

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM RANDOLPH,
individually and on behalf of
a class of similarly situated
persons,

Plaintiffs,

-v-

MONDELÉZ GLOBAL LLC,
Defendant.

21-cv-10858 (JSR)

OPINION AND ORDER

JED S. RAKOFF, U.S.D.J.:

This is a putative class action alleging New York state law deceptive practices, false advertising, and unlawful enrichment claims concerning the labeling of the snack cracker "Stoned Wheat Thins." Plaintiffs allege that the box misleadingly suggests to consumers that the crackers are made with "stoneground whole wheat," for which consumers are willing to pay a premium, when in fact unbleached enriched white flour milled on steel rollers is the predominant ingredient.

The Second Circuit held in Mantikas v. Kellogg Co. that a plaintiff states a claim under New York's deceptive practices and false advertising statutes where a food package features the term "whole grain" and "the grain content is [not] entirely or at least predominantly whole grain." 910 F.3d 633, 637 (2d Cir. 2018). Since Mantikas, a line of snack crackers cases has emerged in this district extending that reasoning to packages of "graham crackers" that are predominantly made with white flour, rather than the coarsely ground

whole-grain flour recommended by Sylvester Graham as the cornerstone of the American diet. See Valcarcel v. Ahold U.S.A., Inc., 2021 WL 6106209, at *1 (S.D.N.Y. Dec. 22, 2021); see also, e.g., Campbell v. Whole Foods Mkt. Grp. Inc., 516 F.Supp. 3d 370 (S.D.N.Y. 2021).

Plaintiffs say this case is the same, but the Court disagrees. Mantikas has established a useful rule that prevents food companies from confusing consumers into thinking that certain crunchy snacks are healthier than they are. The Court now suggests an endpoint to Mantikas's reasoning: where a package nowhere uses the phrase "whole grain" or any synonym or type thereof, the Court will not infer that the reasonable consumer shopping reasonably would mistake the product for being predominantly whole grain, absent specific allegations to the contrary. And since the amended complaint nowhere makes factual allegations that give rise to a plausible inference that consumers reasonably interpret the phrase "stoned wheat" to mean that the crackers are made with whole wheat, the motion to dismiss of defendant Mondelēz Global LLC is granted (though without prejudice to amendment).

I. Factual Background

The packaging for "Stoned Wheat Thins" snack crackers includes an image of a wheat field below a blue and orange background, which is overlaid with a red oval containing large, white letters reading "STONED WHEAT THINS." First Amended Complaint, ECF 16 (FAC) ¶ 13.¹

¹ There are three varieties of crackers at issue: "Stoned Wheat Thins," "Mini Stoned Wheat Thins," and "Stoned Wheat Thins Low Sodium." FAC ¶¶ 13-15. There is no material difference between the packaging for the three varieties, so the Court will refer throughout this

Below that, in smaller, thin black letters, it reads "WHEAT CRACKERS."
Id. The box also features an image of a cracker topped with thin apple slices and cheddar cheese and garnished with an unidentified green herb. Id. Nowhere does the package mention "whole wheat" or the word "stoneground."



Plaintiffs allege that the box leads the reasonable consumer to believe that stone-ground whole wheat flour is the predominant ingredient in the crackers. FAC ¶ 16. In fact, as the ingredients list discloses, the predominant ingredient is "unbleached enriched flour," and the second ingredient is "cracked wheat." See ECF 22-1 (label). William Randolph, the named plaintiff of a putative class, alleges

opinion to the original Stoned Wheat Thins box, which is inserted below. The complaint itself has images of the three boxes, but those images do not include the ingredients lists. Id. Mondelez correctly argues that the full labels, provided via a defendant's declaration, are cognizable on a motion to dismiss claims under GBL §§ 349 & 350, because the full packaging is integral to the complaint and incorporated by reference. See ECF 22-1, 22-2, 22-3 (Labels).

that he has purchased Stoned Wheat Thins near his home on the Upper West Side on a bi-monthly basis from the beginning of the class period December 18, 2015 to 2019, "believing that the main ingredient of the Product was stoneground whole wheat flour." FAC ¶ 1.²

The complaint alleges that stone ground flour is more nutritious than flour produced on conventional steel roller mills, which expose the flour to high temperatures. FAC ¶¶ 6-10. The complaint further alleges that the market for stone-ground whole wheat has grown in recent years, and that consumers are willing to pay a premium for stone-ground whole wheat products because of perceived health benefits. FAC ¶¶ 11-12. The complaint therefore claims that purchasers of Stoned Wheat Thins received a product that was worth less than what the packaging led them to believe they paid for. FAC ¶¶ 24-31.

The complaint brings three claims under New York law. Plaintiffs sue under both General Business Law §§ 349 and 350, which respectively prohibit "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" and "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service." FAC ¶¶ 39-57. It also brings a claim for unjust enrichment under New York common law. FAC ¶¶ 58-61.

² Unless otherwise specified, all internal quotation marks, citations, elisions, alterations, and emphases are removed from all sources cited herein.

II. Whether the Label is Misleading

"To successfully assert a claim under either section [349 or 350], 'a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice.'" Orlander v. Staples, Inc., 802 F.3d 289, 300 (2d Cir. 2015) (quoting Koch v. Acker, Merrall & Condit Co., 967 N.E.2d 675, 675-67 (N.Y. 2012)). "To state a claim for false advertising or deceptive business practices under New York ... law, a plaintiff must plausibly allege that the deceptive conduct was 'likely to mislead a reasonable consumer acting reasonably under the circumstances.'" Mantikas v. Kellogg Co., 910 F.3d 633, 636 (2d Cir. 2018).

Mantikas concerned "Cheez-It" crackers labeled as "whole grain" on the box. Id. at 635. It held, in sum, that when a label prominently claims a product is "whole grain" or "made with whole grain," then "the reasonable expectations communicated" are that "the grain content is entirely or at least predominantly whole grain." Id. at 637. The labeling is therefore deceptive if white flour is the predominant ingredient, even if the ingredients list discloses that whole grain flour is also used as a lesser component or the specific amount of whole grain per serving is disclosed. Id. Mantikas explains why disclosure of a product's white flour content on the mandatory ingredients list does not cure a misimpression about whole grain content created by the front label:

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