

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CAITLIN PEYTON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WALMART, INC.,

Defendant.

Civil Action No.: 7:21-cv-05880-VB

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Hon. Vincent L. Briccetti

Plaintiff Caitlin Peyton (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendant Walmart, Inc. (“Defendant”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a putative class action lawsuit on behalf of purchasers of Equate Oil-Free cosmetic products (collectively, the “Oil-Free Products”)¹ against Defendant for harm caused by Defendant’s deceptive, improper or unlawful conduct in the design, marketing, manufacturing, distribution, and/or sale of its Oil-Free Products. The labeling and packaging of the Oil-Free Products contains false and misleading “oil-free” claims (the Oil-Free Claims). This misleads consumers into believing that the Oil-Free Products contain no oil or oil-inclusive ingredients even though the Oil-Free products actually do include oil or oil-inclusive ingredients. By doing

¹ The Equate Oil-Free Products include Equate Beauty Oil Free Facial Moisturizer, Oil-Free Acne Wash, and Oil-Free Eye Makeup Remover.

so, Defendant is able to charge a substantial price premium for its Oil-Free Products on account of the false and misleading Oil-Free Claims.

2. Oil-Free cosmetics are desired by consumers because “oil-free” products purportedly nourish and renew skin without clogging pores, causing breakouts, or making consumers’ skin visibly oily.

3. Defendant has engaged in widespread and deceptive advertising of the Oil-Free Products by claiming they are “oil-free.” However, contrary to Defendant’s representations, the Oil-Free Products do, in fact, contain oil.

4. Plaintiff, the Class, and Subclass Members purchased Oil-Free Products designed, marketed manufactured, distributed, and sold by Defendant as “oil-free.” Further Plaintiff, the Class, and Subclass Members relied to their detriment on Defendant’s representation that the Oil-Free Product are “oil-free.” Plaintiff and Class and Subclass Members would not have paid to purchase Defendant’s Oil-Free Products – or would not have paid as much as they did to purchase them – had they known that they are not, in fact, “oil-free”. Plaintiff and Class and Subclass Members thus suffered monetary damages as a result of Defendant’s deceptive and false representations.

PARTIES

5. Plaintiff Caitlin Peyton is a citizen of New York, residing in Westbrookville, New York. In October 2019, Plaintiff Peyton purchased Equate Oil-Free Moisturizer for her personal use for approximately \$6.27 from Walmart in Middletown, New York. Prior to her purchase of Equate Oil-Free Moisturizer, Plaintiff Peyton reviewed the product’s labeling and packaging and saw that the Equate Oil-Free Moisturizer was purportedly “oil-free.” Plaintiff Peyton relied on that labeling and packaging to choose her moisturizer over comparable products. Plaintiff Peyton saw these representations prior to, and at the time of purchase, and understood them as

representations and warranties that her Equate Oil-Free Moisturizer was “oil-free.” Plaintiff Peyton relied on these representations and warranties in deciding to purchase her Equate Oil-Free Moisturizer. Accordingly, these representations and warranties were part of the basis of the bargain, in that she would not have purchased Equate Oil-Free Moisturizer on the same terms had she known these representations were not true. However, Plaintiff Peyton remains interested in purchasing oil-free products and would consider Equate Oil-Free Moisturizer in the future if Defendant ensured the products were actually oil-free. In making her purchase, Plaintiff Peyton paid a substantial price premium due to the false and misleading Oil-Free Claims. However, Plaintiff Peyton did not receive the benefit of her bargain because her Equate Oil-Free Moisturizer, in fact, was not “oil-free”. Further, Plaintiff Peyton understood that the purchase came with Defendant’s representation and warranties that her Equate Oil-Free Moisturizer was “oil-free.”

6. Defendant Walmart, Inc. (“Walmart”) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Little Rock Arkansas. Walmart manufactures, sells, and/or distributes Equate-brand products, and is responsible for the advertising, marketing, trade dress, and packaging of the Oil-Free Products. Walmart manufactured, marketed, and sold the Oil-Free Products during the class period.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there are over 100 members of the putative class, and Plaintiff, as well as most members of the proposed class, are citizens of states different from Defendant.

8. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business within New York, such that Defendant has significant, continuous, and pervasive contacts with the State of New York. Defendant is registered to do business in the State of New York. Furthermore, a substantial portion of the events giving rise to Plaintiffs' claims occurred in this State, including Plaintiff's purchase.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events giving rise to Plaintiff's claims took place within this District.

FACTUAL ALLEGATIONS

10. Defendant manufactures, advertises, markets, sells, and/or distributes cosmetic products throughout New York and the United States under the brand name "Equate."

11. At all relevant times, Defendant has marketed its Oil-Free Products in a consistent and uniform manner. Each of the Oil-Free Products included the Oil-Free Claims when they in fact contain oil or oil inclusive products:



12. The Oil-Free Products contain the following oils:

Product	Oil
Equate Beauty Oil Free Facial Moisturizer	Glycine Soja (Soybean) Sterols, Dimethicone
Equate Beauty Oil-Free Acne Wash	Cocamidopropyl betaine
Equate Beauty Oil-Free Eye Makeup Remover	Cyclopentasiloxane, Cyclohexasiloxane

13. All of the Oil-Free Products contain oils, but Defendant intentionally advertises and labels the Oil-Free Products as “oil-free.”

14. Oil is a term that describes materials that are both hydrophobic and lipophilic. Oil can also be classified by the polarity of the substance. Oils can be wholly non-polar such as hydrocarbons or polar, such as fatty acids. Oil comprises the following chemical functional groups:²

- a. hydrocarbons (alkanes, alkenes) – such as squalene (also known as squalene oil);
- b. triglycerides – such as glycerol tristate (stearin);
- c. esters – such as ester oil;
- d. fatty acids – such as palmitic acid or cocamidopropyl betaine;
- e. silicones – such as alkyl dimethicone and siloxanes; and
- f. fatty alcohols – such as sterols.

15. The above groups can be characterized by the same physical properties, including being less dense than water, more viscous than water, and feeling slick or slippery to the touch.

16. Soybean sterols *i.e.* soybean oil can only be created by creating a chemical reaction from soybean oil and distilling the sterols left behind.

² Ton O’Lenick, Polar vs. Nonpolar oils, 2008, <https://www.cosmeticsandtoiletries.com/research/chemistry/17390254.html> (last accessed Jan. 29, 2021).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.