

Sheehan & Associates, P.C.
Spencer Sheehan
60 Cuttermill Rd Ste 409
Great Neck, NY 11021-3104
Telephone: (516) 268-7080
spencer@spencersheehan.com

United States District Court
Eastern District of New York

1:21-cv-00443

Michael Fleischer, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

Aldi Inc.,

Defendant

Complaint

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

1. Aldi Inc. (“defendant”) manufactures, distributes, markets, labels and sells “Smoked White Cheddar – Deli Sliced Cheese” (“Product”) to consumers from its over 2,000 grocery stores in the United States.



2. Smoking is a processing method to preserve or improve the flavor of food by exposing it to smoke, usually from burning wood.
3. The drying action of the smoke and the different phenol compounds present in wood smoke helps to preserve the protein-rich foods such as meat, cheese and fish.
4. The origins of smoking date to prehistory, as nomadic peoples experimented with fire and primitive cheese products.

5. The earliest written records of smoked cheese comes from Roman times, when an owner of a cheese shop was forced to share space in the Roman market with a baker.

6. It was observed that the baker's wood burning fire gave a distinct flavor to the cheese which varied based on the type of wood that was used.

7. For example, hickory wood chips – from deciduous hardwood trees of the genus *Carya* – are often used for providing hearty yet sweet flavors to cheese and meat (“hickory”).

8. Pecan wood, a type of hickory, gives cheese a spicy and nutty taste.

9. Oak provides smoked flavors of moderate intensity, between fruit woods and hickory.

10. While the popularity of smoking decreased in the mid-20th century due to the introduction of “convenient” chemical preservatives, the last two decades have seen a resurgence in smoked foods, as consumers embrace foods made without advanced chemistry and synthetic ingredients.

11. According to reports out of Wisconsin, the capital of the nation's cheese production, the “volume on the smoked cheeses just continues to grow every year. People are seeking bigger flavors, bolder flavors, deeper flavors.”¹

12. Cheese industry observers “say smoked cheeses are on the rise, stoked by general excitement about bacon and other smoked foods.”²

13. The alternative to using real wood to smoke cheese is using a “smoke flavor,” which is “smoke condensed into a liquid form.”³

¹ Kimberly L. Jackson, [Smoked cheese: Growth stoked by demand for bolder flavors](#), Newark Star-Ledger, Dec 30, 2014, Updated Mar 29, 2019.

² *Id.*

³ Matthew Sedacca, [Liquid Smoke: The History Behind a Divisive Culinary Shortcut – Barbecue's love/hate relationship with the manufactured flavor](#), Eater.com, Jun 15, 2016.

14. While this development made it more convenient to enjoy “smoked” foods, it fails to supply the rich, layered taste provided by phenols and other odor-active compounds present when a food is smoked.

15. Liquid smoke flavor also contains numerous additives and has been associated with detrimental health impacts.

16. Whether a food is flavored by “liquid smoke flavor” or from being smoked is information consumers rely on when making quick purchasing decisions at the grocery store.

17. They will look at the food’s front label and see the name of the food, i.e., Smoked White Cheddar Cheese, and expect they are buying cheddar cheese which has been smoked. 21 C.F.R. § 101.3(b)(2) (requiring front label to state “common or usual name” of a food).

18. Where a food is labeled as having a main flavor, consumers expect to be told basic information on the front of the product about the source of that flavor. 21 C.F.R. § 101.22(i)(1).

19. This information includes whether (1) a food has flavor from the “real” thing, i.e., being smoked, (2) the product contains added flavor *from* the named process (or flavor) even though it was not subject to that process, i.e., natural smoked flavor and (3) the flavor come from artificial, synthetic sources, i.e., pyroligneous acid or artificial smoke flavor. 21 C.F.R. § 101.22(i); 21 C.F.R. § 101.22(h)(6).

20. These flavor regulations have established custom and practice so that consumers’ experience primed them to infer from a product’s labeling whether a flavor was entirely from the characterizing ingredients or not.

21. Most foods contain disclosures such as “naturally flavored,” “other natural flavors” or “artificially flavored.”

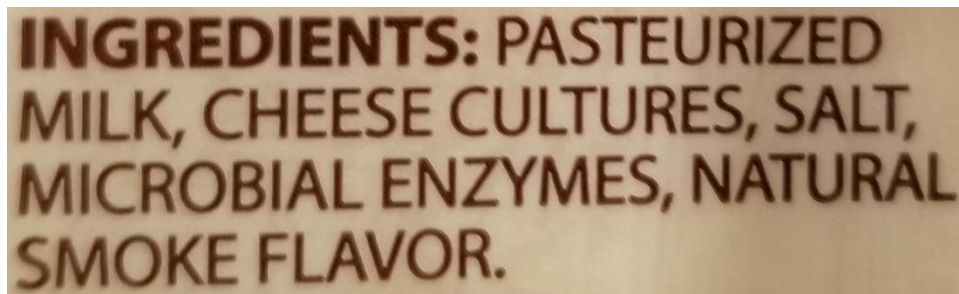
22. “The rule [21 C.F.R. § 101.22(i)] is premised on the simple notion that consumers

value ‘the real thing’ versus a close substitute and should be able to rely on the label to readily distinguish between the two. This consumer protection objective is relevant to taste claims conveyed in advertising as well.”⁴

23. Consumers prefer foods that are flavored from an ingredient or a natural production process, instead of by the essential oil, captured and refined “liquid smoke” and extractives – made in a laboratory – for reasons including nutrition, health and the avoidance of additives and highly processed ingredients.⁵

24. Since the food is labeled as “Smoked White Cheddar Cheese,” consumers expect its smoked flavor is from being smoked over wood chips.

25. However, the Product’s smoked flavor is not from being smoked over wood chips, but from added “liquid smoke” flavor, identified as “natural smoke flavor” on the ingredient list.



INGREDIENTS: PASTEURIZED MILK, CHEESE CULTURES, SALT, MICROBIAL ENZYMES, NATURAL SMOKE FLAVOR.

26. Consumers are misled because the front label fails to tell them what the Product is – “Natural Smoke Flavored White Cheddar Cheese” – in violation of the requirements of federal and state law. 21 U.S.C. § 343(i); 21 C.F.R. § 101.22(i)(1)(i).

27. The FDA has warned companies that fail to accurately inform consumers of foods

⁴ Steven Steinborn, Hogan & Hartson LLP, [Regulations: Making Taste Claims](#), PreparedFoods.com, August 11, 2006.

⁵ David Andrews, [Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial flavors](#), Environmental Working Group (EWG).

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