

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Justin Chimienti,

Plaintiff,

vs.

Wendy's International, LLC, and
McDonald's Corporation.

Defendants.

Case No.: 1:22-cv-02880

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Justin Chimienti, by and through his undersigned counsel, upon personal knowledge as to himself and upon information and belief as to all other matters, allege as follows:

1. Plaintiff brings this action against defendants Wendy's International, LLC ("Wendy's"), and McDonald's Corporation ("McDonald's"), (together at times referred to herein as "Defendants"), on behalf of himself and all other similarly situated individuals who purchased a Wendy's or McDonald's menu item based on false and misleading advertising concerning the size of the beef patty and/or the amount of ingredients or toppings contained in said menu item.

FACTUAL ALLEGATIONS

2. This is a class action against Wendy's and McDonald's for unfair and deceptive trade practices concerning the sale of certain falsely advertised menu items.

Wendy's Materially Overstates the Size of Its Beef Patties and Toppings

3. Wendy's advertises its burgers as large burgers compared to competitors and containing thick and juicy beef patties stuffed with toppings to make it appear that the burgers are substantially larger in size than the actual burger served to customers.

4. For example, Wendy's currently represents that the Bourbon Bacon Cheeseburger looks as follows on its website and store menu ordering boards:



See <https://order.wendys.com/product/31298/bourbon-bacon-cheeseburger>.

5. The commercial for the Bourbon Bacon Cheeseburger displays the burger as follows:



See <https://youtu.be/hFyOUTS3JBU?t=2>.

6. However, the Bourbon Bacon Cheeseburger that is regularly served to customers looks as follows:



See <https://youtu.be/Hf10LoEzR7g?t=162>.

7. Wendy's materially overstates the amount of toppings on the Bourbon Bacon Cheeseburger and materially overstates the thickness of the beef patty contained therein.

8. The beef patties that Wendy's uses for its advertisements are not fully cooked to make it appear that they are approximately 15-20% larger than the beef patties that are actually served to customers.

9. In general, meat shrinks 25% when cooked.

10. A food stylist for Wendy's has admitted that she tricks and deceives customers by using undercooked patties in burger advertisements.

11. "Food stylist Ellie Stern says she prefers to use burgers that are undercooked in photos. That ensures a big, plump patty, whereas fully cooked burgers tend to shrink and look less appetizing." See <https://www.moneytalksnews.com/how-they-make-fast-food-look-good/>.

12. According to Ellie Stern's website, her recent clients include Wendy's and McDonald's. See <https://www.elliestern.com/about/>.

13. Wendy's materially overstates the amount of toppings and the size of the beef patties for nearly every menu item in its current advertisements, including the Big Bacon Cheddar Cheeseburger, the Big Bacon Cheddar Cheeseburger Double, the Big Bacon Cheddar Cheeseburger Triple, the Bourbon Bacon Cheeseburger, the Bourbon Bacon Cheeseburger Double, the Bourbon Bacon Cheeseburger Triple, Dave's Single, Dave's Double, Dave's Triple, the Baconator, the Son of Baconator, the Big Bacon Classic, the Big Bacon Classic Double, the Big Bacon Classic Triple, the Bacon Double Stack, the Jr. Bacon Cheeseburger,

the Jr. Cheeseburger Deluxe, the Jr. Cheeseburger, and the Double Stack (each of these items are referred to at times herein as an “Overstated Wendy’s Menu Item”).

14. For example, the current advertisement for the Dave’s Single burger on Wendy’s website and store menu ordering boards compared to the actual burger served to customers is as follows:

ACTUAL DAVE’S SINGLE



CURRENT ADVERTISEMENT



See <https://youtu.be/Q-leCr5bjYU?t=86;>
<https://order.wendys.com/product/30000/daves-single>.

15. Many food reviewers have recently criticized Wendy’s for serving smaller menu items than advertised.

16. For example, a food reviewer, with a Youtube channel named Natalino Reviews, compared the Bourbon Bacon Cheeseburger to the advertisement and stated “this don’t look like the picture....Why is this burger so small?....It looks so big in the picture.” See <https://youtu.be/Hf10LoEzR7g?t=106>.

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