

James E. Cecchi  
Caroline F. Bartlett  
CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO, P.C.  
5 Becker Farm Road  
Roseland, New Jersey 07068  
Tel: (973) 994-1700  
Fax: (973) 994-1744  
jcecchi@carellabyrne.com  
cbartlett@carellabyrne.com

Richard H. Weiss  
Andrei V. Rado  
Jessica Sleater  
MILBERG LLP  
One Pennsylvania Plaza  
New York, New York 10119  
Tel: (212) 594-5300  
Fax: (212) 868-1229  
rweiss@milberg.com  
arado@milberg.com  
jsleater@milberg.com

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CHRISTINA BEVANS, on Behalf of  
Herself and all Others Similarly Situated,

Plaintiff,

v.

GENERAL MILLS, INC.,

Defendant.

Civil Action No.

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

Plaintiff Christina Bevans (“Plaintiff”), individually and on behalf of all others similarly situated, by her attorneys, makes the following allegations pursuant to the investigation of his 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. Plaintiff brings this class action on behalf of herself and a class of persons who purchased any of the following Kix brand cereals: Kix (original), Berry Berry Kix, and Honey Kix (collectively referred to as “Kix”).

2. The Kix brand is owned, developed, marketed, and sold by defendant General Mills, Inc. (“General Mills” or “Defendant”). General Mills is headquartered in Minneapolis, Minnesota.

3. General Mills labels its Kix cereals as “made with All Natural Corn.” This representation is central to General Mills’ marketing of Kix, and this label is displayed on the product itself, the General Mill’s website, and Kix advertisements.

4. But Kix cereals are not made of “all natural” corn. Kix main ingredient is corn that is a genetically modified plant (“GM”) or genetically modified organism (“GMO”).

5. Monsanto Company, a global agricultural company that pioneered GM seeds, defines GMO on its website as food with “*genetic makeup altered to exhibit traits that are not naturally theirs*.” In general, genes are taken (copied) from one organism that shows a desired trait and transferred into the genetic code of another organism.” Monsanto, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited Jan. 11, 2012) (emphasis added). As more fully alleged below, “unnatural” is a recognized defining characteristic of genetically modified foods.

6. The reasonable consumer assumes that “seeds created by swapping genetic material across species to exhibit traits not naturally theirs” are not “all natural.” Kix advertising is very likely to deceive consumers.

7. Plaintiff was damaged, in an amount to be determined at trial, because she did not get the “all natural” Kix products that were advertised and that she paid for. Plaintiff paid more for Kix labeled as “all natural” compared to other cereal brands because she believed the “all natural corn” was more valuable.

8. Defendant’s violations of New Jersey and federal law and wrongful conduct mislead and deceive consumers into purchasing Kix by labeling it as natural when, in fact, it is made up of GM or GMO ingredients, constitutes unjust enrichment, breach of express warranty, violate the New Jersey Consumer Fraud Act, N.J.S.A. § 58:8-1, *et seq.*, and violates the Magnuson-Moss Warranty Act 15 U.S.C. § 2301.

## **THE PARTIES**

9. Plaintiff Christina Bevans is a consumer residing in Jersey City, New Jersey. For years Bevans regularly purchased Kix cereals for her own and her family's consumption, most recently in October 2011. Specifically since 2008, Bevans has purchased Kix original cereal every several months. During that period (2008 to present), Plaintiff observed Kix labels that stated that the cereal is "made of All Natural Corn." Plaintiff was aware of this representation through General Mill's advertising and labeling to which she was exposed about three times a month, by observing Kix advertisements in print media and retail stores and on the labels of the products themselves. She was also exposed to that representation each time she looked at the label of the Kix cereal she had at home. She purchased the products because she believed and relied upon Defendant's representations on the product labels and advertisements that Kix cereals she purchased were made of all natural ingredients. Plaintiff would not have purchased Kix but for Defendant's misleading statements about the product being all natural.

10. Mrs. Bevans chose to purchase and paid more for Kix cereal labeled as "made of All Natural Corn" compared to other cereals that do not have an "all natural" representation because she believed that "all natural corn" was more valuable than other products that did not make this claim. Plaintiff paid at least 23% more for Kix compared to similar products not advertised as all natural, such as Kellogg's Corn Flakes. Corn Flakes is a comparable product to Kix. Corn is the first ingredient in both products and both contain relatively few ingredients, as compared to other breakfast cereals, and are nutritionally similar in all material ways. Like Kix, Corn Flakes is a mass-market product, ubiquitous in supermarkets in New Jersey and nationwide. Corn Flakes – unlike Kix – does not advertise that it is made from "All Natural Corn." Because Kix advertises that it is made from all natural corn, it commands a substantial premium over Corn Flakes. Recently, Plaintiff purchased Kix original at the Target store in Jersey City for \$4.65 per pound, which Target lists as the price of Kix original and Honey Kix. Target sells Berry Berry Kix for \$4.72 per pound. In the same store, Kellogg's Corn Flakes sell for \$3.24 per pound. Kix commands a premium of at least 43.5% because it deceptively

advertises that it is made from “All Natural Corn.” Kix enjoys a similarly material premium nationwide as a result of its “All Natural Corn” advertising as compared with Corn Flakes and other cereals not advertised as “all natural.”

11. Plaintiff was injured in fact and lost money as a result of Defendant’s wrongful conduct of improperly describing Kix as made with “All Natural Corn.” Plaintiff paid for an all natural product, but did not receive a product that was all natural. Plaintiff received a product that was genetically engineered in a laboratory, and had its genetic code artificially altered to exhibit not “natural” qualities.

12. Defendant General Mills is a Delaware corporation located in Minneapolis, Minnesota. General Mills markets and distributes Kix cereals.

### **JURISDICTION AND VENUE**

13. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332(d), because there are at least 100 Class Members in the proposed Class, the combined claims of proposed Class Members exceed \$5,000,000 exclusive of interest and costs, and at least one Class Member is a citizen of a state other than Defendant’s state of citizenship. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because a federal question is involved whether Defendant violated the Magnuson-Moss Act 15 U.S.C. § 2301.

14. General Mills purposefully avails itself of the New Jersey consumer market. Every day it sells Kix cereals in at least hundreds of locations within this District to thousands of consumers.

15. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims asserted occurred in this District, and Plaintiff dealt with Defendant, who is located in and/or does business in this District. Venue is proper pursuant to 28 U.S.C. § 1391(c) because Defendant conducts substantial business in this District, has sufficient minimum contacts with this District, and otherwise purposely avails itself of the markets in this District, through the promotion, sale, and marketing of its products in this District.

## **FACTUAL ALLEGATIONS**

### **A. General Mills Advertises Kix as “Made With All Natural Corn”**

16. General Mills sells Kix brand cereals. Kix cereals are sold with a label on the front of the box that states prominently “made with All Natural Corn” and displays a large corn husk as a graphic. *See* Exhibits A-C (Berry Berry Kix, <http://www.generalmills.com/Home/Brands/Cereals/Kix/Brand%20Product%20List%20Page.aspx> (last visited Jan. 11, 2012); Honey Kix, <http://www.generalmills.com/Home/Brands/Cereals/Kix/Brand%20Product%20List%20Page.aspx> (last visited Jan. 11, 2012); Kix (original), <http://www.generalmills.com/Home/Brands/Cereals/Kix/Brand%20Product%20List%20Page.aspx> (last visited Jan. 11, 2012).

17. The three Kix cereals’ “crispy corn puffs” are primarily composed of whole grain corn, corn meal, corn bran, sugar, and salt, with corn being the primary ingredient by weight.

18. The claim that Kix cereals are “natural” is highly material to the average consumer, which is why General Mills places “made with All Natural Corn” on the front of its Kix boxes and advertisements.

### **B. Kix Cereals Are Made From Genetically Modified Organisms**

19. The corn in Kix cereal is from genetically modified seeds.

20. The Cornucopia Institute recently published a report, on or about October 11, 2011, on cereals that make claims about being natural and/or organic. Cornucopia Institute, *Cereal Crimes: How “Natural” Claims Deceive Consumers and Undermine the Organic Label—A Look Down the Cereal and Granola Aisle* [http://cornucopia.org/cereal-scorecard/docs/Cornucopia\\_Cereal\\_Report.pdf](http://cornucopia.org/cereal-scorecard/docs/Cornucopia_Cereal_Report.pdf). The report found in pertinent part:

General Mills owns cereal brands including Cheerios, Lucky Charms, Kix and Total. General Mills had \$6.5 billion in retail sales for breakfast cereal alone in 2009 and is the country’s second largest marketer of breakfast cereal.

General Mills also owns the Cascadian Farm brand, which is all organic. Some General Mills breakfast cereals, such as Kix, have jumped on the “natural” bandwagon and now make claims such as “Made with all natural corn.” Testing confirms that “natural” products by General Mills, such as Kix, are made with

genetically engineered ingredients. Test results reveal that General Mills uses genetically engineered ingredients in its Kix cereal.

Cornucopia Institute, *Organic Cereal Scorecard*, <http://cornucopia.org/cereal-scorecard/view-brand.php?id=51>.

21. The report also found that consumers pay *more* for “natural” labeled Kix cereals than its organic counterparts:

This unexpected finding in price differences—with organic cereal often priced as much as 25% lower than conventional “natural” cereal—is especially striking when comparing natural food store prices with prices in conventional supermarkets. For example, in a Whole Foods Market in the Boston area, Nature’s Path® unsweetened organic corn puffs are offered at \$1.99 for 6 ounces; Kix® conventional (“natural”) crispy corn puffs cost \$3.69 for 8.2 ounces in a conventional supermarket (Stop ’n Shop) in the same town. That’s 33 cents for an ounce of organically grown corn puffs at Whole Foods, and 45 cents per ounce for “natural,” genetically engineered, pesticide-sprayed corn puffs at Stop ’n Shop.

Cornucopia Institute, *Cereal Crimes: How “Natural” Claims Deceive Consumers and Undermine the Organic Label—A Look Down the Cereal and Granola Aisle* [http://cornucopia.org/cereal-scorecard/docs/Cornucopia\\_Cereal\\_Report.pdf](http://cornucopia.org/cereal-scorecard/docs/Cornucopia_Cereal_Report.pdf), at 18.

22. As noted in paragraph 14, Kix commands a material premium over comparable products not advertised as “all natural.”

23. Through its labeling of Kix cereals as “made with All Natural Corn,” General Mills clearly targets consumers looking for natural foods. The “natural” designation represents to consumers they are getting food that is not genetically modified.

24. Genetically Modified Organisms Are Not “ALL NATURAL”

25. Monsanto Company is the world’s biggest seller of GMO seeds and an avid GMO-proponent. On its website, Monsanto defines GMO as follows:

Genetically Modified Organisms (GMO) – Plants or animals that have had their *genetic makeup altered to exhibit traits that are not naturally theirs*. In general,

genes are taken (copied) from one organism that shows a desired trait and transferred into the genetic code of another organism.

Monsanto, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited Jan. 11, 2012) (emphasis added).

26. The World Health Organization (“WHO”), which is the United Nations’ directing and coordinating authority for health, defines GMO as follows:

Genetically modified organisms (GMOs) can be defined as organisms in which ***the genetic material (DNA) has been altered in a way that does not occur naturally***. The technology is often called “modern biotechnology” or “gene technology”, sometimes also “recombinant DNA technology” or “genetic engineering”. It allows selected individual genes to be transferred from one organism into another, also between non-related species.

Such methods are used to create GM plants—which are then used to grow GM food crops.

WHO, <http://www.who.int/foodsafety/publications/biotech/20questions/en/> (last visited Jan. 11, 2012) (emphasis added).

27. Romer Labs, a company that provides diagnostic solutions to the agricultural industry, defines GMO as follows:

Agriculturally important plants are often genetically modified by the insertion of DNA material from outside the organism into the plant's DNA sequence, allowing the plant to ***express novel traits that normally would not appear in nature***, such as herbicide or insect resistance. Seed harvested from GMO plants will also contain these [sic] modification.

Romer Labs, <http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html> (last visited Jan. 11, 2012) (emphasis added).

28. As the above definitions make clear, genetically modified organisms are “created” artificially in a laboratory through genetic engineering. Kix cereals main ingredient of corn is

not natural, much less “all natural.” Advertising Kix cereals as made with all natural corn is deceptive and likely to mislead the public.

### **CLASS ALLEGATIONS**

29. Plaintiff brings this action on her own behalf and as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks certification of the following Class:

All persons in the United States who have purchased Berry Berry Kix, Honey Kix, and Kix from January 13, 2008 through the final disposition of this and any and all related actions (the “Class”).

30. Plaintiff and the members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impractical. Defendant’s national marketing and advertising campaigns target consumers across the country. The precise number of Class members and their identities are unknown to Plaintiff at this time but will be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication.

31. This action involves questions of law and fact common to Plaintiff and all members of the Class, which include the following:

- (a) Whether Defendant was unjustly enriched by its conduct;
- (b) Whether Defendant’s conduct constituted a breach of express warranty;
- (c) Whether Defendant’s conduct constituted a breach of the implied warranty of merchantability made to Plaintiff and the Class;
- (d) Whether Defendant violated New Jersey Consumer Fraud Act;
- (e) Whether Defendant violated Magnuson-Moss Act 15 U.S.C. § 2301; and
- (f) Whether Plaintiff and Class Members sustained damages resulting from Defendant’s conduct and, if so, the proper measure of damages, restitution, equitable, or other relief.



32. Plaintiff understands and is willing to undertake the responsibilities of acting in a representative capacity on behalf of the proposed Class. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to, or which directly conflict with, the interests of the other members of the Class.

33. Plaintiff has engaged the services of counsel who are experienced in complex class litigation, who will adequately prosecute this action, and who will assert and protect the rights of and otherwise represent Plaintiff and the absent Class Members.

34. Plaintiff's claims are typical of those of the absent Class Members because Plaintiff and the Class Members all sustained damages arising from Defendant's wrongful conduct, as alleged more fully herein.

35. This action is brought under Rule 23 because Defendant has acted on grounds generally applicable to all members of the Class and/or because questions of law or fact common to Class Members predominate over any questions affecting only individual members.

36. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than piecemeal individual determinations.

37. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude maintenance as a class action.

### **COUNT I**

#### **(Violation of Magnuson-Moss Act (15 U.S.C. § 2301 *et seq.*))**

38. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

39. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

40. Defendant is supplier and warrantor as defined in 15 U.S.C. § 2301(4)(5).

41. Kix cereals are consumer products as defined in 15 U.S.C. §2301(6).

42. By reason of Defendant's breach of its implied warranties and express written warranties that Kix cereals are "made with All Natural Corn," when in truth they are composed

of GMOs and are not as they are found in nature, Defendant has violated the statutory rights due the Plaintiff and the Class pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiff and the Class.

## **COUNT II**

### **(Violation of the New Jersey Consumer Fraud Act, N.J.S.A. § 58:8-1, *et seq.*)**

43. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

44. Plaintiff brings this claim individually and on behalf of the Class members who purchased Kix cereals in New Jersey.

45. General Mills misrepresented that Kix cereals were “made with All Natural Corn” when they are not.

46. General Mills’ material misrepresentation that Kix cereals are “made with All Natural Corn” constitutes an unconscionable commercial practice, deception, fraud, false promise and/or misrepresentation as to the nature of the goods, in violation of the New Jersey Consumer Fraud Act.

47. Plaintiff and the Class members suffered an ascertainable loss caused by General Mills’ misrepresentation because: (a) they would not have purchased Kix cereals based on the same representation if the truth that Kix cereals are made of GMOs that are not natural had been known; or (b) they paid a price premium due to the mislabeling of Kix cereals, as detailed above.

## **COUNT III**

### **(Breach of Express Warranty)**

48. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

49. Plaintiff brings this claim individually and on behalf of the Class.

50. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and the other Class Members purchased Kix cereals. The terms of that contract include the promises and affirmations of fact made by Defendant on the Kix cereals’ packaging

and through marketing and advertising, as described above. This marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between Plaintiff and the members of the Class and Defendant.

51. Defendant purports through its advertising to create express warranties that Kix cereals are all natural by making the affirmation of fact, and promising, that Kix cereals are “made with All Natural Corn.”

52. All conditions precedent to Defendant’s liability under this contract were performed by Plaintiff and the Class, when they purchased the product and used it as directed.

53. Despite the express warranties that Kix cereals are “made with All Natural Corn,” in fact, they are composed of GMOs and are not as they are found in nature.

54. Defendant breached express warranties about Kix cereals and their qualities because the products do not conform to Defendant’s affirmations and promises that they are natural and provide such benefits described above.

55. As a result of Defendant’s breach of express warranty, Plaintiff and the Class were harmed in the amount of the purchase price of Kix cereals.

#### **COUNT IV**

##### **(Unjust Enrichment)**

56. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

57. Plaintiff brings this claim individually and on behalf of the Class against defendant General Mills.

58. Plaintiff and Class members conferred a benefit on General Mills by purchasing Kix cereals.

59. General Mills has be unjustly enriched in retaining the revenues derived from Class members’ purchases of Kix cereals, which retention of such revenues under these circumstances is unjust and inequitable because General Mills misrepresented that Kix cereals

are “made with All Natural Corn” when in fact they are made of GMOs that are not natural, which caused injuries to Plaintiff and the Class because: (a) they would not have purchased Kix cereals based on the same representation if the true facts concerning their composition had been known; or (b) they paid a price premium due to the mislabeling of Kix cereals.

60. Because General Mills’ retention of the non-gratuitous benefit conferred on it by Plaintiff and the Class members is unjust and inequitable, General Mills must pay restitution to Plaintiff and the Class members for its unjust enrichment, as ordered by the Court.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, pray for judgment against Defendant as follows:

A. An order certifying the nationwide Class pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and her counsel to represent the Class Members;

B. An order declaring that the acts and practices of Defendant violate Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, and the New Jersey Consumer Fraud Act, N.J.S.A. § 58:8-1, *et seq.*, breach express warranties, and constitute unjust enrichment;

C. For damages pursuant to New Jersey law and the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.* in an amount to be determined at trial, including interest;

D. For restitution for monies wrongfully obtained and/or disgorgement of ill-gotten revenues and/or profits;

E. A permanent injunction enjoining Defendant from continuing to harm Plaintiff and the members of the Class and violating federal and New Jersey law;

F. An order requiring Defendant to adopt and enforce a policy that requires appropriate removal of misleading natural claims, which complies with New Jersey and federal law;

G. Reasonable attorneys' fees and the costs of the suit; and

H. Such other relief as this Court may deem just and proper.

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO  
Attorneys for Plaintiff

By:           /s/ James E. Cecchi            
          JAMES E. CECCHI

Dated: January 13, 2012

Richard H. Weiss  
Andrei V. Rado  
Jessica Sleater  
MILBERG LLP  
One Pennsylvania Plaza  
New York, New York 10119

Tel: (212) 594-5300  
Fax: (212) 868-1229  
rweiss@milberg.com  
arado@milberg.com  
jsleater@milberg.com

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims so triable.

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO  
Attorneys for Plaintiff

By: /s/ James E. Cecchi  
JAMES E. CECCHI

Dated: January 13, 2012

Richard H. Weiss  
Andrei V. Rado  
Jessica Sleater  
MILBERG LLP  
One Pennsylvania Plaza  
New York, New York 10119  
Tel: (212) 594-5300  
Fax: (212) 868-1229  
rweiss@milberg.com  
arado@milberg.com  
jsleater@milberg.com

# ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)