

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION

Zilphia Howze, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Mondelēz Global LLC,

Defendant

1:22-cv-00351

Class Action Complaint

Jury Trial Demanded

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

1. Mondelēz Global LLC (“Defendant”) manufactures, labels, markets, and sells shortbread cookies under the Lorna Doone brand (“Product”).



2. The representations of the square cookies, “Lorna Doone,” and tartan (plaid) packaging, are evocative of Scottish themes.

3. The brand name, “Lorna Doone,” comes from the name of a character in an 1869 Scottish novel by R.D. Blackmore.

4. The interlocking yellow and white stripes are referred to as a tartan and are part of

Scotch culture.

5. The representations are misleading to consumers because despite an expectation that a product identified as shortbread contains some butter, the Product contains no butter.

6. Shortbread was invented in Scotland centuries ago and derived its name from its short, or crumbly, structure, caused by the high proportion of fat, in the form of butter.

7. The high fat content of shortbread inhibits gluten, allowing the dough to rise, contributing to the tender, crumbly texture.

8. All forms of baked goods identified as shortbread are based on sugar, shortening in the form of butter, and wheat flour.

9. Dictionary.com defines shortbread as a “a butter cookie commonly made in thick, pie-shaped wheels or rolled and cut in fancy shapes.”

10. Lexico, from Oxford Dictionary, calls it a “crisp, rich, crumbly type of cookie made with butter, flour, and sugar.”

11. The Cambridge Dictionary describes a type of sweet cookie that contains a lot of butter.

12. Collins Dictionary defines it as a kind of cookie made from flour, sugar, and butter.

13. Google Dictionary – based on its leading search engine that discovers the most relevant and accurate information – defines shortbread as a crisp, rich, crumbly type of cookie made with butter, flour, and sugar.

14. Other dictionaries define it as “[A] cookie made of flour, sugar, and much butter or other shortening” and “a hard sweet cookie made with a large amount of butter.”

15. Commercial treatises define shortbread consistently with mainstream dictionaries.

16. In *Biscuit Manufacture: Fundamentals of In-Line Production*, P.R. Whitely

emphasized that that while shortbread is not required to only have butter, it must have a significant percentage of butter relative to any other shortening ingredients.

17. Nicholas Malgieri, author of “How to Bake” by Harper Collins, concurred with Whitely’s analysis, noting, “You can't make shortbread without butter.”

18. The expectation that shortbread is made with butter is not limited to experts in food science.

19. One amateur food writer noted that most experts have agreed that whether shortbread is made commercially or in one’s kitchen, the presence of butter is essential.

20. A popular recipe website emphasizes the importance of butter to shortbread, advising to use only butter and not vegetable oils, because this negatively affects not only the taste but the crumbly texture.

21. A layperson recently reviewing the Product on Amazon.com was critical, asking rhetorically, “How can you make shortbread without butter?”

22. Since the time butter was first discovered, there have been attempts to imitate it with lower quality substitutes.

23. Since the late nineteenth century, this has been in the form of vegetable oils.

24. Vegetable oils like palm oil are solid at room temperature and referred to as “hard [vegetable] fats.”

25. Vegetable fats are unable to provide the structural, organoleptic, nutritional, and sensory properties to shortbread that butter does.

26. Consumers expect that a food identified as shortbread contains at least some butter.

27. However, the Product’s ingredient list reveals it is inconsistent with what consumers expect from shortbread cookies, shown by the absence of butter.

INGREDIENTS: UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE {VITAMIN B1}, RIBOFLAVIN {VITAMIN B2}, FOLIC ACID), SUGAR, CANOLA OIL, PALM OIL, CORN FLOUR, SALT, HIGH FRUCTOSE CORN SYRUP, BAKING SODA, SOY LECITHIN, CORNSTARCH, ARTIFICIAL FLAVOR.

INGREDIENTS: UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE {VITAMIN B1}, RIBOFLAVIN {VITAMIN B2}, FOLIC ACID), SUGAR, CANOLA OIL, PALM OIL, CORN FLOUR, SALT, HIGH FRUCTOSE CORN SYRUP, BAKING SODA, SOY LECITHIN, CORNSTARCH, ARTIFICIAL FLAVOR.

28. In place of using any butter, the Product exclusively uses vegetable shortening, shown through the listing of “CANOLA OIL [and] PALM OIL,” as the third and fourth ingredients, after flour and sugar.

29. The result of substituting vegetable oils for butter is that the Product lacks the nutritional, organoleptic, and sensory attributes of shortbread.

30. The substitution of palm oil and canola oil for butter reduces costs.

31. Butter does more than provide structure and texture to shortbread, but imparts a butter taste, due to the hundreds of lactones or aroma compounds it contains.

32. In place of butter, the Product adds artificial flavor to imitate the flavor of butter.

33. The addition of artificial flavor is required to be disclosed on the front label, i.e., “Artificially Flavored Shortbread Cookies.” *See* 21 C.F.R. § 101.22(i)(2).

34. The front label does not tell consumers they are getting a “Shortbread-Style Cookie” or a “Shortbread Flavored Cookie,” but a “Shortbread Cookie.”

35. Shortbread cookies made with the expected ingredients are not a rare or pricy delicacy that would make a reasonable consumer “double check” to confirm the presence of butter

by scouring the packaging.

36. These products exist in the marketplace and are not technologically or otherwise unfeasible to produce.

37. While some brands of shortbread cookies highlight that they are made with butter, this is not required or universal, because manufacturers and consumers understand and expect shortbread to be made with butter.

38. For instance, Favorite Day brand from Target sells “Butter Shortbread” cookies described as “made with real butter.”



INGREDIENTS: ENRICHED WHEAT FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMIN MONONITRATE, RIBOFLAVIN, FOLIC ACID), SALTED BUTTER (CREAM, SALT), POWDERED SUGAR (CANE SUGAR, CORN STARCH), VANILLA, SEA SALT.

INGREDIENTS: ENRICHED WHEAT FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMIN MONONITRATE, RIBOFLAVIN, FOLIC ACID), SALTED **BUTTER** (CREAM, SALT), POWDERED SUGAR (CANE SUGAR, CORN STARCH), VANILLA, SEA SALT.

39. The ingredients in the Favorite Day shortbread list only butter for shortening.

40. Walker’s Pure Butter Shortbread lists only butter for shortening.

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