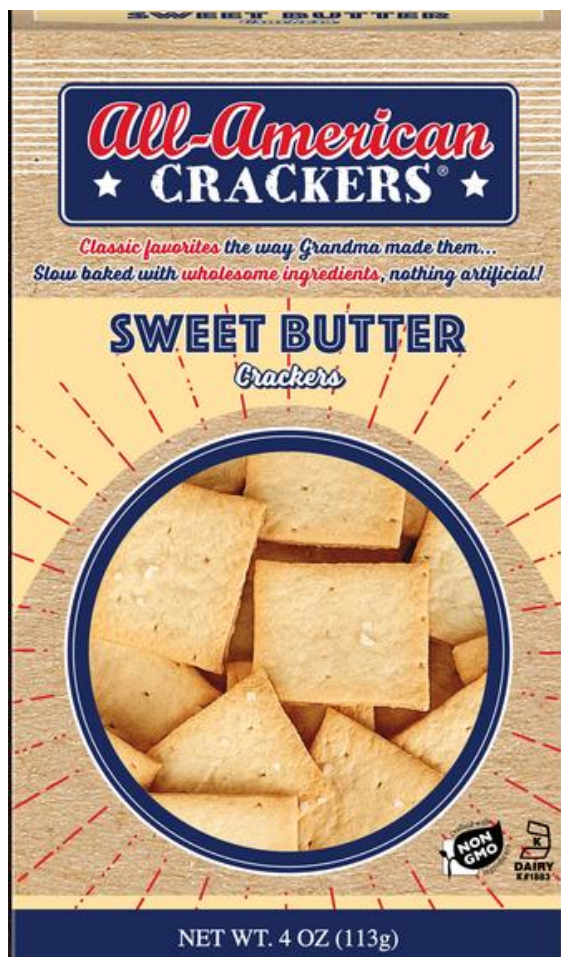
INGREDIENTS:

EXTRA SHARP CHEDDAR (CHEDDAR CHEESE [PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES, ANNATTO (COLOR)], MODIFIED CORNSTARCH ADDED TO PREVENT CAKING, NATAMYCIN [A NATURAL MOLD INHIBITOR]), **EXTRA SHARP WHITE CHEDDAR** (CHEDDAR CHEESE [PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES], MODIFIED CORNSTARCH ADDED TO PREVENT CAKING, NATAMYCIN [A NATURAL MOLD INHIBITOR]), **BUTTER CRACKERS** (UNBLEACHED ENRICHED FLOUR [WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE (VITAMIN B1), RIBOFLAVIN (VITAMIN B2), FOLIC ACID], **CANOLA OIL**, SUGAR, **PALM OIL**, LEAVENING [CALCIUM PHOSPHATE AND/OR BAKING SODA], SALT, SOY LECITHIN).

26. Though crackers do not have high levels of fat, the fat content contributes to their taste and texture.

27. The absence of butter – understood as made only from milk, cream, or both – is misleading based on the representation of “Butter Crackers.”

28. “Butter crackers” which are made only with butter and not vegetable oils exist in the marketplace and are technologically feasible.



INGREDIENTS: Enriched Unbleached Flour (wheat flour, malted barley flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid), **Butter** (cream [milk], salt), Cane Sugar, Non-GMO Baking Powder (monocalcium phosphate, sodium bicarbonate, corn starch), Sea Salt, Topping Salt.

29. These “Sweet Butter Crackers” contain butter and no butter substitutes.
30. Defendant did not have to name the Product “Butter Crackers,” but chose to, since this is more enticing to consumers.
31. Consumers are accustomed to labels which truthfully disclose where a food labeled as “Butter _____” gets its taste from real butter or artificial butter flavor.
32. For example, cookies and biscuits which tout “butter” conspicuously disclose that their butter taste is from artificial flavor.

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