

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

CHRISTINE BISCHOFF, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

ALBERTSONS COMPANIES, INC., ACME
MARKETS, INC., SAFEWAY, INC.,
BETTER LIVING BRANDS, LLC, and LNK
INTERNATIONAL, INC.,

Defendants.

Civil Action No.:

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY
TRIAL**

Plaintiff Christine Bischoff (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendants Albertsons Companies, Inc., ACME Markets, Inc., Safeway, Inc., Better Living Brands, LLC, and LNK International, Inc. (collectively, “Defendants” or “Albertsons”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a putative class action lawsuit against Defendants for cheating customers by uniformly advertising, marketing, and selling generic versions of certain over-the-counter drugs, including analgesic or pain-relieving medicines using acetaminophen under the brand name “Signature Care” (the “Class Rapid Release Gels” or the “Products”), prominently bearing the misrepresentation “Rapid Release” (the “Rapid Release Claims” or “Misrepresentation”). However, contrary to Defendants’ claims, the purported “Rapid Release” Products actually dissolve *slower* than Signature Care-branded non-rapid release acetaminophen

products made and sold in tablet and caplet form.

2. Albertsons is the second largest supermarket chain in the United States.¹ As of February 2022, Albertsons “operated 2,276 retail stores ... across 34 states and the District of Columbia with 24 banners including Albertsons, Safeway, Vons, Jewel-Osco, Shaw’s, Acme, Tom Thumb, Randalls, United Supermarkets, Pavilions, Star Market, Haggen, Carrs, Kings Food Markets and Balducci’s Food Lovers Market.”² At each of these stores and banners, Defendants sell a variety of health and wellness products, including over-the-counter pharmaceuticals. Relevant here, in addition to selling brand name over-the-counter drugs, Defendants also produce, manufacture, market, distribute, and sell the Class Rapid Release Gelcaps.



¹ See, e.g., Statista Research Department, *Revenues of Albertsons Companies U.S. 2020, by segment* (Jan. 27, 2022), <https://www.statista.com/statistics/1167551/albertsons-revenue-by-segment-us/> (“As the second-largest supermarket chain in the North America, Albertsons generated retail sales and other revenues exceeding 69 billion U.S. dollars in 2020.”); Statista Research Department, *Net sales of Albertsons Companies U.S. 2015-2020* (Jan. 27, 2022), <https://www.statista.com/statistics/1167526/albertsons-net-sales-us/>; see also Statista Research Department, *Albertsons Companies Statistics & Facts* (Jan. 24, 2022), <https://www.statista.com/topics/6931/albertsons-companies/#dossierKeyfigures> (“Today, Albertsons Companies operates over 2,270 stores throughout the United States and employs around 300,000 people, making it one of the largest supermarket chains in North America.”).

² *Albertsons Companies, Inc. Reports Fourth Quarter and Full Year Results* (Apr. 12, 2022), available at <https://www.albertsonscorporation.com/newsroom/press-releases/news-details/2022/Albertsons-Companies-Inc.-Reports-Fourth-Quarter-and-Full-Year-Results/default.aspx>. See also Albertsons Companies, *Q4 2021 Latest Quarterly Results: Earnings Release Infographic* (Apr. 2022), available at https://s29.q4cdn.com/239956855/files/doc_financials/2021/q4/ALBCIV184062_CORP_ACI_InvestorRelations_April2022-FINAL.pdf; Albertsons Companies, *Company Fact Sheet* (Apr. 2022), available at https://s29.q4cdn.com/239956855/files/doc_downloads/2022/04/ALBCIV181099_CORP_ACI_FactSheet_FY2021-April2022--FINAL.pdf; Albertsons Companies, “Investors,” available at <https://www.albertsonscorporation.com/investors/overview/default.aspx>.



3. In 2005, Johnson & Johnson Consumer Inc. introduced the name brand Tylenol® Extra Strength Rapid Release Gels to the American public, purporting that its “Gelcaps [] are specially designed with holes to allow [for] the release of powerful medicine *even faster than before.*”³ Three years later, in 2008, Tylenol® PM Rapid Release Gels were launched with the same promises.⁴

4. Relevant to these allegations, Tylenol® is the branded name for acetaminophen. In other words, acetaminophen is “generic Tylenol®.”

³ <https://www.tylenol.com/news/about-us> (last accessed May 5, 2022) (emphasis added).

⁴ *Id.*

5. Defendants then introduced their own version of the Tylenol® Extra Strength Rapid Release Gels called “Signature Care Rapid Release Gelscaps:”⁵



⁵ See, e.g., <https://www.acmemarkets.com/shop/product-details.960326318.html>; <https://www.albertsons.com/shop/product-details.960189576.177.html>; <https://www.safeway.com/shop/product-details.157050117.html>.

6. Defendants also introduced their own version of the Tylenol® Extra Strength PM Rapid Release Gels called “Signature Care PM Rapid Release Gelcaps” (together with Signature Care Rapid Release Gelcaps, the “Class Rapid Release Gelcaps”):⁶



7. Since the release of the Class Rapid Release Gelcaps, Defendants have misled, and continue to mislead, consumers about the nature, quality, and effectiveness of the Products through their advertising and labeling. Specifically, Defendants market the Class Rapid Release Gelcaps as “comparable to Tylenol® Extra Strength Rapid Release Gels,” even though they actually dissolve *slower* than Defendants’ acetaminophen in traditional tablet and caplet form.

8. More importantly, following Tylenol’s lead, Defendants prominently label every Product sold in the United States as “Rapid Release” Gelcaps.

9. But Defendants’ Rapid Release Claims concerning the Products are false, misleading, and deceptive to consumers, who reasonably understand such claims to mean that the Products work faster for consumers than non-rapid release products with the same active ingredients and of the same dosage. However, despite what Defendants’ marketing and labeling

⁶ See, e.g., <https://www.acmemarkets.com/shop/product-details.960019790.html>; <https://www.albertsons.com/shop/product-details.960019790.html>; <https://www.safeway.com/shop/product-details.960171151.html>.

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.