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United States District Court
Southern District of New York

1:20-cv-09012

Hawa Kamara, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Pepperidge Farm, Incorporated,

Defendant

Class Action Complaint

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

1. Pepperidge Farm, Incorporated (“defendant”) manufactures, distributes, markets, labels and sells crackers purported to be made only with butter as a shortening ingredient under its Pepperidge Farm brand (“Product”).

2. The Product is available to consumers from retail and online stores of third-parties and is sold in sizes including boxes of 9.75 OZ and the crackers are prominently and exclusively identified and described as “Golden Butter – Crackers [lower left corner]” and “distinctively delicious crackers.”



3. Consumers prefer butter to chemically produced “vegetable” oils when baking for reasons including taste, health and avoidance of highly processed artificial substitutes for butter.
4. Butter costs more than vegetable oil alternatives, like soybean, palm or canola oil.
5. Where a food is labeled “Butter _____” or uses the word “butter” in conjunction with its name, reasonable consumers will expect all of its shortening ingredient to be

butter.¹

6. The representations as “All Butter Loaf Cake” are misleading because butter is not the sole shortening ingredient in the Product, as shown by the small print of the ingredient list.

MADE FROM: ENRICHED WHEAT FLOUR (FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), BUTTER (MILK), VEGETABLE OILS (CANOLA, SUNFLOWER AND/OR SOYBEAN), SUGAR, INVERT SYRUP, CONTAINS 2% OR LESS OF: SALT, MALTED BARLEY FLOUR, BAKING SODA, MONOCALCIUM PHOSPHATE.

MADE FROM: ENRICHED WHEAT FLOUR (FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), BUTTER (MILK), VEGETABLE OILS (CANOLA, SUNFLOWER AND/OR SOYBEAN), SUGAR, INVERT SYRUP, CONTAINS 2% OR LESS OF: SALT, MALTED BARLEY FLOUR, BAKING SODA, MONOCALCIUM PHOSPHATE

7. Though the Product contains butter, it also contains vegetable oils, as shortening ingredients.

8. Defendant’s branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud plaintiff and consumers.

9. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers like

¹ Compliance Policy Guide (“CPG”), [Sec 505.200. “Butter” Featured in Product Name](#), Center for Food Safety and Applied Nutrition, Office of Regulatory Affairs, March 1988 (“If the product contains both butter and shortening but a sufficient amount of butter to give a characteristic butter flavor to the product, an appropriate name would be ‘butter flavored _____’... if the product contains any artificial butter flavor it would have to be labeled in compliance with 21 CFR 101.22(i)(2).”).

plaintiff.

10. The value of the Product that plaintiff purchased and consumed was materially less than its value as represented by defendant.

11. Had plaintiff and class members known the truth, they would not have bought the Product or would have paid less for them.

12. As a result of the false and misleading labeling, the Product is an sold at a premium price, approximately no less than \$2.64 for 9.75 OZ, excluding tax, compared to other similar products represented in a non-misleading way, and higher than the price of the Product if it were represented in a non-misleading way.

Jurisdiction and Venue

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

14. 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).

15. Plaintiff Hawa Kamara is a citizen of New York.

16. Defendant Pepperidge Farm, Incorporated, is a Connecticut corporation with a principal place of business in Norwalk, Fairfield County, Connecticut and is a citizen of Connecticut.

17. “Minimal diversity” exists because plaintiff Hawa Kamara and defendant are citizens of different states.

18. Upon information and belief, sales of the Product in New York exceed \$5 million per year, exclusive of interest and costs.

19. Venue is proper in this judicial district because a substantial part of the events or omissions giving rise to the claim occurred in this District, *viz*, the decision of plaintiff to purchase the Product and the misleading representations and/or their recognition as such.

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

Parties

21. Plaintiff Hawa Kamara is a citizen of Bronx, Bronx County, New York.

22. Defendant Pepperidge Farm, Incorporated is a Connecticut corporation with a principal place of business in Norwalk, Connecticut, Fairfield County and is a citizen of Connecticut.

23. During the relevant statutes of limitations, plaintiff purchased the Product within her district and/or State for personal and household consumption and/or use in reliance on the representations of the Product.

24. Plaintiff Hawa Kamara purchased the Product on one or more occasions, during the relevant period, including 2019 and 2020, at stores including but not necessarily limited to, Target, 112 W 34th St, New York, NY 10120, and among other times, purchased the Product between June and October 2020.

25. Plaintiff bought the Product at or exceeding the above-referenced price because she liked the product for its intended use, and expected it to contain only butter as a shortening ingredient due to the product name and description prominently displayed on the front label.

26. Plaintiff was deceived by and relied upon the Product's deceptive labeling.

27. Plaintiff would not have purchased the Product in the absence of Defendant's misrepresentations and omissions.

28. The Product was worth less than what Plaintiff paid for it and she would not have

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