

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY**

DEVONIA SPEARMAN RUFF, on behalf of
herself and her minor child, J.R., and all others
similarly situated,

Plaintiff,

vs.

PERFETTI VAN MELLE USA INC.,

Defendant

Case No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

Plaintiff (“Plaintiff”), Devonian Spearman Ruff, on behalf of herself and her minor child, J.R., individually and on behalf of all others similarly situated, brings this action against Defendant Perfetti Van Melle USA Inc., (“Defendant” or “Perfetti”). Plaintiff seeks to obtain damages, restitution, and injunctive relief for the Class, as defined below, from Perfetti. Plaintiff makes the following allegations upon information and belief, except as to her own actions, the investigation of her counsel, and the facts that are a matter of public record.

1. This is a consumer protection class action involving Airheads Gummies, a popular chewy candy that comes in six “fantastically fruity flavors” and that also contains a tree nut ingredient — coconut oil — despite a label on the candy’s outer packaging stating prominently that it does not contain any tree nuts.¹

¹ See, <https://airheads.com/candy/> (last visited May 22, 2023), citing SmartLabel, which describes Airheads Gummies as “a variety of six favorite fantastically fruity flavors including Blue Raspberry, Cherry, Watermelon, Orange, White Mystery, and Strawberry. The same label states that Airheads Gummies are “[f]ree of all “Big 8” allergens: milk, eggs, peanuts, tree nuts, soy, fish, shellfish and wheat.” <https://smartlabel.labelinsight.com/product/5115572/other/claims>

2. Airheads Gummies are distributed and marketed by Perfetti Van Melle USA Inc. at its domestic headquarters in Erlanger, Kentucky. Perfetti's parent company is one of the world's largest sellers of confectionery and chewing gum products.

3. This is a consumer protection action arising out of the misleading and deceptive labeling of Airheads Gummies in violation of the Federal Food Drug & Cosmetic Act ("FDCA") Section 201(v), the Food Allergen Labeling and Consumer Protection Act of 2004 ("FALCPA"), 21 U.S.C. 301, *et seq.*, as well as state laws prohibiting misbranded food of the 50 states and the District of Columbia, which impose requirements identical to federal law.

4. At all relevant times during the class period, Perfetti sold Airheads Gummies using a label that states prominently that the candy is both "peanut free" and "tree nut free" as follows:



5. Upon information and belief, Perfetti sold and continues to sell Airheads Gummies with the same label today.

6. The ingredients list for Airheads Gummies also discloses, in smaller type, that the candy contains coconut oil, an allergen that the FDA considers a tree nut.²

7. Tree nuts are considered “major allergens” within the meaning of the FALCPA, and as such the manufacturer is required comply with the allergen labeling requirements of section 403(w) of the FDCA.³

8. The packaging of Airheads Gummies leads consumers to think that it is “tree nut free” because of the bold logo on its labeling. Thus, consumers including Plaintiff and her son were and are misled into thinking the product contains no major allergens, when in fact it does.

THE PARTIES

Plaintiff

9. Plaintiff Devonia Spearman Ruff is a resident and citizen of the State of Mississippi, residing in Pearl, Rankin County, which is part of the Southern District of Mississippi, U.S. District Court. Plaintiff’s minor son J.R., who is 12 years old, resided with her at all relevant times.

10. In early May 2023, Ms. Ruff and her son visited a retail outlet in Pearl, Mississippi, where they purchased Airheads Gummies. Both Ms. Ruff and her son are accustomed to reading consumer labels closely because J.R. is allergic to many substances, including tree nuts. They viewed the “tree nut free” label on Airheads Gummies and reasonably believed that the product did not contain tree nuts. Later that same day, after ingesting the candy, J.R. became sick and had

² See Food and Drug Administration, Center for Food Safety and Applied Nutrition, *Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Guidance for Industry* (Nov. 2022), listing coconut as an example of a tree nut.

³ *Id.* (“Food manufacturers, in particular, need to know if any major food allergens are present in the food ingredients they use to manufacture other products to ensure that ingredients containing major food allergens are properly handled and that finished product labels comply with the FDCA.”).

difficulty breathing. He woke up throughout the night and told his mother he was scared and worried, prompting a visit to the doctor's office the next day and a subsequent referral to an otolaryngologist. Doctors later prescribed medicine for J.R. and advised him to stay away from products such as Airheads Gummies that contain coconut oil, despite the labeling stating that the candy is tree nut free.

Defendant

11. Defendant Perfetti Van Melle USA Inc. is a corporation organized under the laws of Kentucky with its headquarters at 3645 Turfway Rd, Erlanger, KY 41018 and an address for service of process at FBT LLC, 400 West Market St. 32nd Floor, Louisville, KY 40202. On information and belief, Defendant manufactured, packaged, distributed, advertised, marketed and sold the Misbranded Products to millions of customers nationwide.

12. Perfetti's parent company, Perfetti Van Melle Group B.V., has 17,700 employees worldwide and \$2.615 billion in annual sales to more than 150 countries.⁴ It is based in Amsterdam, and in Milan, Italy.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(d). The amount in controversy in this class action exceeds \$5,000,000, exclusive of interest and costs, and there are numerous Class Members who are citizens of states other than Defendant's state of citizenship.

14. This Court has personal jurisdiction over the parties in this case. Defendant Perfetti conducts business in this District and is a citizen of this District by virtue of having its principal

⁴ Perfetti Van Melle "at a glance," <https://www.perfettivanmelle.com/assets/pdf/At-a-glance.pdf> (last visited May 24, 2023).

place of business located in this District.

15. Venue is proper in this District under 28 U.S.C. §1391(b) because Perfetti and/or its parents or affiliates are headquartered in this District and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

FACTUAL ALLEGATIONS

A. Perfetti's failure to disclose a major allergen in Airheads Gummies candy

16. Airheads Gummies are regularly sold at pharmacies, convenience stores, grocery stores and supermarkets in all 50 states and the District of Columbia.

17. Plaintiff, her minor son J.R., and Class members purchased Airheads Gummies and viewed Perfetti's misleading product packaging, reasonably relied in substantial part on the representations including the prominent "tree nut free" label and were thereby deceived in deciding to purchase the candy.

18. Had they known about Airheads Gummies containing coconut oil, which is contrary to the product's labeling, Plaintiff and her son would not have purchased the candy and would not have experienced the fear, emotional distress, allergy symptoms, and physical discomfort that J.R. suffered.

19. Plaintiff's son, J.R. is allergic to tree nuts. Approximately 1.6 million to 3.3 million people in the United States are similarly allergic to tree nuts, posing severe risks including life threatening anaphylaxis.⁵

⁵ American Academy of Allergy Asthma & Immunology, *Everything You Need to Know About Tree Nut Allergy*, available at [https://www.aaaai.org/tools-for-the-public/conditions-library/allergies/everything-you-need-to-know-about-tree-nut-allergy#:~:text=Tree%20nut%20allergy%20is%20one,1%25%20of%20the%20U.S.%20populati on](https://www.aaaai.org/tools-for-the-public/conditions-library/allergies/everything-you-need-to-know-about-tree-nut-allergy#:~:text=Tree%20nut%20allergy%20is%20one,1%25%20of%20the%20U.S.%20populati on.). (last visited May 24, 2023).

20. According to the FALCPA, there is no cure for food allergies. Therefore, a food allergic consumer must avoid the food to which the consumer is allergic.

21. In a review of the foods of randomly selected manufacturers of baked goods, ice cream, and candy in Minnesota and Wisconsin in 1999, the Food and Drug Administration found that 25 percent of sampled foods failed to list peanuts or eggs as ingredients on the food labels; and nationally, the number of recalls because of unlabeled allergens rose to 121 in 2000 from about 35 a decade earlier.⁶

22. A recent study shows that many parents of children with a food allergy were unable to correctly identify in each of several food labels the ingredients derived from major food allergens. Tree nuts, which include coconut oil, are among the eight major allergens.

23. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (the “Class Period”), purchased Airheads Gummies for consumption and not for resale.

24. During the Class Period, Perfetti manufactured, marketed and sold Airheads Gummies throughout the United States. Perfetti purposefully sold the candy with a prominent label stating that they were “tree nut free” which was not the case because they contained coconut oil, which is considered a tree nut by the U.S. Food and Drug Administration.

25. Perfetti violated statutes enacted in each of the 50 states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are as follows:

- a. Alabama Deceptive Trade Practices Act, Ala. Statutes Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code §

⁶ FALCPA, available at <https://www.fda.gov/media/77570/download> (last visited May 24, 2023).

- 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
 - d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
 - e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
 - f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
 - g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
 - h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
 - i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
 - j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
 - k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
 - l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 I, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
 - m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
 - n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
 - o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
 - p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
 - q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
 - r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
 - s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
 - t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
 - u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
 - v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
 - w. Michigan Consumer Protection Act, § § 445.901, *et seq.*;
 - x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
 - y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
 - z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
 - aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code § 30-14- 101, *et seq.*

- bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*; *ee.* New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 *1, et seq.*;
- ee. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 *1, et seq.*;
- ff. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- gg. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 1501, *et seq.*;
- hh. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- ii. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- jj. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- kk. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- ll. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. §§ 201-1, *et seq.*;
- mm. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- nn. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- oo. South Dakota Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 *1, et seq.*;
- pp. Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- qq. Texas Stat. Ann. § 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;
- rr. Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- ss. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- tt. Virginia Consumer Protection Act, Virginia Code Ann. §§ 59.1-196, *et seq.*;
- uu. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- vv. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- ww. Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100. 18, *et seq.*;
- xx. Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§ 40-12-101, *et seq.*

26. Perfetti deceived Plaintiffs and other consumers nationwide by mislabeling the major allergens in Airheads Gummies. Defendant has been unjustly enriched as a result of its conduct. Through these unfair and deceptive practices, Defendant has collected millions of dollars from the sale of its Products that it would not have otherwise earned. Plaintiffs bring this action to stop Defendant's misleading practice.

27. Perfetti's misbranding and mislabeling is intentional. Defendant has been unjustly enriched as a result of its conduct. Through these unfair and deceptive practices, Defendant has collected millions of dollars from the sale of its Products that it would not have otherwise earned.

28. Under the Federal Food Drug and Cosmetic Act (herein "FDCA"), Section 403(d) (codified as 21 U.S.C. § 343(d)), a food shall be deemed misbranded "[i]f its container is so made, formed, or filled as to be misleading." Consumer protection laws of the fifty states and the District of Columbia correspond to the requirements of the FDCA, 21 U.S.C. §§ 343 *et seq.*

29. Plaintiff and her minor child J.R., and the members of the Class, relied on the "tree nut free" label prominently displayed on Airheads Gummies and reasonably believed that the candy did not contain tree nuts. The "tree nut free" label offers consumers a quick reference and the assurance that tree nuts are not contained in the product, so there is no need to read the entire ingredient list.

30. Perfetti's packaging of Airheads Gummies as alleged herein is deceptive and misleading and was designed to increase sales of the Products by convincing customers that the candy does not contain tree nuts when in fact it does. Defendant's misrepresentations are part of its systematic Product packaging practice.

31. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the term “misleading” is a term of art. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O- Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951).

32. Under the FDCA, it is not necessary to prove that anyone was actually misled. Consumer protection laws of the 50 states and the District of Columbia have substantially identical requirements as the FDCA.

33. Airheads Gummies are misbranded under state consumer protection laws and state food and drug laws because they misled Plaintiffs and Class members about the presence of a major allergen pursuant to the candy’s packaging and labeling. Specifically, the “tree nut free” label gives the false impression that the consumer is buying a product that is safe from certain allergens when in fact it is not.

34. The types of misrepresentations made above would be considered by a reasonable consumer when deciding to purchase Airheads Gummies. A reasonable person would attach importance to whether Airheads Gummies are “misbranded,” *i.e.*, not legally salable, or capable of legal possession, and/or contain a major allergen.

35. Plaintiffs and Class members did not know, and had no reason to know, that the Products contained tree nuts.

36. Perfetti’s labeling was a material factor in Plaintiffs’ and Class members’ decisions to purchase Airheads Gummies. In reliance on the packaging, Plaintiffs and Class members believed that they were getting a product that did not contain a major allergen.

37. Had Plaintiffs and Class members known Airheads Gummies contained tree nuts, they would not have bought the candy.

38. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products contained tree nuts as set forth herein, and would not have bought the candy had they known the truth.

39. Defendant's "tree nut free" label is misleading and in violation of the FDCA and consumer protection laws of each of the 50 states and the District of Columbia, and the candy at issue is misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

40. As a result of Defendant's misrepresentations, Plaintiffs and millions of others throughout the United States purchased the Products.

41. Plaintiffs and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Airheads Gummies containing a major allergen and paid prices they otherwise would not have paid.

CLASS ACTION ALLEGATIONS

42. Plaintiff brings all counts, as set forth below, individually and as a class action, pursuant to the provisions of Fed. R. Civ. P. 23, on behalf of a Class defined as:

All persons or entities in the United States who made retail purchases of Airheads Gummies during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

43. Excluded from the proposed Class are current and former officers and directors of Perfetti, members of the immediate families of the officers and directors of Perfetti, its legal

representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

44. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

45. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

46. **Numerosity, Fed. R. Civ. P. 23(a)(1):** The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through the appropriate discovery, Plaintiffs believe that there are as many as 3 million members in the proposed Class. Other members of the Class may be identified from records maintained by Defendant and may be notified of the pendency of this action by mail, or by advertisement, using the form of notice similar to that customarily used in class actions such as this.

47. **Typicality, Fed. R. Civ. P. 23(a)(3):** Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct.

48. **Adequacy of Representation, Fed. R. Civ. P. 23(a)(4):** Plaintiff will fairly and adequately represent and protect the interests of the Members of the Class. Plaintiff's Counsel is competent and experienced in litigating class actions.⁷

⁷ The undersigned has litigated dozens of class action cases across Kentucky and the nation, including matters involving train derailments, toxic spills, industrial fires, cemetery mismanagement, data breaches, bank fees, medical records and other claims. See, e.g., *Manning v. Liberty Tire Servs. of Ohio, LLC*, 577 S.W.3d 102, 114 (Ky. App. 2019); *St. Stephen's Cemetery Ass'n, et al. v. Tina Seaton, et al.*, 2022-CA-0080-ME, Unpub. (Ky. App. November 10, 2022).

49. Plaintiffs will fairly and adequately protect the interests of the members of the Class in that Plaintiffs have no interests antagonistic to those of the other members of the Class. Plaintiffs have retained experienced and competent counsel.

50. **Superiority, Fed. R. Civ. P. 23(b)(3):** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class members may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to individually seek redress for the wrongful conduct alleged herein. If Class treatment of these claims were not available, Defendant would likely unfairly receive millions of dollars or more in improper sales.

51. **Commonality, Fed. R. Civ. P. 23(a)(2):** Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the common questions of law fact to the Class are:

- a) Whether Perfetti labeled, packaged, marketed, advertised and/or sold Airheads Gummies to Plaintiffs and Class members, using false, misleading and/or deceptive packaging and labeling with respect to the “tree nut free” label on the packaging;
- b) Whether Perfetti’s actions constitute violations of the Food Drug and Cosmetic Act, Section 201(v);
- c) Whether Perfetti’s actions violations of the Food Allergen Labeling and Consumer Protection Act of 2004 (“FALCPA”), 21 U.S.C. 301, *et seq.*
- d) Whether Perfetti omitted and/or misrepresented material

facts in connection with the labeling, packaging, marketing, advertising and/or sale of Airheads Gummies;

- e) Whether Perfetti's labeling, packaging, marketing, advertising and/or selling of Airheads Gummies constituted an unfair, unlawful or fraudulent practice.
- f) Whether, and to what extent, injunctive relief should be imposed on Perfetti to prevent such conduct in the future.
- g) Whether the members of the Class have sustained damages as a result of Perfetti's wrongful conduct.
- h) Whether Perfetti has been unjustly enriched by its scheme of using false, misleading and/or deceptive "tree nut free" labeling, packaging or misrepresentations, and;
- i) Whether Perfetti should be enjoined from continuing its unlawful practices regarding the presence of allergens in its candy.

52. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Perfetti has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

53. **Injunctive Relief, Fed. R. Civ. P. 23(b)(2):** The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

54. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Perfetti. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

55. Perfetti's conduct is generally applicable to the Class as a whole and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As such, Perfetti's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT 1 – NEGLIGENCE MISREPRESENTATION

56. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

57. Perfetti, directly or through its agents and employees, made false representations, concealment and nondisclosures to Plaintiffs and members of the Class. Defendant, through its deceptive labeling of Airheads Gummies, makes uniform representations regarding the candy.

58. Perfetti, as the manufacturers, packagers, labelers and initial sellers of the Airheads Gummies purchased by Plaintiffs, had a duty to disclose the true nature of the candy and not sell a candy with coconut oil that also contained a "tree nut free" label. Perfetti had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs; Perfetti made partial representations that are misleading. Its failure to disclose the information it had a duty to disclose constitutes material misrepresentations and materially misleading omissions which misled the Plaintiffs who relied on Perfetti in this regard to disclose all material facts accurately and truthfully and fully.

59. Plaintiffs and members of the Class reasonably relied on Defendant's representation that their Product did not contain tree nuts.

60. In making the representations of fact to Plaintiffs and members of the Class described herein, Perfetti failed to fulfill its duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

61. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

62. Plaintiffs and members of the Class would have acted differently had they not been misled - i.e. they would not have paid money for the Products in the first place.

63. Defendant has a duty to correct the misinformation they disseminated through the deceptive packaging of the Products. By not informing Plaintiffs and members of the Class, Defendant breached their duty. Defendant also profited financially as a result of this breach.

64. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendant when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

65. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Products, and any interest that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.

66. Defendant acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and members of the Class.

67. Plaintiffs and members of the Class are entitled to damages, including punitive damages.

COUNT 2 – NEGLIGENT MISREPRESENTATION

68. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

69. As a result of Perfetti's deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of Products, Defendant was enriched, at the expense of and members of the Class, through the payment of the purchase price for Defendant's Products.

70. Plaintiffs and members of the Class conferred a benefit on Perfetti through purchasing the Products, and Defendant has knowledge of this benefit and has voluntarily accepted and retained the benefits conferred on it.

71. Perfetti will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Perfetti and for which Perfetti has been unjustly enriched.

72. Under the circumstances, it would be against equity and good conscience to permit Perfetti to retain the ill-gotten benefits that they received from Plaintiffs, and all others similarly situated, in light of the fact that the nature and ingredients of Airhead Gummies purchased by Plaintiffs and the Class, was not what Perfetti purported it to be by its labeling and packaging. Thus, it would be unjust or inequitable for Perfetti to retain the benefit without restitution to Plaintiffs, and all others similarly situated, for selling their Products with labels that make a reasonable consumer believe they do not contain tree nuts when in fact they do because they are made with coconut oil. In order for Plaintiffs and Class members to be made whole, they need

to receive the price premium paid for the Products or a refund of the purchase price of the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendant as follows:

- A. For an Order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff and her minor son J.R. as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;
- B. For an Order declaring the Defendant's conduct violates the statutes referenced herein;
- C. For an Order finding in favor of Plaintiffs and members of the Class;
- D. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For an Order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief to repackage the Products to clearly state that they contain tree nuts which are a major allergen as recognized by the FDA;
- H. For an Order awarding Plaintiffs and members of the Class their reasonable attorneys' fees and expenses and costs of suit; and
- I. For such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs, individually and on behalf of all others similarly situated,
hereby demand a jury trial on all claims so triable.

Dated: May 24, 2023

Respectfully submitted,

ALEX DAVIS LAW OFFICE PSC

s/ Alex C. Davis

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Airheads Gummies Not as 'Tree Nut Free' as Advertised, Class Action Says](#)
