

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

Andrew Schrode, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

Arizona Beverages USA LLC,

Defendant

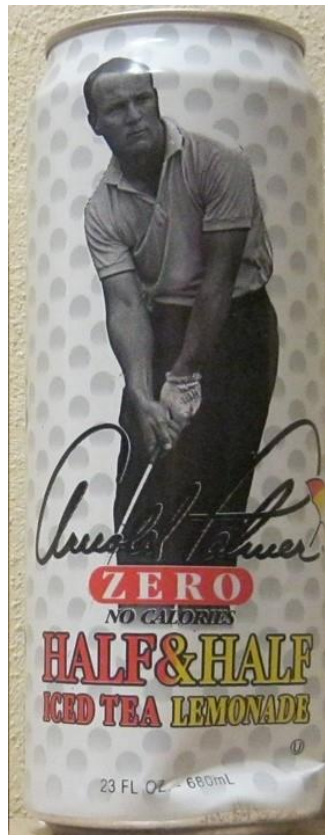
1:21-cv-03159

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. Arizona Beverages USA LLC (“defendant”) manufactures, markets, labels and sells combinations of half iced-tea and half-lemonade (an “Arnold Palmer”), represented as having “Zero [Calories]” and “No Calories,” under the Arizona brand (“Product”).



2. The statements, “Zero” and “No Calories” tell consumers the Product will not have any calories.

3. Zero is defined as “a state of total absence or neutrality” and refers to “arithmetical symbol 0 or 0 denoting the absence of *all* magnitude or quantity.” (emphasis added).<sup>1</sup>

#### I. Consumers Seek to Reduce Calorie Consumption

4. Due to awareness of harms from excess calorie intake, consumers are increasingly purchasing foods which contain less calories.

5. Calorie and sugar reduction are inextricably linked, as sugar is a source of calories.

6. Many consumers seek to avoid calories, especially “empty” calories consumed through beverages.

7. Reasonable consumers “clearly link sugar to calories,” and expect a food or beverage with no calories will not have any sugar. N.J. Patterson et al., “*Consumer understanding of sugars claims on food and drink products.*” Nutrition bulletin 37.2 (2012): 121-130.

8. By consuming foods with less or no calories – due to less or no sugar – consumers can potentially avert “numerous health problems, including weight gain, Type 2 diabetes, dental caries, metabolic syndrome and heart disease, and even indirectly to cancer because of certain cancers’ relationship to obesity.”<sup>2</sup>

9. As “sugar avoidance [is] a macro trend ‘that is here to stay and will only increase,’” companies have sought to promote products with less sugar, because such products would necessarily have fewer calories.<sup>3</sup>

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<sup>1</sup> Merriam Webster, [Zero](#).

<sup>2</sup> Marlene Cimon, [Eating too much sugar can hurt your health, and for some it’s actually addictive](#), Washington Post December 16, 2017.

<sup>3</sup> Ron Sterk, [Avoidance of sugar remains macro trend](#), Food Business News, February 28, 2018

10. Surveys confirm that a growing number of consumers are buying products with less sugar to decrease their caloric intake, and “85% are doing so for health reasons and 58% for weight concerns.”<sup>4</sup>

## II. “Zero Calories” and “No Calories” are Nutrient Content Claims

11. Representing a food or beverage as having zero or no calories is a nutrient content claim. 21 C.F.R. § 101.60(a).

12. Congress required the FDA to develop and implement nutrient content claims to prevent consumers from being misled by the endless terms and descriptors on labels.<sup>5</sup>

13. FDA regulations, adopted by Illinois, provide “general principles” for nutrient content claims, which are fleshed out in other regulations. 21 C.F.R. § 101.13; 21 C.F.R. §§ 101.54-101.69 (“Subpart D – Specific Requirements for Nutrient Content Claims”).<sup>6</sup>

14. The terms, descriptors and criteria for nutrient content claims were the outcome of dozens of meetings held by the FDA with consumers across the country.

15. Nutrient content claims for calories are intended to prevent consumers being deceived by labels which make representations about their calorie content that are not true. 21 C.F.R. § 101.60(b) (“*Calorie content claims.*”).

16. Products that are labeled as “no calories,” [or] “zero calories,” are permitted, provided certain criteria are met. 21 C.F.R. § 101.60(b)(1).

17. Specifically, a food must “contain[s] less than 5 calories per reference amount customarily consumed and per labeled serving” to be represented as “zero calories” or “no

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<sup>4</sup> *Id.*

<sup>5</sup> Nutrition Labeling and Education Act, [Public Law 101-535, 104 Stat 2353](#); 21 U.S.C. § 343(r)(2)(A).

<sup>6</sup> See 1 NYCRR 259.1(a)(3) contained in Section 259.1 (“Packaging and labeling of food.”) (incorporating 21 C.F.R. Part 101).

calories.” 21 C.F.R. § 101.60(b)(1)(i).

18. Otherwise, manufacturers could arbitrarily decrease the serving size so that it would contain less than five calories, and then advertise it as containing “zero calories.”

19. The Product’s Nutrition Facts indicate it has zero calories, based on a serving size of eight fluid ounces (fl. oz.), and that it has approximately three servings (23 oz).

Nutrition Facts	
Serving Size 8 fl. oz. (240mL)	
Servings Per Container Approx. 3	
Amount Per Serving	
Calories 0	Calories from Fat 0
% Daily Value*	
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 10mg	0%
Total Carbohydrate 1g	0%
Dietary Fiber 0g	0%
Sugars <1g	
Protein 0g	0%
Vitamin A 0%	Vitamin C 0%
Calcium 0%	Iron 0%
*Percent Daily Values are based on a 2,000 calorie diet.	

20. The reference amount customarily consumed (“RACC”) for non-carbonated beverages is 12 oz (360 mL).

21. The 23-oz can is 192 percent of the RACC and meets the definition of a single-serving container. 21 C.F.R. § 101.9(b)(6).

22. Federal regulations permit “amounts less than 5 calories [to] be expressed as zero” in the Nutrition Facts. 21 C.F.R. § 101.9(c)(1).

23. This means that presuming eight ounces contain less than five calories, listing “0” calories on the Nutrition Facts is permitted.

24. However, the RACC for the Product is the entire 23 oz-can, which does not contain less than five calories.

25. This fact is concluded because the Product is sold in what appears to be two versions.

Version 1

Version 2

<b>CONTAINS 5% JUICE</b>			
<b>Nutrition Facts</b>			
Approx. 2 servings per container			
<b>Serving size 12 fl oz (355mL)</b>			
	Per serving	Per container	
<b>Calories</b>	<b>5</b>	<b>15</b>	
	% DV*	% DV*	
<b>Total Fat</b>	0g	0%	0%
<b>Sodium</b>	0mg	0%	0%
<b>Total Carb.</b>	2g	1%	4%
Dietary Fiber	0g	0%	0%
Total Sugars	1g		2g
Incl. Added Sugars	0g	0%	0%
<b>Protein</b>	0g		0g
Vitamin D	0mcg	0%	0mcg 0%
Calcium	1mg	0%	2mg 0%
Iron	0mg	0%	0mg 0%
Potassium	7mg	0%	15mg 0%
Vitamin C	18mg	20%	34mg 40%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

<b>Nutrition Facts</b>	
Serving Size 8 fl. oz. (240mL)	
Servings Per Container Approx. 3	
Amount Per Serving	
<b>Calories 0</b>	<b>Calories from Fat 0</b>
% Daily Value*	
<b>Total Fat 0g</b>	<b>0%</b>
Saturated Fat 0g	0%
Trans Fat 0g	
<b>Cholesterol 0mg</b>	<b>0%</b>
<b>Sodium 10mg</b>	<b>0%</b>
<b>Total Carbohydrate 1g</b>	<b>0%</b>
Dietary Fiber 0g	0%
Sugars <1g	
<b>Protein 0g</b>	<b>0%</b>
Vitamin A 0%	Vitamin C 0%
Calcium 0%	Iron 0%

\*Percent Daily Values are based on a 2,000 calorie diet.

26. Both Nutrition Facts correspond to the identical 23-oz product with identical ingredients.

27. The Nutrition Facts on the left shows five calories per serving of 12 ounces.

28. According to reports, the FDA required Defendant to cease representing the Product as containing “Zero Calories” and “No Calories.”

29. Defendant now sells the identical product but labeled as “Diet,” which contains 15 calories per can, indicated in the left column.

### III. “Dual Column” Nutrition Facts is Misleading

30. The Product’s revised Nutrition Facts is misleading because it uses “dual columns,” which presents consumers with the number of calories “per serving” (5) (“12 oz”) and “per container” (15) (23 oz).

31. Research demonstrates that package and portion sizes have a considerable impact on the amount of food consumed.

32. Presenting Nutrition Facts with dual columns causes consumers to expect they will only consume half of the can.

33. However, evidence and studies show that consumers will generally consume an entire beverage when it is packaged and presented in a size such as the 23-oz can.

34. While a consumer may hope to consume part of the bottle – 5 calories – evidence suggests otherwise, and they will consume the entire can – 15 calories.

35. By presenting the Nutrition Facts with dual columns, format, it is inconsistent with the information required to maintain healthy dietary practices.

36. 21 C.F.R. § 101.9(b)(6) requires that “the entire content of the product must be labeled as one serving.”

37. While 21 C.F.R. § 101.9(b)(6) permits “an additional column that lists the quantitative amounts and percent Daily Values per common household measure that most closely approximates the reference amount,” this does not apply to single-serving beverage containers like the Product. *See* 21 C.F.R. § 101.9(b)(5)(iv) (defining “common household measure” as “A description of the individual container or package shall be used for single serving containers”); *see also* FDA, Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain

Reference Amounts Customarily Consumed, Feb. 2018 (“For single-serving containers and individually packaged products within multiserving containers, the common household unit must be a description of the individual container or package, such as can, box, or package (21 CFR 101.9(b)(5)(iv)).”).

38. The Product contains other representations which are false and misleading.

39. Reasonable consumers must and do rely on a company to honestly identify and describe the components, attributes and features of the Product, relative to itself and other comparable products or alternatives.

40. The value of the Product that plaintiff purchased was materially less than its value as represented by defendant.

41. Defendant sold more of the Product and at a higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

42. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for it.

43. The Product is sold for a price premium compared to other similar products, no less than \$1.49 per 23-oz can, higher than it would otherwise be sold for, absent the misleading representations and omissions.

#### Jurisdiction and Venue

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

45. Upon information and belief, the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

46. Plaintiff Andrew Schrode is a citizen of Illinois.

47. Defendant Arizona Beverages USA LLC is a New York limited liability company with a principal place of business in Woodbury, Nassau County, New York and upon information and belief, at least one member of defendant is not a citizen of the same state as the plaintiff.

48. Venue is proper because plaintiff resides in this judicial district, and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

#### Parties

49. Plaintiff Andrew Schrode is a citizen of Hickory Hills, Cook County, Illinois.

50. Defendant Arizona Beverages USA LLC, is a New York limited liability company with a principal place of business in Woodbury, New York, Nassau County.

51. Defendant is one of the largest sellers of iced tea beverages in the country.

52. Defendant's products, including the Product in this action, are sold to consumers by third-parties, available online and in almost every convenience store, grocery store, big box store, drug store within the nation, and in Illinois.

53. Plaintiff bought the Product at or exceeding the above-referenced price, on one or more occasions at one or more locations, including in 2020 and 2021, from stores including Walgreens, 8800 West 95th Street Hickory Hills IL 60457.

54. Plaintiff relied on the front label statements that the Product had zero calories and no calories.

55. Plaintiff chose between Defendant's Product and other similar products which were represented as zero calories and *had* zero calories, instead of zero calories based on an inaccurate serving size.

56. The Product was worth less than what Plaintiff paid and he would not have paid as



much absent Defendant's false and misleading statements and omissions.

57. Plaintiff intends to, seeks to, and will purchase the Product again when he can do so with the assurance that Product's representations are consistent with its capabilities and features.

Class Allegations

58. The class will consist of all Illinois, Ohio, Texas, Virginia, Rhode Island, Delaware and Florida residents who purchased the Product during the statutes of limitations for each cause of action alleged.

59. Common questions of law or fact predominate and include whether defendant's representations were and are misleading and if plaintiff and class members are entitled to damages.

60. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

61. Plaintiff is an adequate representative because his interests do not conflict with other members.

62. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

63. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

64. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

65. Plaintiff seeks class-wide injunctive relief because the practices continue.

Illinois Consumer Fraud and Deceptive Business Practices Act  
("ICFA"), 815 ILCS 505/1, et seq.

(Consumer Protection Statute)

66. Plaintiff incorporates by reference all preceding paragraphs.

67. Plaintiff and class members desired to purchase a product which had zero calories, not zero calories based on a serving size that was inapplicable.

68. Defendant's false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions.

69. Defendant misrepresented the Product through statements, omissions, ambiguities, half-truths and/or actions.

70. Plaintiff relied on the representations.

71. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

Breaches of Express Warranty,  
Implied Warranty of Merchantability and  
Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

72. The Product was manufactured, labeled and sold by defendant and expressly and impliedly warranted to plaintiff and class members that it was had zero calories, not zero calories based on a serving size that was inapplicable.

73. Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Product.

74. This duty is based on Defendant's outsized role in the market for this type of Product – a leading seller of ready-to-drink iced tea beverages.

75. Plaintiff provided or will provide notice to defendant, its agents, representatives, retailers and their employees.

76. Defendant received notice and should have been aware of these issues due to complaints by regulators, competitors, and consumers, to its main offices.

77. The Product did not conform to its affirmations of fact and promises due to

defendant's actions and were not merchantable because they were not fit to pass in the trade as advertised.

78. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

#### Negligent Misrepresentation

79. Defendant had a duty to truthfully represent the Product, which it breached.

80. This duty is based on defendant's position, holding itself out as having special knowledge and experience this area.

81. The representations took advantage of consumers' cognitive shortcuts made at the point-of-sale and their trust in defendant.

82. Plaintiff and class members reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, their purchase of the Product.

83. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

#### Fraud

84. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that had zero calories, not zero calories based on a serving size that was inapplicable

85. Defendant's fraudulent intent is evinced by its knowledge that the Product was not consistent with its composition and qualities.

#### Unjust Enrichment

86. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek

restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

**WHEREFORE**, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
4. Awarding monetary damages, statutory damages pursuant to any statutory claims and interest pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: June 11, 2021

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

60 Cuttermill Rd Ste 409

Great Neck NY 11021-3104

Tel: (516) 268-7080

Fax: (516) 234-7800

spencer@spencersheehan.com

1:21-cv-03159  
United States District Court  
Northern District of New York

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Andrew Schrode, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

Arizona Beverages USA LLC,

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Class Action Complaint

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60 Cuttermill Rd Ste 409  
Great Neck NY 11021-3104  
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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: June 11, 2021

/s/ Spencer Sheehan  
Spencer Sheehan

CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Andrew Schrode, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Cook (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

DEFENDANTS

Arizona Beverages USA LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, and Incorporated or Principal Place of Business.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions .

Large grid table for Nature of Suit with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332. Brief description of cause: False advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

June 11, 2021 /s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Spencer Sheehan, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?  Yes  No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County?  Yes  No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District?  Yes  No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?  Yes  No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes  No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

**Signature:** /s/Spencer Sheehan

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**PLAINTIFFS**

Andrew Schrode, individually and on behalf of all others Arizona Beverages USA LLC  
similarly situated

**DEFENDANTS**

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)      ATTORNEYS (IF KNOWN)  
Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great  
Neck NY 11021-3104 (516) 268-7080

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 USC § 1332; False advertising

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No  Yes  Judge Previously Assigned

If yes, was this case Vol.  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

IS THIS AN INTERNATIONAL ARBITRATION CASE?      No       Yes

(PLACE AN [x] IN ONE BOX ONLY)

**NATURE OF SUIT**

**TORTS**

**ACTIONS UNDER STATUTES**

**CONTRACT**

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 151 MEDICARE ACT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- 160 STOCKHOLDERS SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

**PERSONAL INJURY**

- 310 AIRPLANE
- 350 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MED MALPRACTICE

**ACTIONS UNDER STATUTES**

**CIVIL RIGHTS**

- 440 OTHER CIVIL RIGHTS (Non-Prisoner)
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 AMERICANS WITH DISABILITIES - EMPLOYMENT
- 446 AMERICANS WITH DISABILITIES - OTHER
- 448 EDUCATION

**PERSONAL INJURY**

- 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- 365 PERSONAL INJURY PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

**PERSONAL PROPERTY**

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING

**PRISONER PETITIONS**

- 463 ALIEN DETAINEE
- 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
- 530 HABEAS CORPUS
- 535 DEATH PENALTY
- 540 MANDAMUS & OTHER

**PRISONER CIVIL RIGHTS**

- 550 CIVIL RIGHTS
- 555 PRISON CONDITION
- 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

**FORFEITURE/PENALTY**

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

**PROPERTY RIGHTS**

- 820 COPYRIGHTS
- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATION
- 840 TRADEMARK

**LABOR**

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- 790 OTHER LABOR LITIGATION
- 791 EMPL RET INC SECURITY ACT (ERISA)

**IMMIGRATION**

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

**BANKRUPTCY**

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

**SOCIAL SECURITY**

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

**FEDERAL TAX SUITS**

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS-THIRD PARTY 26 USC 7609

**OTHER STATUTES**

- 375 FALSE CLAIMS
- 376 QUI TAM
- 400 STATE REAPPORTIONMENT
- 410 ANTITRUST
- 430 BANKS & BANKING
- 450 COMMERCE
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- 480 CONSUMER CREDIT
- 480 TELEPHONE CONSUMER PROTECTION ACT
- 490 CABLE/SATELLITE TV
- 850 SECURITIES/ COMMODITIES/ COMMODITIES/
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 896 ARBITRATION
- 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ 5,000,000 OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND:  YES  NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).



(PLACE AN x IN ONE BOX ONLY)

**ORIGIN**

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation (Transferred)
- 7 Appeal to District Judge from Magistrate Judge
- a. all parties represented
- b. At least one party is pro se.
- 8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

**BASIS OF JURISDICTION**

**IF DIVERSITY, INDICATE CITIZENSHIP BELOW.**

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

**CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)**

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] 1	DEF [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF [] 3	DEF [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF [] 5	DEF [] 5
CITIZEN OF ANOTHER STATE	[*] 2	[] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4	[*] 4	FOREIGN NATION	[] 6	[] 6

**PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)**

Andrew Schrode, 9455 S 85th Ct Apt 3S Hickory Hills IL 60457-1854, Cook County

**DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)**

Arizona Beverages USA LLC, 60 Crossways Park Dr W Ste 400 Woodbury NY 11797-2018, Nassau County

**DEFENDANT(S) ADDRESS UNKNOWN**

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

**COURTHOUSE ASSIGNMENT**

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  MANHATTAN

DATE 6/11/2021

SIGNATURE OF ATTORNEY OF RECORD  
/s/ Spencer Sheehan

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO  
[\*] YES (DATE ADMITTED Mo. 07 Yr. 2012 )  
Attorney Bar Code # SS-2056

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

The ILND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See instructions on next page of this form.)

I. (a) PLAINTIFFS

Andrew Schrode, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Cook (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (firm name, address, and telephone number) Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

DEFENDANTS

Arizona Beverages USA LLC

County of Residence of First Listed Defendant (In U.S. plaintiff cases only)

Note: In land condemnation cases, use the location of the tract of land involved.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Check one box, only.)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only.)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Check one box, only.)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, IMMIGRATION, BANKRUPTCY, FORFEITURE/PENALTY, PRISONER PETITIONS, HABEAS CORPUS, LABOR, SOCIAL SECURITY, OTHER STATUTES, FEDERAL TAXES.

V. ORIGIN (Check one box, only.)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

28 U.S.C. § 1332; false advertising

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT:

Check if this is a class action under Rule 23, F.R.C.V.P.

Demand \$ 5,000,000.00

CHECK Yes only if demanded in complaint: Jury Demand: Yes No

IX. RELATED CASE(S) IF ANY (See instructions):

Judge Case Number

X. Is this a previously dismissed or remanded case?

Yes No If yes, Case # Name of Judge

Date: June 11, 2021

Signature of Attorney of Record /s/Spencer Sheehan

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Andrew Schrode individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Cook (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Arizona Beverages USA LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF 1 1 Incorporated or Principal Place of Business In This State 4 4 Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5 Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 625 Drug Related Seizure, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332 Brief description of cause: False advertising

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the Northern District of Illinois

Andrew Schrode, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Arizona Beverages USA LLC,

Defendant(s)

Civil Action No. 1:21-cv-03159

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Arizona Beverages USA LLC
c/o Martin Cunningham
60 Crossways Park Dr W Ste 400
Woodbury NY 11797-2018

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:21-cv-03159

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 05/00) Summons in a Civil Action

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

**SUMMONS IN A CIVIL CASE**

Andrew Schrode, individually and on behalf of  
all others similarly situated,

Plaintiff(s)

CASE NUMBER: 1:21-cv-03159

V.

ASSIGNED JUDGE:

Arizona Beverages USA LLC

DESIGNATED  
MAGISTRATE JUDGE:

Defendant(s)

TO: (Name and address of Defendant)

Arizona Beverages USA LLC  
c/o Martin Cunningham  
60 Crossways Park Dr W Ste 400  
Woodbury NY 11797-2018

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Sheehan & Associates, P.C.  
60 Cuttermill Rd Ste 409  
Great Neck NY 11021-3104  
(516) 268-7080

an answer to the complaint which is herewith served upon you, 21 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

AO 440 (Rev. 05/00) Summons in a Civil Action

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE
--	------

NAME OF SERVER ( <i>PRINT</i> )	TITLE
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*Check one box below to indicate appropriate method of service*

Served personally upon the defendant. Place where served: \_\_\_\_\_  
 \_\_\_\_\_

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
 Name of person with whom the summons and complaint were left: \_\_\_\_\_

Returned unexecuted: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Other (specify): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_ Date \_\_\_\_\_ *Signature of Server* \_\_\_\_\_

\_\_\_\_\_  
*Address of Server*

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

Richard Alonzo, individually and on behalf of  
all others similarly situated,

Plaintiff,

-against-

William Grant & Sons, Inc.,

Defendant

**SUMMONS**

Index No.  
Purchased on June 11, 2021

To the above-named Defendant:

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** to answer the complaint of the plaintiff herein and to serve a copy of your answer on the plaintiff at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

**YOU ARE HEREBY NOTIFIED THAT** should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: June 11, 2021

/s/Spencer Sheehan  
Sheehan & Associates, P.C.  
60 Cuttermill Rd Ste 409  
Great Neck NY 11021-3104  
Tel: (516) 268-7080  
Fax: (516) 234-7800  
spencer@spencersheehan.com

Address

Plaintiff 180 E 104th St Apt 19 New York NY 10029-4910

Defendant 300 Park Ave S Fl 6 New York NY 10010-5364

Plaintiff designates New York County as the place of trial.

Venue The basis of designation is: **[SELECT ONE]**

- Plaintiff's Residence in New York County
- Defendant's Residence in New York County
- Other



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Tackles 'No Calories' Claims on Arizona's Arnold Palmer Zero Lemonade-Iced Tea Cans](#)

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