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United States District Court
Southern District of New York

7:20-cv-10273

John Salony, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

VMG Partners, LLC,

Defendant

Class Action Complaint

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

1. VMG Partners, LLC (“defendant”) manufactures, distributes, markets, labels and sells PopChips Ridges – Cheddar & Sour Cream (“Product”) to consumers from retail and online stores in packaging of various sizes.

2. The Product makes representations with respect to its “primary recognizable flavor(s),” cheddar cheese and sour cream, through the wedge of cheddar and bowl of sour cream, the words “Cheddar & Sour Cream” and the orange color pattern on the label. *See* 21 C.F.R. § 101.22(i).



3. Consumers expect the designation of a food's flavor to tell them information about the source of the flavor, such as (1) how much is from the named flavor, i.e., cheddar cheese and sour cream, (2) does the product contain flavor *from* the named flavor, i.e., cheddar flavor, (3) does the named flavor come from natural sources other than the food ingredient, i.e., cheddar flavor from swiss cheese and (4) does the flavor come from artificial, synthetic sources, made in an artificial process, i.e., cheddar flavor derived from petroleum chemicals. 21 C.F.R. § 101.22(i).

4. "The rule [21 C.F.R. § 101.22(i)] is premised on the simple notion that consumers

value ‘the real thing’ versus a close substitute and should be able to rely on the label to readily distinguish between the two. This consumer protection objective is relevant to taste claims conveyed in advertising as well.”¹

5. These flavor regulations have established custom and practice so that consumers’ experience primed them to infer from a product’s labeling whether a flavor was entirely from the characterizing ingredients or not.

6. Most foods contain disclosures such as “naturally flavored,” “other natural flavors” or “artificially flavored.”

7. The absence of these terms causes consumers to infer the food has a sufficient amount of the characterizing ingredients to flavor the food. 21 C.F.R. § 101.22(i)(1).

8. The Product’s front label contains no flavor qualifications, which causes consumers to expect all the flavor comes from cheddar cheese and sour cream.

9. This representation is misleading because the cheddar and sour cream flavor does not come only from cheddar cheese and sour cream and has less (or none) of these ingredients than expected by consumers.

10. Consumers prefer foods that are flavored by actual ingredients, such as cheddar cheese and sour cream, as opposed to cheddar and sour cream flavor.

11. Even “natural cheddar” and “natural sour cream” flavors are the distilled and extracted flavor components of the respective foods and are highly processed in laboratories with complex methods and contain numerous additives and enhancers.

12. Consumers are seeking products which obtain their flavor from their characterizing food ingredients, i.e., strawberry shortcake with strawberries or natural strawberry flavor from

¹ Steven Steinborn, Hogan & Hartson LLP, [Regulations: Making Taste Claims](#), PreparedFoods.com, August 11, 2006.

strawberries as opposed to strawberry flavor synthesized from cherries.²

13. The Product's representations that it is flavored only by cheddar cheese and sour cream is misleading.

14. Though the Product contains *some* cheddar cheese, it also contains added cheddar cheese flavor, indicated by the listing of "Natural Flavors."



INGREDIENTS: DRIED POTATO, YELLOW CORN (DEGERMED), SUNFLOWER AND/OR SAFFLOWER OIL, SEASONING (WHEY POWDER, BUTTERMILK POWDER, CORN MALTODEXTRIN, SALT, DRIED BUTTER [CREAM, SALT], CHEDDAR CHEESE [MILK, CULTURES, SALT, ENZYMES], AUTOLYZED YEAST EXTRACT, ONION POWDER, NONFAT DRY MILK, NATURAL FLAVORS, ANNATTO [COLOR], GARLIC POWDER, CITRIC ACID, DRIED MILKFAT, PAPRIKA OLEORESIN [COLOR], TURMERIC [COLOR]), RICE FLOUR, POTATO STARCH.

INGREDIENTS: DRIED POTATO, YELLOW CORN (DEGERMED), SUNFLOWER AND/OR SAFFLOWER OIL, SEASONING (WHEY POWDER, BUTTERMILK POWDER, CORN MALTODEXTRIN, SALT, DRIED BUTTER [CREAM, SALT], CHEDDAR CHEESE [MILK, CULTURES, SALT, ENZYMES], AUTOLYZED YEAST EXTRACT, ONION POWDER, NONFAT DRY MILK, NATURAL FLAVORS, ANNATTO [COLOR], GARLIC POWDER, CITRIC ACID, DRIED MILKFAT, PAPRIKA OLEORESIN [COLOR], TURMERIC [COLOR]), RICE FLOUR, AND POTATO STARCH.

15. Based on analysis of the Product, the "Natural Flavors" contains numerous cheddar aroma compounds such as acetic, butyric, caproic, and caprylic acids.

16. These flavors are added because the amount of cheddar cheese in the Product is insufficient to independently provide a cheddar taste of the food.

² David Andrews, [Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial flavors](#), Environmental Working Group (EWG).

17. The front label is required to disclose the added cheddar flavoring, with the word “cheddar” preceded by the word “natural,” followed by the word “flavored,” i.e., “natural cheddar flavored” or “cheddar flavored.” 21 C.F.R. § 101.22(i)(1)(i).

18. The Product also contains annatto and turmeric, orange food colorings, which gives consumers the incorrect impression that the Product contains *more* cheddar than it does.

19. The front label also fails to disclose the Product contains no real sour cream, because “sour cream” and its components of “cultured milk” and/or “cultured cream” are not listed on the ingredient list.

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20. Sour cream is a cultured dairy product made by adding lactic acid bacteria to pasteurized milk or cream.

21. This process restores many of the beneficial bacteria that are lost during

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