

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
CENTRAL ISLIP

Agnita Cheah, individually and on behalf of all  
others similarly situated,

Plaintiff,

- against -

Pepperidge Farm, Incorporated,

Defendant

2:22-cv-03633

Class Action Complaint

Jury Trial Demanded

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

1. Pepperidge Farm, Incorporated (“Defendant”) manufactures, markets, labels and sells dark colored, mottled crackers identified as “Harvest Wheat” under the Pepperidge Farm brand (“Product”).



2. The crackers contain specks of what appear to be grains and are displayed on a stone slap with freshly picked produce and cheese.

3. The representation as “Harvest Wheat” causes consumers to expect it contains a predominant amount of whole grains compared to refined grains.

## **I. CONSUMERS VALUE WHOLE GRAINS**

4. Consumers increasingly prefer whole grains to non-whole, or refined, grains.

5. Whole grains are nutritionally superior to non-whole grains because they include the entire grain seed, consisting of the endosperm, bran, and germ.

6. The bran and germ contain important nutrients like fiber, vitamins, minerals, and antioxidants, such as iron, zinc, folate, magnesium, thiamin, niacin, selenium, riboflavin, manganese, copper, vitamin A, and vitamin B6.

7. In contrast, “non-whole grains” or “refined grains” have been processed to remove the bran and germ, thereby removing the fiber and most other nutrients.

8. Most refined grains are enriched, a process that adds back some of the previously removed iron and B vitamins, such as thiamin, riboflavin, niacin, and folic acid.

9. Other nutrients, including fiber, vitamin E, vitamin B6, vitamin K, magnesium, manganese, potassium, phosphorus, copper, calcium, and selenium, are not added back.

10. Where flour is made of refined grains, which only contains the endosperm and mainly starch, it is white in color (“white flour”).

## **II. CONSUMERS EXPECT FIBER FROM PRODUCTS REPRESENTED AS WHOLE GRAIN**

11. The 2015-2020 Dietary Guidelines for Americans recommend that at least half of all grains eaten be whole grains.

12. The Dietary Guidelines recommend consuming 48g of whole grains and 28g of fiber per day.

13. The Dietary Guidelines promote whole grains as an important source of fiber.

14. 87% of consumers try to consume more whole grains and 92% try to get more fiber.
15. Research proves that consumers seek whole grains because they want more fiber.
16. In surveys, more than 60% of consumers stated they want to consume more whole grains to improve their digestive health, which is reflective of a desire to increase fiber intake.
17. Almost 75% of consumers who are presented representations which contain express and implied representations that a product is made with, or contains whole grains, will expect that food to be at least a good source of fiber – 10% of the daily value.
18. Almost 70% of consumers agree with the statement that whole grains are one of the best sources of fiber.
19. 62% of consumers agree that foods made from whole grains are one of the best sources of fiber.
20. 46% of consumers rely on foods with whole grains for their daily fiber needs.
21. Based on the proven connection with fiber, consumers expect foods represented – directly or indirectly – as whole grain, do more than tell consumers a product contains a type of grain ingredient.

### **III. CONSUMER CONFUSION ABOUT WHOLE GRAINS**

22. Despite consumers' desire to consume more whole grains, a recent study in the journal, Public Health Nutrition, concluded that labeling practices stymie these efforts.
23. The study found that the most significant information considered by consumers in comparing foods with different amounts of whole grain was not the ingredient list or nutrition facts, but the front label.
24. When products used terms like “multigrain” or “wheat” on the front label, between thirty to fifty percent of participants believed these foods had more whole grains than products

without such names.

25. According to a food economist and professor at Tufts University, the words used on wheat products can cause consumers to be misled as to the relative amount of whole grains compared to refined grains.

26. For instance, products labeled “multigrain” and “Twelve Grain” by definition contain more than one type of grain.

27. However, consumers expect that besides regular refined grains, the primary grains in those products are whole grains.

28. Instead, they are mostly refined grains with a *de minimis* amount of whole grains.

29. Other potentially misleading terms include “stoned wheat” or “stoned ground grain.”

30. These terms have no formal definition about how much whole grain they contain.

31. However, the word “stoned” implies a primitive form of processing, i.e., with stones.

32. This is in contrast to the advanced technology and machinery used to create refined grains, or white flour.

33. The result is that consumers expect grain products described and promoted with the word “stone[d]” to contain mostly whole grains, because they are presumed to be less processed than refined grains.

34. Another term which contributed to consumer misunderstanding about whole grains is “honey wheat.”

35. The Public Health Nutrition study found that 43% of respondents believed at least half to all of the grains in a “honey wheat” product was whole grains.<sup>1</sup>

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<sup>1</sup> Parke Wilde, et al. “Consumer confusion about wholegrain content and healthfulness in product labels: a discrete choice experiment and comprehension assessment.” *Public Health Nutrition* 23.18 (2020): 3324-3331.

36. However, the amount of whole grains was negligible.

37. Consumers believed “honey wheat” was a type of wheat, and the term “honey” referred to its amber color, darker than regular wheat.

38. Where grains and wheat are described with the term “harvest,” i.e., “harvest grain” and “harvest wheat,” consumers expect a product which is mostly whole grains.

39. This is because the word “harvest” is defined and understood as “the process or period of gathering in crops.”

40. By emphasizing the “harvest” in “harvest grain” and “harvest wheat,” consumers expect that the wheat and grains they are consuming is closer in form to its original “harvest” state than after it is fully refined.

41. After all, all grains are initially harvested, but it is their subsequent refining – the removal of the bran and germ – that strips away the nutrients of harvested grains.

42. The public health advocacy group, Center for Science in the Public Interest (“CSPI”), noted that terms such as “harvest grain” was misleading to consumers, who expected it meant a product contained a predominant amount of whole grains.<sup>2</sup>

43. One food and nutrition professor stated, “Even people with advanced degrees cannot figure out how much whole grain” is in products represented to consumers as whole grain.

44. The FDA and Federal Trade Commission (“FTC”) have cautioned companies against misleading consumers as to the relative amounts of whole grains in foods.

45. Both agencies – based on numerous studies and research – know that when consumers are presented with products that reference or allude to whole grains on the front label, consumers will expect those foods to get at least half of its grain content from whole grain.

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<sup>2</sup> CSPI, Comments to 2006 FDA Draft Guidance on Whole Grain Labeling.

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