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United States District Court
Southern District of New York

1:20-cv-09108

James Prater, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

Arizona Beverages USA LLC,

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. Arizona Beverages USA LLC ("defendant") manufactures, distributes, markets, labels and sells iced tea and lemonade blends ("Arnold Palmers") purporting to be "Lite" – under its Arizona brand ("Product").

2. The Product is available to consumers from retail and online stores of third-parties and is sold in bottles of various sizes including 20 OZ.

3. The relevant front label statements include "Half & Half," "Iced Tea Lemonade" "Arnold Palmer" and "Lite."

4. The terms "light" and "lite" in the context of food descriptions are used interchangeably.

5. Though "lite" may connote a wide variety of meanings, surveys have shown that consumers believe the term means that the caloric level has been reduced significantly.

6. The FDA established nutrient content claims to prevent consumers being deceived by a product when the terms used to describe the food are not consistent with the message they convey.

7. "Lite" is a term which (1) is primarily a relative claim that compares one food to another food and (2) is often used to directly describe the food itself in a way in which an absolute term or claim is used, i.e., low in calories and/or sugar. 21 C.F.R. § 101.56.

8. The term "Lite" is misleading because it gives the impression consumption of the Product, when compared to other foods in its class, contributes substantially to the reduction of calories in the diet.

9. Relative claims are required to have certain additional information, including "the identity of the reference food and the percentage (or fraction) of the amount of the nutrient in the reference food by which the nutrient in the labeled food differs (e.g., "50 percent less fat than (reference food)" or "1/3 fewer calories than (reference food)')." 21 C.F.R. § 101.13(j)(2)(i).

10. Consumers will expect the Product to be lower in calories than it is.

11. According to the requirements for nutrient content claims, the Product is required to be reduced in calories by at least one-third when compared to an appropriate reference food.

12. A "lite" claim is required to indicate a reference food, defined as "representative of the type of food that includes the product that bears the claim…The nutrient value for the reference food shall be representative of a broad base of foods of that type; e.g., a value in a representative, valid data base." 21 C.F.R. § 101.13(j)(1)(ii)(A).

13. However, the Product has so many calories and grams of sugar per serving size that it would be difficult to fathom a reference food which would have one-third more calories per reference amount customarily consumed.

14. Far from being "Lite" and low in calories, a 12-ounce bottle has 130 calories, 10 less than a can (12 OZ) of Coca Cola.

15. In other words, a reference food likely does not exist for the Product because it contains an absolute, high number of calories per RACC.

16. In purchasing and consuming the Product, consumers are misled to believe it is lower in calories than similar items in the marketplace, when it is not.

17. Defendant's branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud plaintiffs and consumers.

18. 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 plaintiffs.

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

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

21. As a result of the false and misleading labeling, the Product is an sold at a premium price, approximately no less than $1.19 for 12 OZ, excluding tax, compared to other similar products represented in a non-misleading way, and higher than the price of the Product if represented in a non-misleading way.

Jurisdiction and Venue

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

23. 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).

24. Plaintiff James Prater is a citizen of New York.

25. Defendant is a New York limited liability company with a principal place of business in Woodbury, New York and at least one member, upon information and belief, is a citizen of a state other than New York.

26. Minimal diversity exists because plaintiff seeks to represent citizens of New York, New Jersey, Maryland, Ohio and Pennsylvania who purchased the Product. *Gonzales v. Agway Energy Services, LLC*, No. 18-cv-235 (N.D.N.Y. Oct. 22, 2018) ("At this time, the allegation that some class member maintains diversity with Defendant is sufficient to establish minimal diversity under CAFA" and citing 28 U.S.C. § 1332(d)(1)(D) "'the term 'class members' means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.").

27. The "local controversy" exception to diversity jurisdiction does not apply because less than two-thirds of the putative class members are citizens of New York.

28. The "home state controversy" exception to diversity jurisdiction does not apply because less than two-thirds of the members of all proposed plaintiff classes are citizens of New York.

29. Upon information and belief, sales of the Product in New York exceed $5 million per year, exclusive of interest and costs and damages exceed this amount.

30. 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.

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