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United States District Court
Eastern District of New York

1:19-cv-06448

Amy Warren, individually and on behalf of
all others similarly situated,

Plaintiff,

Complaint

- against -

Whole Foods Market Group, Inc.,

Defendant

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Whole Foods Market Group, Inc. (“defendant”) manufactures, distributes, markets, labels and sells instant oatmeal containing oats and flax, under their 365 Everyday Value brand (“Products”).
2. The Products are available to consumers from defendant’s hundreds of stores across all 50 states, directly from defendant’s website and from Amazon.com.
3. The Products are sold in boxes which contain packets of 40 g.

4. The relevant front labels representations include “Instant Oatmeal,” “Oats & Flax,” “Low Fat,” “Vegan,” “Good Source of Fiber,” “Whole Grain Stamp,” “Non-GMO Project Verified,” “USDA Organic” and pictures of fresh raspberries on top of and around a heaping bowl of the product.



5. The Product’s ingredient list on the back of the package states:

INGREDIENTS: ORGANIC ROLLED OATS, ORGANIC DEHYDRATED CANE JUICE SOLIDS, ORGANIC FLAXSEED, SEA SALT.

INGREDIENTS: ORGANIC ROLLED OATS, ORGANIC DEHYDRATED CANE JUICE SOLIDS, ORGANIC FLAXSEED, SEA SALT.

I. Product is Misleading because Sugar is Disguised as “Organic Dehydrated Cane Juice Solids”

6. Consumers expect ingredients on a product to be declared by their common or usual name.

7. Where an ingredient contains the term “juice,” consumers expect that ingredient to be derived from a consumable fruit or vegetable.

8. In fact, “juice” is defined as “the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.”¹

9. “Juice solids” is a term associated with the processing of fruit juice such as oranges and apples.

10. Sometimes referred to as “soluble juice solids” or “soluble solids,” this term is used to measure the quality of a juice and refers to a “valuable constituent” of a juice, i.e., “orange juice solids.”²

11. However, in the context of the Product’s “Organic Dehydrated Cane Juice Solids,” the “juice solids” do not refer to an ingredient that reasonable consumers find “valuable.”

12. This is because “dehydrated cane juice” – whether followed by the term “solids” or not – is another name for the ingredient commonly known as “sugar.”

13. The FDA previously concluded that where an ingredient was described as “[evaporated] cane juice,” consumers may be misled because “cane juice” refers to a sweetener.

14. “Evaporated cane juice,” according to the FDA, “suggest[s] that the ingredients are made from or contain fruit or vegetable “juice” as defined in 21 CFR 120.1.”³

15. For the purposes of declaring a food’s ingredients by their common or usual names, there is no material difference between “evaporated cane juice” and “dehydrated cane juice solids.”

¹ 21 C.F.R. § 120.1(a).

² FDA Warning Letter to Penguin Juice Company, Inc., 2010-DT-18, Sept. 8, 2010 (“Your [juice] products are adulterated within the meaning of section 402(b)(1) of the Act [21 U.S.C. 342(b)(1)] because a valuable constituent, namely juice solids, has been in part omitted or abstracted from these products.”).

³ FDA Guidance, Ingredients Declared as Evaporated Cane Juice (May 2016)

16. “Dehydrated” is a commonly understood synonym for “evaporated” such that reasonable consumers will be equally misled by its use.⁴

17. By declaring “sugar” by a term which fails to describe the basic function and qualities of the ingredient, reasonable consumers are deceived into purchasing a product with added sugar as its second most predominant ingredient.

18. Given that the Product marketed as a simple, no-frills basic oatmeal and flax, pictured beneath fresh raspberries, consumers will expect that “dehydrated cane juice solids” is related to actual fruit, including those prominently displayed and is certainly not the equivalent of sugar.

19. This results in the impression that the Products are a better nutritional choice than other comparable products which truthfully and non-deceptively identify “sugar” as their second most predominant ingredient.

20. The Product’s deceptive labeling is especially egregious because defendant is a grocery store with a reputation for selling health food products of high nutritional quality.

21. A growing number of consumers, including plaintiff, are paying more attention to the ingredients contained in the foods they eat and are shunning excess, added sugars due to their association and contribution to ailments and conditions like coronary heart disease, obesity and diabetes.

22. The misleading terms used on the Products have a material bearing on price or consumer acceptance of the Products because they will pay more for products with the positive qualities associated with actual fruit juice, including naturally occurring vitamins and minerals.

II. Conclusion

⁴ Collins Dictionary, [Evaporate](#), synonyms.

23. Had plaintiff and class members known the truth about the Products, they would not have bought the Product or would have paid less for it.

24. The Products contain other representations which are misleading and deceptive.

25. As a result of the false and misleading labeling, the Products are sold at premium prices, approximately no less than \$4.29 per eight packets, excluding tax – compared to other similar products represented in a non-misleading way.

Jurisdiction and Venue

26. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) (Class Action Fairness Act of 2005 or “CAFA”).

27. Under CAFA, district courts have “original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity[.]” *Gold v. New York Life Ins. Co.*, 730 F.3d 137, 141 (2d Cir. 2013).

28. Upon information and belief, the aggregate amount in controversy is more than \$5,000,000.00, exclusive of interests and costs.

29. Plaintiff is a citizen of New York.

30. Defendant Whole Foods Market Group, Inc. is a Delaware corporation with a principal place of business in Austin, Travis County, Texas.

31. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

32. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and State.

33. A substantial part of events and omissions giving rise to the claims occurred in this District.

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