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United States District Court
Southern District of New York

7:21-cv-01075

Erin Marcinelli, individually and on behalf
of all others similarly situated,

Plaintiff,

- against -

Kraft Heinz Foods Company,

Defendant

Class Action Complaint

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

1. Kraft Heinz Foods Company (“defendant”) manufactures, distributes, markets, labels and sells frozen pizza bagels under the Bagel Bites brand purporting to be made with real mozzarella cheese (“Product”).

2. The relevant representations include “Made With Real Cheese,” the “Real” dairy seal, “Mozzarella Cheese,” “Mini Bagels With Mozzarella Cheese and Tomato Sauce,” “Kosher Dairy” and “7g of Protein Per Serving.”



3. Reasonable consumers understand “pizza” to refer to a combination of tomato sauce, mozzarella cheese and wheat crust.
4. In the context of a “pizza snack” where the crust is replaced with a bagel, consumers will still expect the other two elements – tomato sauce and mozzarella cheese.
5. The Product’s representations are misleading because though it is labeled as containing mozzarella cheese, it actually contains a “Cheese Blend” of “Part-Skim Mozzarella Cheese” and “Modified Food Starch.”

INGREDIENTS: BAGEL HALVES (ENRICHED FLOUR [WHEAT FLOUR, ENZYME, ASCORBIC ACID, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID], WATER, SALT, INVERT CANE SYRUP, YEAST, SOYBEAN OIL), CHEESE BLEND (PART-SKIM MOZZARELLA CHEESE [PART-SKIM MILK, CHEESE CULTURES, SALT, ENZYMES], MODIFIED FOOD STARCH, SKIM MILK), SAUCE (WATER, TOMATO PASTE, INVERT CANE SYRUP, MODIFIED CORN STARCH, SALT, METHYLCELLULOSE, CITRIC ACID, POTASSIUM CHLORIDE, AMMONIUM CHLORIDE, SPICE, YEAST EXTRACT, NATURAL FLAVOR, CALCIUM LACTATE), WATER, INVERT CANE SYRUP.

INGREDIENTS: BAGEL HALVES (ENRICHED FLOUR [WHEAT FLOUR, ENZYME, ASCORBIC ACID, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID], WATER, SALT, INVERT CANE SYRUP, YEAST, SOYBEAN OIL), **CHEESE BLEND** (**PART-SKIM MOZZARELLA CHEESE** [PART-SKIM MILK, CHEESE CULTURES, SALT, ENZYMES], **MODIFIED FOOD STARCH**, SKIM MILK), SAUCE (WATER, TOMATO PASTE, INVERT CANE SYRUP, MODIFIED CORN STARCH, SALT, METHYLCELLULOSE, CITRIC ACID, POTASSIUM CHLORIDE, AMMONIUM CHLORIDE, SPICE, YEAST EXTRACT, NATURAL FLAVOR, CALCIUM LACTATE), WATER, INVERT CANE SYRUP.

6. Mozzarella cheese is a sliceable curd cheese made from cow's milk.
7. Consumers want real mozzarella cheese in pizza because they value (1) its soft, moist texture, (2) its milky, yet tangy taste and (3) its high protein but relatively low calories and sodium compared to other cheeses.
8. Reasonable consumers do not expect a cheese blend with modified food starch where they are expecting to receive *only* mozzarella cheese.¹

¹ Or part-skim mozzarella.

9. Defendant knows consumers want real mozzarella cheese which is why it is highlighted on the front label, with a protein claim (mozzarella is high in protein) and the “Real Dairy” Seal.

10. The “Real” Seal is owned by the National Milk Producers Federation (“NMPF”), which authorizes its use to third parties.

11. According to the website, realseal.com, “When you see the REAL® logo on a product in a store or on a menu in a restaurant, you can trust it’s the real thing, and not a pale imitation.”

12. To use the “Real” seal, a dairy product “must meet the Federal Standards of Identity, which are legal definitions of food products laid out in the Code of Federal Regulations and enforced by the Food and Drug Administration (FDA).”

13. However, the “Real” seal is not permitted, according to the NMPF, where a cheese ingredient uses extenders and fillers such as modified food starch, “vegetable proteins, vegetable oils and commonly imported additives like casein, caseinates and milk protein concentrate (MPC).”²

14. Since consumers are often misled by lower quality “cheese” products, standards exist to ensure a food labeled as or containing mozzarella cheese is what the front label says.

15. According to 21 C.F.R. § 133.155, mozzarella cheese is required to be made from dairy ingredients and can have only a small number of other optional ingredients. 21 C.F.R. § 133.155(a).³

² NMPF, [Who Can Use The REAL® Seal?](#).

³ New York’s labeling regulations are identical to federal regulations.

16. These optional ingredients include additional milk or cream, clotting enzymes, vinegar, coloring, salt or antimycotics. 21 C.F.R. § 133.155(b)(1)-(3).

17. The reason the optional ingredients are limited is to prevent added lower quality ingredients like modified food starch.

18. The result from substituting dairy ingredients with modified food starch is a nutritionally inferior cheese product, technically described as an “imitation.”

19. The reason why companies, including Defendant, add extender and filler ingredients is so they can use less of the more valuable mozzarella cheese in the form of a “cheese blend.”

20. The modified food starch causes the Product to have less nutritional value than if only mozzarella cheese were used, a flat “cardboard-like” taste and a rubbery mouthfeel.

21. Though the term is seldom used anymore, a food is considered an imitation “if it is a substitute for and resembles another food but is nutritionally inferior to that food.” 21 C.F.R. § 101.3(e)(1).

22. The cheese blend with added modified starch substitutes for and resembles mozzarella cheese.

23. However, because the cheese blend lacks the protein of mozzarella cheese, it can and should be described as “imitation mozzarella cheese.”

24. Imitation foods are required to inform consumers of what they are buying through a front label statement, i.e., “Imitation Mozzarella.”

25. The average consumer spends fifteen seconds deciding to purchase a specific product, and consistent, truthful labeling gives them confidence to make quick buying decisions.

26. Consumers are misled because the front label fails to disclose – as required by law – that the Product is made with imitation mozzarella cheese.

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