

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS COURTHOUSE

Kari Warren, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

The Coca-Cola Company,

Defendant

7:22-cv-06907

Class Action Complaint

Jury Trial Demanded

Plaintiff Kari Warren (“Plaintiff”) alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. The Coca-Cola Company (“Defendant”) manufactures, distributes, labels, markets, and/or sells alcoholic beverages described as “Margarita – Hard Seltzer” under the Topo Chico brand (“Product”).



2. Relevant representations include “Topo Chico,” “4.5% ALC/VOL,” “Margarita Hard Seltzer,” and a yellow backdrop of agave plants, the source crop for tequila.

3. The packaging contains the four varieties of Margarita Hard Seltzer including the “Signature Margarita.”

4. In smaller font beneath each variety, the label states “Naturally Flavored With Other Natural Flavors.”

I. MARGARITA CONTAINS TEQUILA

5. Consumers expect to receive a cocktail containing tequila when they order a margarita as this ingredient defines what a margarita is.

6. Merriam-Webster dictionary defines a “margarita” as “a cocktail consisting of tequila, lime or lemon juice, and an orange-flavored liqueur.”

7. Wikipedia defines a “margarita” as “a cocktail consisting of tequila, orange liqueur, and lime juice[.]”

8. The International Bartenders Association (“IBA”) recognizes a “margarita” as a classic cocktail made with tequila.

II. LABEL INDICATES PRODUCT WILL CONFORM TO A MARGARITA

9. Consumers will expect the Product to contain tequila because the label says “Margarita – Hard Seltzer” with pictures of the plant most associated with tequila, agave.

10. The term “Hard Seltzer” beneath “Margarita” furthers the expectation the Product will contain tequila.

11. With one notable exception, the term “hard” in the context of alcohol refers to distilled spirits, i.e., “hard liquor.”

12. The exception is the fermented apple beverage known as “hard cider.”

13. Various theories exist about how the term “hard” became associated with cider.
14. One explanation contends that “hard” was implicit in the Middle English definition of cider as a “strong drink.”
15. Another posits that “hard” was used to distinguish fermented apple juice which contains alcohol from non-fermented and non-alcoholic fresh apple juice.
16. Eventually, “hard cider” was adopted in the IRS tax code and given a statutory definition.
17. However, consumers understand “hard” in the context of alcoholic beverages to refer to distilled spirits.
18. Ready-to-drink (“RTD”) margarita beverages which contain tequila are sold by competitor brands like BuzzBox and Dulce Vida and are not technologically or commercially unfeasible.



III. PRODUCT DOES NOT CONTAIN TEQUILA

19. The representations are misleading because the Product does not contain tequila, absent from the ingredient list on the side panel of the packaging.

SIGNATURE MARGARITA: INGREDIENTS:

FILTERED CARBONATED WATER, ALCOHOL, LIME JUICE FROM CONCENTRATE, AGAVE SYRUP, CITRIC ACID, NATURAL FLAVORS, SALT*, SODIUM CITRATE, SUCRALOSE, MAGNESIUM CHLORIDE*, POTASSIUM CHLORIDE*. (*MINERALS FOR TASTE)

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FILTERED CARBONATED WATER, ALCOHOL, LIME JUICE FROM CONCENTRATE, AGAVE SYRUP, CITRIC ACID, NATURAL FLAVORS, SALT*, SODIUM CITRATE, SUCRALOSE, MAGNESIUM CHLORIDE* POTASSIUM CHLORIDE*. (*MINERALS FOR TASTE)

20. Instead of listing the alcohol source from a fermented sugar base, the ingredients list only “alcohol.”
21. The ingredients include “agave syrup,” a sweetener from the agave plant, instead of the liquor obtained from the distillation of the agave plant and the essential tequila ingredient in a margarita.
22. That the front of the cans state “Naturally Flavored With Other Natural Flavors” does not tell consumers the drinks they are purchasing are flavored beers that purport to taste like a margarita.
23. Moreover, the flavor designation of “Naturally Flavored With Other Natural Flavors” is not clearly visible on the box at the point-of-sale, written in smaller font beneath the variety of each can.
24. There is no inconsistency between a RTD margarita containing tequila and added flavoring.
25. This is shown by the Dulce Vida label, which states, “Our Dulce Vida Sparkling

Margarita is the first ready-to-drink premium cocktail made with real lime and natural flavors.”



26. The “Margarita” representations including “Margarita,” “Hard Seltzer,” and pictures of agave plants are misleading because the Product does not contain tequila.

27. Malt beverage products are required to indicate the class of beverage they fit into.

28. The representation as “Hard Seltzer” does not indicate the class of malt beverages the Product fits in, preventing consumers from knowing the type of alcoholic drink they are buying.

29. “Margarita – Hard Seltzer” does not identify the Product’s base class and/or type designation, which is beer.

30. The Product’s use of the term “Hard Seltzer” is false, deceptive and misleading

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