

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

COY'S HONEY FARM, INC.,	)	
	)	MDL No.: 1:18-md-02820-SNLJ
Plaintiff,	)	
	)	Indiv. Case No. 1:21-cv-00089-SNLJ
v.	)	
	)	
BAYER CORPORATION; BAYER	)	
U.S., LLC; BAYER CROPSCIENCE	)	
Arkansas Inc.; BASF CORPORATION;	)	
and BASF SE	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO DISMISS  
PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants Bayer Corporation, Bayer U.S., LLC, Bayer Cropscience Arkansas Inc., and BASF Corporation<sup>1</sup> move to dismiss Plaintiff's First Amended Complaint, pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6). In support thereof, Defendants state as follows:

1. This Court should dismiss Plaintiff's Lanham Act claim (Count I) because Plaintiff lacks standing because Plaintiff is not within the zone of interests protected by the Lanham Act, and also because Plaintiff has failed to state a claim because Plaintiff did not allege a loss of goodwill or any direct diversion of sales from itself to Defendants.

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<sup>1</sup> BASF SE is also named as a defendant in Plaintiff's First Amended Complaint, but BASF SE has not been served.

2. This Court should dismiss Plaintiff's breach of implied warranty of merchantability claim (Count V) because Defendants disclaimed all implied warranties on their product labels and because Plaintiff failed to plead the statutorily required pre-suit notice.

3. This Court should dismiss Plaintiff's nuisance claim (Count VI) because Plaintiff does not allege that any of the Defendants owned or otherwise used land in Arkansas, much less in the vicinity of Plaintiff's hives—an essential element of the cause of action.

4. This Court should dismiss Plaintiff's trespass claim (Count VII) because Plaintiff failed to plead intent, because product manufacturers are not liable for trespass after a product leaves their control, and because particulate matter does not constitute a physical invasion under Arkansas's traditional view of trespass.

5. This Court should dismiss Plaintiff's strict liability – ultrahazardous/abnormally dangerous activity claim (Count X) because ultrahazardous activity liability does not apply to mere product manufacturers and herbicide application, including application of dicamba-based herbicides, is a matter of common usage.

6. This Court should dismiss Plaintiff's claim under the Arkansas Deceptive Trade Practices Act (Count XI) because the statute provides a safe harbor for regulated transactions such as the manufacture and sale of herbicides, and Plaintiff has failed to plead fraud with particularity.

7. This Court should dismiss Plaintiff's product liability related claims (Counts II, III, IV, V, VIII, and IX) because they are untimely. Although Plaintiff knew of its claimed injuries and alleged connection to Defendants' products back in 2017, Plaintiff delayed filing the current suit until May 2021, more than a year after the applicable three-year statute of limitations had run.

8. A memorandum in support of this motion is filed contemporaneously and incorporated by reference.

WHEREFORE, Defendants Bayer Corporation, Bayer U.S., LLC, Bayer Cropscience Arkansas Inc., and BASF Corporation respectfully request that this Court dismiss Plaintiff's First Amended Complaint pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6).

Respectfully submitted,

DATED: August 25, 2021

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Bayer Cropscience (Arkansas) Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2021, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all counsel of record.

/s/ John P. Mandler