

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
ROCHESTER DIVISION**

Patricia Donadio, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

Bayer Healthcare LLC,

Defendant

6:22-cv-06521

Class Action Complaint

Jury Trial Demanded

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

1. Bayer Healthcare LLC (“Defendant”) manufactures, markets, labels and sells mix-in powder packets under the Alka-Seltzer Plus brand promoted as for “Severe Cold & Flu” to be used in the evenings and containing “Honey [and] Lemon Zest” (“Product”).



2. The label describes the Product as suitable to be consumed at night for a “Severe Cold & Flu,” identifying the relevant symptoms as “Nasal Congestion,” “Headache,” “Sore Throat,” “Body Ache,” “Cough,” “Runny Nose” and “Fever,” while disclosing its active ingredients and their functions.

## **I. CONSUMER INTEREST IN MORE NATURAL MEDICINES**

3. Recent studies indicate that consumers are increasingly purchasing nontraditional over-the-counter (“OTC”) medications when it comes to relief for colds and coughs.

4. This is confirmed by the growth in the market for natural and homeopathic OTC products, expected to reach \$4.5 billion by 2024 from \$3.1 billion this year.

5. Some of the larger companies in this space include Zarbee’s Naturals, recently bought by Johnson & Johnson, and Hyland’s.

6. The reasons for this shift are several.

7. First, according to a consumer survey by Mintel, 37% of respondents said traditional OTC products posed safety risks and could cause unwanted side effects.

8. Second, almost 60% believed natural ingredients in this emerging class of products are equally, if not more effective, in treating cold and coughs.

9. Third, younger purchasers are more likely to seek OTC products without long and complicated lists of ingredients, including synthetic components and additives.

10. Fourth, many OTC purchasers believe traditional products merely suppress symptoms, while natural and homeopathic varieties work in concert with the body’s healing mechanisms.

11. Fifth, the coronavirus pandemic has made consumers more future-oriented in terms of the cold and cough OTC products they are seeking, and desire products which emphasize an

immune support component.

12. Notwithstanding the front label disclosure of the active ingredients, the labeling appeals to consumers seeking more natural OTC products, through the wedge of fresh lemon and a dripping honey dipper, described as “Honey [and] Lemon Zest,” next to a cup of steaming tea.

13. Based on the labeling, consumers will expect the Product contains honey and lemon ingredients, in the form of “honey” and “lemon zest,” the outermost layer of the peel and that these ingredients provide some therapeutic benefit in addition to the identified active ingredients.

14. However, the active and inactive ingredient lists reveal the absence of honey and lemon zest.

<b>Active ingredients (in each packet)</b>	<b>Purposes</b>
Acetaminophen 650 mg.....	Pain reliever/fever reducer
Dextromethorphan hydrobromide 20 mg.....	Cough suppressant
Doxylamine succinate 12.5 mg.....	Antihistamine
Phenylephrine hydrochloride 10 mg.....	Nasal decongestant

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**Inactive ingredients** acesulfame potassium, anhydrous citric acid, compressible sugar, D&C yellow #10, dental-type silica, FD&C red #40, flavors, pregelatinized starch, sodium citrate, sucralose, tartaric acid, tribasic calcium phosphate

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15. Nevertheless, despite the recent growth in the OTC natural products category, no credible evidence or studies support the notion that either honey or lemon are effective in treating

or reducing the severity and duration of colds, coughs, and the other symptoms identified.

16. Though consumers increasingly seek immunity benefits from OTC products and look for the presence of added vitamin C, no evidence or studies support a connection between vitamin C and immunity.

17. While the label does not explicitly promote added vitamin C, consumers viewing the lemon wedge and reading “Lemon Zest” will understand these references as implying the Product contains vitamin C which will improve their health and immunity.

18. As a result of the false and misleading representations, the Product is sold for a premium price of not less than \$8.99 for six packets, excluding tax and sales, a higher price than it would otherwise be sold for, absent the misleading representations and omissions.

#### Jurisdiction and Venue

19. Jurisdiction is pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

20. The aggregate amount in controversy exceeds \$5 million, including any statutory damages, exclusive of interest and costs.

21. Plaintiff is a citizen of New York.

22. Defendant is a Delaware limited liability company with a principal place of business in Whippany, New Jersey, Morris County.

23. The member of Defendant is Bayer Corporation, an Indiana corporation with a principal place of business in Pittsburgh, Pennsylvania, Allegheny County.

24. Defendant is a citizen of Indiana and Pennsylvania.

25. The class of persons Plaintiff seeks to represent includes persons who are citizens of different states from which Defendant is a citizen.

26. The members of the class Plaintiff seeks to represent are more than 100, because the Product has been sold for several years with the representations described here, from thousands of locations including grocery stores, big box stores, drug stores, convenience stores, club stores and online, across the States covered by Plaintiff's proposed classes.

27. Venue is in this District with assignment to the Rochester Division because a substantial part of the events or omissions giving rise to these claims occurred in Ontario County, including Plaintiff's purchase and/or use of the Product and awareness and/or experiences of and with the issues described here.

#### Parties

28. Plaintiff Patricia Donadio is a citizen of Farmington, Ontario County, New York.

29. Defendant Bayer Healthcare LLC is a Delaware limited liability company with a principal place of business in Whippany, New Jersey, Morris County.

30. Defendant manufactures products under the Alka-Seltzer brand, one of the most well-known and respected names in the OTC industry.

31. Plaintiff purchased the Product at locations including Walmart, 441 Commerce Dr, Victor, NY 14564, between November 2021 and November 2022, among other times.

32. Plaintiff read the words on the front label including honey and lemon zest and saw the images and believed the Product contained honey and lemon ingredients and that these provided a therapeutic benefit in addition to the identified active ingredients.

33. Plaintiff relied on the words, terms coloring, descriptions, layout, placement, packaging, and/or images on the Product, on the labeling, statements, omissions, claims, statements, and instructions, made by Defendant or at its directions, in digital, print and/or social media, which accompanied the Product and separately, through in-store, digital, audio, and print

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