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United States District Court  
Eastern District of New York

1:20-cv-05125

Stephen Bradshaw, individually and on  
behalf of all others similarly situated,

Plaintiff,

- against -

Blue Diamond Growers,

Defendant

Complaint

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

1. Blue Diamond Growers (“defendant”) manufactures, distributes, markets, labels and sells blends of almond milk and coconut milk under the Almond Breeze brand purporting to be flavored only with vanilla (“Product”).
2. The Product is available to consumers from retail and online stores of third-parties and is sold in cartons of 32 OZ and 64 OZ.
3. The relevant front label representations include “Unsweetened,” “Vanilla,” “Almond Breeze,” “Almond Coconut Blend,” “almondmilk coconutmilk blend” and pictures of almonds and coconuts.<sup>1</sup>

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<sup>1</sup> The original complaint included a different version of the product label. The version included here is the label relied on by Plaintiffs.



4. The representation as “Vanilla” is false, deceptive and misleading because the Product contains fake, artificial vanilla which provides the vanilla taste, and the amount of real vanilla, if any, is trace or *de minimis*.

5. Vanilla (*Vanilla planifolia* Andrews and *Vanilla tahitensis* Moore) comes from an orchid plant that originated in Mexico where it was first cultivated.

6. The vanilla orchid produces a fruit pod, the vanilla bean, which is the raw material for true vanilla flavorings.

7. The vanilla bean is not consumed by itself – it is heated in the sun for weeks until being soaked in alcohol solution and its flavor constituents extracted (vanilla extract).

8. An example of the compounds which provide vanilla's flavor are shown below in a sample of vanilla extract.

MS Scan #	Area Integration	Peak Assignment	Peak Area %
67	16132	hexanal	0.0206
71	16235	butanediol isomer	0.0207
81	57370	butanediol isomer	0.0732
103	36387	3-methylbutyric acid	0.0464
115	33053	furfural	0.0422
141	27408	butanal, diethyl acetal	0.0350
262	18390	3-methylbutanal, diethyl acetal	0.0235
281	25224	hexanoic acid	0.0322
289	2729	methyl furfural	0.0035
299	52183	phenol + trace of benzaldehyde	0.0665
349	2385	1H-pyrrole-2-carboxaldehyde	0.0030
379	47287	limonene + benzyl alcohol	0.0603
397	13835	heptanoic acid	0.0176
409	31102	gamma-hexalactone	0.0397
415	19338	p-cresol	0.0247
425	4470	hexanal, diethyl acetal	0.0057
443	287479	guaiacol	0.3666
453	5947	nonanal	0.0076
477	10000	phenylethyl alcohol	0.0128
496	112067	?	0.1429
505	44668	benzoic acid + octanoic acid	0.0570
522	4551	diethyl succinate	0.0058
536	2461	ethyl benzoate	0.0031
544	11769	1,2-benzenediol	0.0150
555	145356	2-methoxy-4-methylphenol	0.1854
567	2537	methyl salicylate	0.0032
587	8552	hydroxy methyl furfural (HMF)	0.0109
594	5555	benzeneacetic acid	0.0071
605	101562	nonanoic acid	0.1295
624	6802	hydroquinone	0.0087
631	3864	4-methoxybenzaldehyde (p-anisaldehyde)	0.0049
642	6356	ethyl nonanoate	0.0081
653	53264	4-methoxybenzyl alcohol (p-anisyl alcohol)	0.0679
676	14481	cinnamyl alcohol	0.0185
685	16094	3-hydroxybenzyl alcohol	0.0205
718	12188570	3-hydroxybenzaldehyde + 4-ethoxymethylphenol	15.5440
751	122634	methyl cinnamate	0.1564
759	60715743	vanillin	77.4301
796	90669	methyl-p-methoxybenzoate (methyl paraben)	0.1156
809	2228588	vanillyl ethyl ether + trace of 4-hydroxy-3-methoxybenzyl alcohol	2.8421
832	224829	p-hydroxybenzoic acid	0.2867
839	37335	acetovanillone	0.0476
892	950342	vanillic acid	1.2120
909	405589	3,4-dihydroxybenzaldehyde	0.5172
935	82429	3,4-dihydroxy-5-methoxybenzaldehyde	0.1051
954	6212	ethyl homovanillate	0.0079
975	78148	syringaldehyde	0.0997
1266	14130	ethyl palmitate	0.0180
1518	21477	ethyl linoleate	0.0274
<b>78413588 Total</b>			<b>100.0000</b>

9. While the main flavor compound of vanilla is vanillin (MS Scan # 759, 77.4301 Peak Area %), vanilla's unique flavor is due to over 200 compounds scientists have identified, including volatile constituents such as acids, ethers, alcohols, acetals, heterocyclics, phenolics, hydrocarbons, esters and carbonyls.

10. Methyl cinnamate (MS Scan # 751) and p-cresol (MS Scan # 415) provide cinnamon and creamy flavor notes to vanilla.

11. Other compounds present in relatively significant amounts include acetovanillone, cinnamyl alcohol, guaiacol, p-cresol, p-hydroxybenzoic acid (MS Scan # 832, 0.2867), vanillic acid (MS Scan # 892, 1.2120) and vanillyl ethyl ether.

12. The popularity of vanilla in the 19<sup>th</sup> century led to the isolation of the vanillin molecule from vanilla, which became the first artificial flavor.

13. This availability of low-cost vanillin resulted in companies adulterating foods purporting to contain vanilla, by either including no vanilla or a trace or *de minimis* amount, boosted by added synthetic vanillin.

14. However, vanillin separated from the rest of the vanilla bean it lacked the other components of vanilla's flavor.

15. Consumer and industry groups have long sought to prevent this deception.

16. The earliest efforts to prevent fraud in vanilla products was the U.S. Pharmacopeia standard, which required a specific weight of vanilla beans as the source for vanilla extract.

17. The focus was on the weight of actual vanilla beans, because this would prevent companies from adding vanillin to a small amount of vanilla beans.

18. Consumer deception continued into the 20<sup>th</sup> century, with government entities regularly penalizing companies that deceived consumers by labeled their products and foods as

“vanilla” but were little more than vanillin with caramel coloring.

19. Congress took note of this consumer deception, and directed the Food and Drug Administration (“FDA”) to establish standards to prevent the marketing of foods from which traditional constituents were removed and new or different (often cheaper and artificial) ingredients were substituted.

20. Vanilla was one of these foods, and regulations were enacted which prevented vanillin from being added to vanilla without disclosing this fact to consumers.

21. For over fifty (50) years, companies’ adherence to labeling foods containing vanillin as artificially flavored gave consumers confidence to trust what was on a label.

22. When a food was labeled as “vanilla” without qualification, it was understood by consumers that the flavoring was only from the ingredient of vanilla beans.

23. These regulations effectively established custom and practice in the so that consumers’ experience has primed them to infer from a product’s labeling whether the flavor source is entirely from the characterizing vanilla bean ingredient or not.

24. In early 2018, in response to reports of a surge in fraudulent vanilla flavored foods, the flavor industry – The Flavor and Extract Manufacturers Association of the United States or “FEMA” – urged companies to return to truthfully labeling vanilla foods so consumers would not be misled by artificial vanilla flavors where foods were labeled only with “vanilla.” See John B. Hallagan and Joanna Drake, FEMA, “[Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.](#),” *Perfumer & Flavorist*, Vol. 43 at p. 46, Apr. 25, 2018 (“Hallagan & Drake”).<sup>2</sup>

25. Based on the term “Vanilla” and the absence of any qualifying terms, reasonable

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<sup>2</sup> Hallagan and Drake, “There are many current examples of food products that are labeled as ‘vanilla’ that are clearly mislabeled and therefore in violation of FDA regulations.” FEMA’s *cri de coeur* was not completely magnanimous. It presently enjoys a special relationship with the FDA whereby its committee is responsible for certifying new food ingredients are safe for consumption. If companies flout the regulations, FEMA’s status would be undermined.

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