

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

**MARSHA SENSENIG, on behalf of
herself and all others similarly
situated,**)

Plaintiff,)

v.)

Case No.:

**MERRICK PET CARE d/b/a CASTOR
AND POLLUX NATURAL PETWORKS,
NESTLE USA, INC., and NESTLE
PURINA PET CARE, CO.,**)

Defendant.)

CLASS ACTION COMPLAINT

This class action stems from defendant’s marketing and selling of pet foods labeled as “Made with Love IN THE USA” when the products contain substantial ingredients sourced from foreign countries. Plaintiff brings this class action under the laws of Illinois and the similar laws of other states on her own behalf and on behalf of all others similarly situated.

I.

Parties, Jurisdiction, and Venue

1. Plaintiff Marsha Sensenig is an adult resident citizen of Lee County, Illinois, which is within this district and division.

2. Defendant Nestle USA, Inc., is a corporation formed under and existing pursuant to the laws of the state of Delaware. This Defendant's principal offices are in Glendale, California.

3. Defendant Nestle Purina Petcare Company is a corporation formed under and existing pursuant to the laws of the state of Missouri. This Defendant's principal offices are in St. Louis, Missouri.

4. Defendant Merrick Pet Care Company, before July 21, 2015, was a corporation formed under and existing pursuant to the laws of the state of Texas, with its principal offices in Hereford, Texas. On or around July 21, 2015, Defendant Merrick Pet Care Company was purchased by either Defendant Nestle Purina Petcare Company or Defendant Nestle USA, Inc., pursuant to a non-public purchase agreement. Merrick Pet Care still holds itself out as a stand-alone company on its website, <http://www.merrickpetcare.com> (last accessed on September 8, 2015), but plaintiff does not know the current corporate relationship among the defendants.

5. Because there is diversity between Plaintiff and the Defendants, and because the aggregate amount in controversy for the class claims exceeds \$5,000,000, exclusive of interest and costs, diversity jurisdiction exists under 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005.

6. Defendant sold, and plaintiff bought, the Ultramix dog food product in this district and division, so venue is appropriate under 28 U.S.C. § 1391(b)(2) as a

substantial part of the conduct giving rise to this action occurred in this district and division.

II.

Factual Background

7. Defendant Nestle Purina Petcare Company (“Nestle Purina”), which describes itself on its website to be “the pet care division of Nestle S.A.,” manufactures and sells many forms of pet food in stores all over the United States, including Illinois. Among other places, it sells its products in large pet store chains including Petco and Petsmart.

8. Nestle Purina purchased an organic pet food company called Merrick Pet Care (“Merrick”), which had previously purchased a company Castor & Pollux Natural Petworks (“C&P”), and continued to market pet food under the “C&P” label.

9. These products, still made either by Merrick, by C&P or directly by Nestle Purina, include the Ultramix and Organix brands pet food.

10. On several occasions within the applicable limitations period, Plaintiff Marsha Sensenig purchased Defendants’ Ultramix Grain Free & Poultry Free Adult Dog Food brand dog food for household use, specifically, to feed her dog.

11. The label of all of Defendants’ Ultramix and Organix brand products, including Ultramix Grain Free & Poultry Free Adult Dog Food, contains a label proclaiming that the products are “Made with Love IN THE USA.”



12. The labels stating that Defendants' pet food is made in the United States are false because Defendants' pet food contains ingredients sourced from foreign countries. As one example, these products contain tapioca, a gluten-free starch made from the cassava root. The tapioca contained in Defendants' Ultramix pet food

comes from foreign countries. In addition, Defendants' pet food products vitamin, mineral, and amino acid packs sourced outside the United States.

13. Plaintiff has suffered damages because she paid more for the products than they were actually worth. She believed the products to be made in the USA and relied upon that in her purchase decision. Recalls of pet food, often because of adulterated foreign-sourced ingredients, have been rampant in recent years. These recalls have made the news and resulted in public desire for safe pet foods with ingredients sourced in the United States. Recalls as recent as this month were issued because of contamination with listeria bacteria, salmonella, propylene glycol (an ingredient not approved for cat foods because of toxicity), mold, Amantadine (an antiviral human drug not approved for use in animal food), elevated and toxic levels of Vitamin D, heavy metals, and others. An incomplete list of these recent headline-making recalls may be found at <http://truthaboutpetfood.com/category/pet-food-recalls/>.

14. Defendants sell other pet foods, including dog foods and cat foods, that also are labeled "Made with love IN THE USA" but contain ingredients manufactured and sourced in foreign countries. These foreign-sourced ingredients include, without limitation, vitamin C. Those products were also were not "all or virtually all" made in the USA. Like the products Plaintiff purchased, those products contained significant ingredients sourced outside the USA.

III.

Class Allegations

15. Plaintiff brings this action on her own behalf and on behalf of others similarly situated as a multi-state class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class which Plaintiff seeks to represent is composed of and defined as:

All persons in states which have enacted the Uniform Deceptive Trade Practices Act, the Illinois Consumer Fraud and Deceptive Business Practices Act, or any act similar in substance, who, within the applicable limitations period, have purchased pet foods manufactured and marketed by Defendant and labeled “Made in the U.S.A.” or were otherwise labeled as “USA-sourced” items.

The Illinois laws in question are 815 ILCS 510/2 and 815 ILCS 505/2. The other states with similar if not identical law are California, Florida, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington. See Cal. Bus. & Prof. Code § 17200, et seq.; Fla. Stat. § 501.201 et seq.; Mich. Stat. §445.901 et seq.; Minn. Stat. §§325F.68-325F.70; Mo. Rev. Stat § 407.010 et seq.; N.J. Stat. Ann. § 56:8-1 et seq.; N.Y. Gen. Bus. Law § 349 et seq.; and Wash. Rev. Code §19.86.010 et seq. In Mullins v. Direct Digital, LLC, the plaintiff sought to represent a similar class, including all nine states that Plaintiff seeks to include here. 795 F.3d 654 (7th Cir. 2015). The Seventh Circuit affirmed certification of the multi-state class alleging violations of these laws in Mullins. Id.

16. Alternatively, if the Court does not certify the above class, Plaintiff seeks to represent the following Illinois-only class:

All Illinois residents who, within the applicable limitations period, have purchased pet foods manufactured and marketed by defendant and labeled “Made in the U.S.A.” or were otherwise labeled as “USA-sourced” items.

17. This action has been brought and may be properly maintained as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure, and satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements thereof.

18. Defendants market their pet foods in major retail stores throughout the United States as well as on the Internet. Therefore, the plaintiff class is so numerous that the individual joinder of all members is impracticable. The class meets the numerosity requirement of Fed. R. Civ. Proc. 23(a)(1).

19. Common questions of law and fact, including whether Defendant’s pet foods contain ingredients manufactured and sourced from foreign countries, exist in this case. The class meets the commonality requirement of Fed. R. Civ. Proc. 23(a)(2).

20. Plaintiff’s claims are typical of the claims of the members of the class under Fed. R. Civ. P. 23(a)(3). The Plaintiff and all members of the class sustained damages arising out of Defendants’ course of conduct in violation of the law as

complained herein. The losses of each member of the class were caused directly by defendant's wrongful conduct in violation of the law as alleged herein.

21. The Plaintiff named herein will fairly and adequately protect the interests of the class as required by Fed. R. Civ. P. 23(a)(4). Plaintiff has no interests which are adverse to the interests of absent class members. Plaintiff, like all class members, purchased pet foods falsely labeled "Made in the U.S.A."

22. A class action is superior to other available methods for the fair and efficient adjudication of this controversy under Fed. R. Civ. Proc. 23(b) because individual joinder of all class members is impracticable. Furthermore, because the damages suffered by each individual member of the class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual class members to redress the wrongs done to them. Individual litigation would likewise burden the court system to a much greater degree than a class action, and would present the potential for inconsistent or contradictory judgments. By contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each class member.

IV.

Claims for Relief

COUNT 1

Violation of Uniform Deceptive Trade Practices Act

23. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set forth herein.

24. The Uniform Deceptive Trade Practices Act, codified in Illinois at 815 ILCS 510/1 et seq., makes it a deceptive trade practice to use “deceptive representations or designations of geographic origin in connection with goods or services.” 815 ILCS 510/2(a)(4).

25. Defendants violated 815 ILCS 510/2(a)(4) by labeling and marketing its pet foods as made in the USA when, in fact, they were not.

26. Defendants has violated this section repeatedly and willfully, intentionally using “Made in the U.S.A.” labels to confuse and defraud shoppers.

27. Plaintiff, and the class she represents, are entitled to injunctive relief as well as costs and attorneys’ fees under 815 ILCS 510/3.

COUNT 2

Violation of Illinois Consumer Fraud and Deceptive Business Practices Act

28. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set forth herein.

29. 815 ILCS 505/2 makes it an unfair or deceptive act or practice to engage in any activity that violates 815 ILCS 510/2. Because Defendants violated 815 ILCS 510/2(a)(4), it also violated 815 ILCS 505/2.

30. Under 815 ILCS 505/2, the “Made in the USA” statements by Defendant constituted a deceptive act or practice. The “Made in the USA” statements were made and the purchases occurred in trade or commerce. Defendants intended that Plaintiff and the rest of the class rely on the statements. The deception caused damage to Plaintiff and the class.

31. Plaintiff, and the class she represents, are entitled under this act to actual damages calculated by difference in price between the product as sold and what it would have been worth had it not been deceptively advertised, punitive damages, and attorneys’ fees.

COUNT 3

Claims Under Similar State Statutes

32. Other states have deceptive trade practices acts which, as they apply to the facts at issue here, are in substance the same as the Acts referenced in Counts 1 and 2, prohibiting the conduct detailed herein. The other states with similar if not identical law are California, Florida, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington. See Cal. Bus. & Prof. Code § 17200, et seq.; Fla. Stat. § 501.201 et seq.; Mich Stat. §445.901 et seq.; Minn Stat. §§325F.68-325F.70; Mo. Rev. Stat § 407.010 et seq.; N.J. Stat. Ann. § 56:8-1 et seq.; N.Y. Gen. Bus. Law § 349 et seq.; and Wash. Rev. Code §19.86.010 et seq. On behalf of the plaintiff class,

Plaintiff asserts claims under those statutes as well for class members residing in those states.

33. On behalf of the out-of-state class members, Plaintiff seeks actual damages, punitive damages, attorney's fees, and costs.

PRAYER FOR RELIEF

Based on the foregoing, Plaintiff prays for the following relief:

- A) An order certifying this as a multi-state class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B) An order appointing Plaintiff's counsel as Class Counsel to represent the interests of the class;
- C) After trial, an injunction ordering Defendant to stop its violations of law as alleged herein;
- D) After trial, an award of compensatory and punitive damages;
- E) An award of costs, including reasonable attorneys' fees; and
- F) Such further or different relief as the Court may deem appropriate.

JURY DEMAND

Plaintiff demands trial by struck jury on all counts.

Respectfully Submitted,

/s/ John E. Norris
John E. Norris

One of the Attorneys for Plaintiff

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