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United States District Court
Eastern District of New York

1:20-cv-00712

Tiffany Taylor, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

Tipp Distributors, Inc.,

Defendant

Complaint

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Tipp Distributors, Inc. ("defendant") manufactures, distributes, markets, labels and sells iced tea beverages purporting to be low in sugar under the Steaz brand ("Products").

2. The Products are available to consumers from retail and online stores of third-parties and are sold in in sizes including 16 OZ.

3. The relevant front label statements include "Lightly Sweetened," "Steaz," statement of identity, Iced Green Tea – Peach, "flavored with other natural flavors" and a vignette of peaches.

4. The representations are misleading because though being represented as low in sugar, they actually contain objectively high amounts of sugar, as added sugar.

I. Increasing Consumer Avoidance of Sugar and Sweetened Food and Beverages

5. In 2014, the National Institutes of Health cautioned: "experts agree that Americans eat and drink way too much sugar, and it's contributing to the obesity epidemic. Much of the sugar we eat isn't found naturally in food but is added during processing or preparation."[1]

6. The NIH noted further: "[s]everal studies have found a direct link between excess sugar consumption and obesity and cardiovascular problems worldwide."[2]

7. There has long been a consensus among doctors and nutritionists that "[e]ating too much sugar contributes to numerous health problems, including weight gain, Type 2 diabetes, dental caries, metabolic syndrome and heart disease, and even indirectly to cancer because of

[1] NIH, Sweet Stuff: How Sugars and Sweeteners Affect Your Health, October 2014.
[2] *Id.*

certain cancers' relationship to obesity."[3]

8. In addition, "there is emerging research that suggests high-sugar diets may increase the risk of developing [dementia]."[4]

9. At least in part due to growing consumer awareness of health problems caused by excessive sugar consumption, in recent years consumers have shown a distinct preference for products with little or no added sugar.

10. In August 2016, a trade journal reported that "[o]ngoing concerns about obesity and sugar intake have driven interest in reduced sugar and diet drinks in recent years."[5]

11. A May 2017 essay observed that "[h]ealth concerns and better educated consumers are propelling the demand for sugar reduction across food and beverage categories."[6]

12. According to lecturers at the International Sweetener Colloquium in Orlando, Florida in February, 2018, " on February 13, "sugar avoidance was a macro trend 'that is here to stay and will only increase.'"[7]

13. This conclusion was supported by survey data showing that "58% of consumers across generations are avoiding sugar. . . [and of] those avoiding sugar, 85% are doing so for health reasons and 58% for weight concerns."[8]

II. Nutrition Authorities Promote Limited Consumption of Added Sugars

14. The 2015-2020 Dietary Guidelines for Americans ("DGA") recommended that

[3] Marlene Cimons, Eating too much sugar can hurt your health, and for some it's actually addictive, Washington Post December 16, 2017.
[4] Kieron Rooney, Yes, too much sugar is bad for our health – here's what the science says, The Conversation, March 8, 2018.
[5] PreparedFoods.com, Trends in Sugar Reduction and Natural Sweeteners, August 24, 2016.
[6] Laura Dembitzer, Less is More: Sugar Reduction, Less Sodium & Low-FODMAPS in Food, Beverage, Food Insider Journal, May 09, 2017.
[7] Ron Sterk, Avoidance of sugar remains macro trend, Food Business News, February 28, 2018
[8] *Id.*, citing survey conducted by Information Resources, Inc. ("IRI").

added sugar make up no more than 10 percent of all calories consumed per day.[9]

15. Based on an average of 2,000 calories per day, this means the maximum daily amount of added sugars should not exceed 200 calories or 50 grams of sugar.

16. The FDA adopted the DGA limits on added sugars and "concluded that there is strong and consistent evidence that healthy dietary patterns characterized, in part, by lower intakes of sugar sweetened foods and beverages relative to less healthy patterns, are associated with a reduced risk of CVD (Cardiovascular disease)."[10]

17. To promote the consumption of less sugar – through less added sugar – the FDA required that a product's added sugars be displayed with a percent daily value (DV) in a food.

18. For example, if a product contained 10 grams of added sugar, it would provide 20% of the DV.

19. By providing more and clearer information, consumers would have the tools to be more aware of and limit their added sugar consumption.

III. Implied Nutrient Content Claims of "Low Sugar" are Prohibited and Can Be Misleading

20. Low sugar products are generally marketed towards consumers seeking products that are useful in "weight control," through consumption of fewer calories. *See* N. J. Patterson et al., "*Consumer understanding of sugar claims on food and drink products*," Nutrition bulletin, 37.2 (2012): 121-130 ("In focus groups, participants felt deceived if sugar reduction claims were being made without a significant reduction in calories.").

21. Representations that characterize the level of a nutrient are specifically limited and

[9] 2 U.S. Health & Human Servs., U.S. Dept. of Agriculture, *Dietary Guidelines for Americans 2015-2020*, 8th Ed. (Dec. 2015).
[10] Center for Science in Public Interest, Letter to FDA Requesting Enforcement Action on Unauthorized Low Sugar Claims, January 9, 2020.

can only be made in accordance with an authorizing regulation. 21 U.S.C. § 343(r)(2)(A); *see* 21 C.F.R. § 101.13 ("general principles"); *see also* 21 C.F.R. §§ 101.54-101.69 ("Subpart D—Specific Requirements for Nutrient Content Claims").

22. Nutrient content claims for sugar were originally in a section of regulations for "dietary foods" as 21 C.F.R. § 105.66 originally included "terms such as low calorie, 'reduced calorie,' and 'sugar free,' which were thought to be useful attributes of a food in the maintenance or reduction of body weight." 56 Fed. Reg. 229, 60421 at 60457, Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms (Nov. 7, 1991) (21 CFR Parts 5, 101, and 105); FDA, *Guidance for Industry and FDA: Dear Manufacturer Letter Regarding Sugar Free Claims*, Sept. 2007 ("FDA has historically taken the position that consumers may associate claims regarding the absence of sugar with weight control and with foods that are low calorie or that have been altered to reduce calories significantly.").

23. As "maintaining a healthy body weight became more scientifically supported and accepted as public health and individual goals, it was no longer accurate that they [lower and reduced sugar foods] be described in connection with "special dietary uses." 56 Fed. Reg. 229, 60421 at 60457 ("Consequently, the agency is proposing to place requirements for terms such as 'low' and 'reduced calorie,' comparative claims, and sugar claims, originally provided for in § 105.66, in § 101.60").

24. Though the FDA has authorized claims for the absence of sugar and calories ("no sugar," "calorie free") and relative amount of calories and sugar ("fewer calories," "less sugar"), no similar claims are permitted for describing a product as "low sugar." *See* 21 C.F.R. § 101.60(c) ("Sugar content claims").

	Calorie Claims[11]	Sugar Claims[12]
Absence	No Calories	No Sugar
Relative	Fewer Calories	Less Sugar
Low	Low Calories	X

25. The FDA regularly prevents companies from making "low sugar" claims because they have the strong tendency to mislead, and do mislead, consumers:

> The labeling for your "Fruit of the Spirit" product, located on the website [url omitted] contains the nutrient content claim "Low sugar." While FDA has defined some nutrient content claims for sugar in 21 CFR 101.60(c), FDA has not defined "Low sugar"; therefore, the use of this claim misbrands your product under section 403(r)(1)(A) of the Act. The claim "lower sugar" may be used…").
>
> FDA, *Warning Letter to CK Management, Inc.*, May 19, 2015.

26. Label claims "about the calorie or sugar content of a food may only be made" if such claim "uses one of the terms defined in this section in accordance with the definition for that term." *See* 21 C.F.R. § 101.60(a) and 21 C.F.R. § 101.60(a)(1).

27. This means that because "low sugar" claims have never been authorized, they are prohibited. 58 Fed. Reg. 2302, 2368 ("The agency stated that under the provisions of the statute, such implied claims are prohibited until they are defined by FDA by regulation.").

28. The Product's use of "Lightly Sweetened" to describe its sugar content is thus prohibited because this term – and its implication of "low sugar" – are not defined by regulation. *See* 21 C.F.R. § 101.60(c).

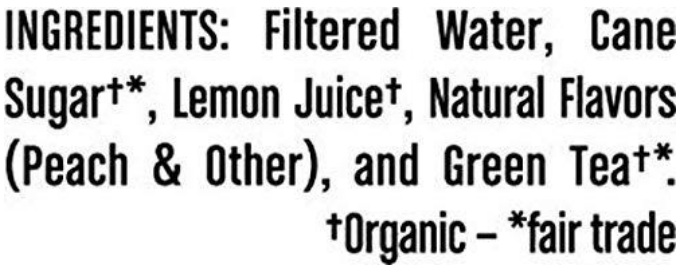
IV. Products Make Misleading Sugar Claims

29. When consumers observe the Products' front-label representation of "Lightly

[11] 21 C.F.R. § 101.60(b)
[12] 21 C.F.R. § 101.60(c)

Sweetened" claim, they will be misled to believe the Products are lower in sugar and added sugar than they are.

30. Far from being "lightly sweetened" and low in sugar or low in added sugar, sugar is the second most predominant ingredient in the Product by weight.

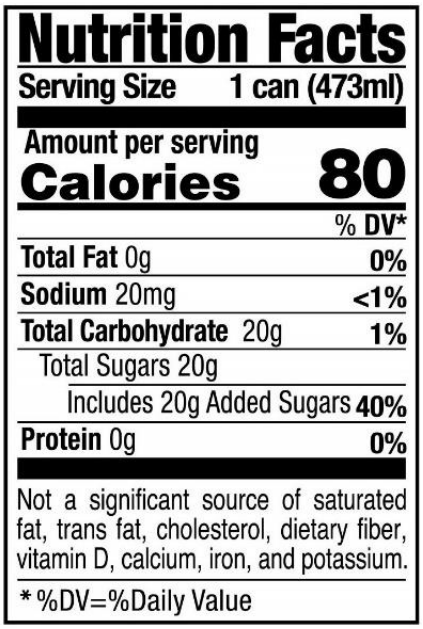


INGREDIENTS: FILTERED WATER, CANE SUGAR†*, LEMON JUICE†, NATURAL FLAVORS (PEACH & OTHER), GREEN TEA.

31. According to CSPI, even though the "FDA has not issued regulations defining 'low sugar' or 'low added sugar,' the "upper thresholds for 'low xxx' claims characterizing levels of fat, saturated fat, cholesterol, and sodium range from 5 to 7 percent of the DV for the relevant nutrient, per RACC."[13]

32. The Product's Nutrition Facts reveals it contains 20 grams of total sugar and 20 grams of added sugar.

[13] Center for Science in Public Interest, Letter to Letter to FDA Requesting Enforcement Action on Unauthorized Low Sugar Claims, January 9, 2020.



Nutrition Facts

Serving Size 1 can (473ml)

Amount per serving

Calories 80

	% DV*
Total Fat 0g	**0%**
Sodium 20mg	**<1%**
Total Carbohydrate 20g	**1%**
Total Sugars 20g	
Includes 20g Added Sugars	**40%**
Protein 0g	**0%**

Not a significant source of saturated fat, trans fat, cholesterol, dietary fiber, vitamin D, calcium, iron, and potassium.

* %DV=%Daily Value

33. The Products are not only "high" in added sugars (40% DV) but can be considered "high" in total sugars.

34. This is because regulations permitting "'high' claims – nutrient content claims characterizing high levels of a nutrient – to be used, provided that the food contains at least 20 percent of the DV per RACC."[14]

35. Since the Products contain 15 grams of sugar per RACC of 360 mL, which is thirty percent of the DV for added sugars, "exceed[ing] 20 percent of the DV for added sugars per RACC," they are "not only not 'low' in added sugars, but [is] actually 'high' in added sugars according to FDA's standard definition for 'high in' claims."[15]

36. The result of the Product's low sugar, "lightly sweetened" claim is the false impression to consumers they are low in sugar including added sugar.

37. Consumers are "misled to believe they are following the DGA's advice and 'selecting beverages low in added sugars,' even as they consume beverages that are actually high

[14] CSPI Letter.
[15] *Id.* at p. 6.

in added sugars."

38. By consuming the Products and the 40% DV of added sugar, the average person who wishes to follow the DGA must consume no more than 30 grams of sugar across 1,920 calories (2,000 calories – 80 calories).

39. It will be difficult to impossible for the average, reasonable consumer to not consume more than 30 grams of sugar in everything else they eat or drink because many foods and beverages have added sugars, albeit in much smaller amounts than the Products here.

40. Given that most Americans have limited numeracy skills, it is not feasible to ensure no more than 30 grams of sugar are consumed, because this would entail detailed calculations after each food to see how many calories and added grams of sugar they should take in.

41. To represent a product as "lightly sweetened" that contains almost half of recommended daily added sugar intake poses "a specific risk of harm to consumers seeking to lower their sugar consumption, including those with diet-related diseases, such as Type 2 diabetes.[16]

42. No requirement exists to compel the Products to represent or allude to their sugar content through the term "Lightly Sweetened" on the front label, as opposed to the requirement it be present in the Nutrition Facts, so added sugar can be viewed next to the percent DV.

V. Conclusion

43. Defendant's branding and packaging of the Products are designed to – and does – deceive, mislead, and defraud consumers.

44. Defendant has sold more of the Products and at higher prices per unit than it would

[16] CSPI Letter, *supra* citing FDA.

have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

45. The amount of sugar or other caloric sweetening ingredients has a material bearing on price or consumer acceptance of the Products because their absence causes consumers to pay more for such Products.

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

47. Had plaintiffs and class members known the truth, they would not have bought the Products or would have paid less for it.

48. The Product contains other representations which are misleading and deceptive.

49. As a result of the false and misleading labeling, the Product is sold at a premium price, approximately no less than $2.49 per unit, excluding tax, compared to other similar products represented in a non-misleading way.

Jurisdiction and Venue

50. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) (Class Action Fairness Act of 2005 or "CAFA").

51. Under CAFA, district courts have "original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least $5,000,000; and (2) minimal diversity[.]" *Gold v. New York Life Ins. Co.*, 730 F.3d 137, 141 (2d Cir. 2013).

52. Upon information and belief, the aggregate amount in controversy is more than $5,000,000.00, exclusive of interests and costs.

53. Plaintiff is a citizen of New York.

54. Defendant is a Texas corporation with a principal place of business in El Paso, El Paso County, Texas and is a citizen of Texas.

55. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to provide and/or supply and provides and/or supplies services and/or goods within New York.

56. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and State.

57. A substantial part of events and omissions giving rise to the claims occurred in this District.

Parties

58. Plaintiff is a citizen of Flushing, Queens County, New York.

59. Defendant Tipp Distributors, Inc. is a Texas corporation with a principal place of business in El Paso, Texas, El Paso County.

60. During the relevant statutes of limitations, plaintiff purchased the Product within this district and/or State for personal consumption in reliance on the representations.

Class Allegations

61. The classes will consist of all purchasers of the Products in New York, the other 49 states and a nationwide class where applicable, during the applicable statutes of limitations.

62. 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.

63. 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.

64. Plaintiff is an adequate representative because her interests do not conflict with other members.

65. No individual inquiry is necessary since the focus is only on defendant's practices

and the class is definable and ascertainable.

66. 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.

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

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

New York GBL §§ 349 & 350
(Consumer Protection from Deceptive Acts)

69. Plaintiff incorporates by reference all preceding paragraphs.

70. Plaintiff and class members desired to purchase, consume and use products or services which were as described and marketed by defendant and expected by reasonable consumers, given the product or service type.

71. Defendant's acts and omissions are not unique to the parties and have a broader impact on the public.

72. Defendant's conduct was misleading, deceptive, unlawful, fraudulent, and unfair because it gives the impression to consumers the Products are low in sugar when they have significant amounts of added sugar and make it difficult for consumers to follow the Dietary Guidelines for Americans to restrict calories from added sugars and to consume beverages that are actually low in sugar.

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

Negligent Misrepresentation

74. Plaintiff incorporates by reference all preceding paragraphs.

75. Defendant misrepresented the substantive, quality, compositional, organoleptic

and/or nutritional attributes of the Products through representing they are low in sugar when they have significant amounts of added sugar and make it difficult for consumers to follow the Dietary Guidelines for Americans to restrict calories from added sugars and to consume beverages that are actually low in sugar.

76. Defendant had a duty to disclose and/or provide non-deceptive marketing of the Products and knew or should have known same were false or misleading.

77. This duty is based on defendant's position as an entity which has held itself out as having special knowledge and experience in the production, service and/or sale of the product or service type.

78. The representations took advantage of consumers' (1) cognitive shortcuts made at the point-of-sale and (2) trust placed in defendant, a well-known and respected brand in this sector.

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

80. 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.*

81. Plaintiff incorporates by reference all preceding paragraphs.

82. Defendant manufactures and sells Products that give the impression they are low in sugar when they have significant amounts of added sugar and make it difficult for consumers to follow the Dietary Guidelines for Americans to restrict calories from added sugars and to consume beverages that are actually low in sugar.

83. The Products warranted to plaintiff and class members that they possessed

substantive, functional, nutritional, qualitative, compositional, organoleptic, sensory, physical and other attributes which they did not.

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

85. This duty is based, in part, on defendant's position as one of the most recognized companies in the nation in this sector.

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

87. Defendant had received or should have been aware of the misrepresentations due to numerous complaints by consumers to its main office over the past several years.

88. The Products did not conform to their affirmations of fact and promises due to defendant's actions and were not merchantable.

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

Fraud

90. Plaintiff incorporates by references all preceding paragraphs.

91. Defendant represented the Products are low in sugar when they have significant amounts of added sugar and make it difficult for consumers to follow the Dietary Guidelines for Americans to restrict calories from added sugars and to consume beverages that are actually low in sugar.

92. Defendant's fraudulent intent is evinced by its failure to accurately identify the Products on the front label.

93. Plaintiff and class members would not have purchased the Products or paid as much

if the true facts had been known, suffering damages.

Unjust Enrichment

94. Plaintiff incorporates by reference all preceding paragraphs.

95. Defendant obtained benefits and monies because the Products were 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 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, restitution and disgorgement for members of the State Subclasses pursuant to the applicable laws of their States;
4. Awarding monetary damages and interest, including treble and punitive damages, 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: February 9, 2020

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

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E.D.N.Y. # SS-8533
S.D.N.Y. # SS-2056

1:20-cv-00712
United States District Court
Eastern District of New York

Tiffany Taylor, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

Tipp Distributors, Inc.,

Defendant

Complaint

Sheehan & Associates, P.C.
505 Northern Blvd Ste 311
Great Neck NY 11021-5101
Tel: (516) 303-0552
Fax: (516) 234-7800

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: February 9, 2020

/s/ Spencer Sheehan
Spencer Sheehan

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

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 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

Tiffany Taylor, individually and on behalf of all others similarly situated

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Sheehan & Associates, P.C., 505 Northern Blvd Ste 311, Great Neck, NY 11021-5101, (516) 303-0552

DEFENDANTS

Tipp Distributors, Inc.

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. Governmen 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)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 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)*

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 (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 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 - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☑ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities-Employment
- ☐ 446 Amer. w/Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 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

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

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 Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity):***
28 USC § 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 2/9/2020

SIGNATURE OF ATTORNEY OF RECORD /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 or 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

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Tiffany Taylor, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Tipp Distributors, Inc.

Defendant(s)

Civil Action No. 1:20-cv-00712

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Tipp Distributors, Inc.

c/o Patrick R. Gordon
4695 N Mesa St Ste 100
El Paso TX 79912-6149

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., 505 Northern Blvd Ste 311, Great Neck, NY 11021-5101, (516) 303-0552

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