

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ARTHUR HOYTE, M.D., on behalf of himself) Civil Action No.
and all others similarly situated, and in the inter-))
ests of the general public,))
118 Monroe Street, Apt. 1204))
Rockville, MD 20850))
))
) CLASS ACTION
))
Plaintiff,))
))
vs.))
))
YUM! BRANDS, INC. d/b/a KFC,))
1441 Gardiner Lane))
Louisville, KY 40213))
))
))
Serve: CT Corp. Systems))
Kentucky Home Life Bldg.))
Louisville, KY 40202))
))
Defendant.))
))

CLASS ACTION COMPLAINT

Plaintiff Arthur Hoyte, M.D., on behalf of himself and all others similarly situated, and in the interests of the general public, alleges as follows against Defendant Yum! Brands, Inc. d/b/a KFC (“KFC”) on information and belief formed after reasonable inquiry under the circumstances:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to the D.C. Code §11-921 and §28-3905(k)(1).
2. This Court has jurisdiction over KFC because it is a corporation that is authorized to conduct, and in fact does conduct, substantial business in the District of Columbia. KFC has sufficient minimum contacts with the District of Columbia or otherwise intentionally avails itself

of the consumer markets within the District of Columbia through the promotion, sale, marketing and/or distribution of its food items in the District of Columbia to render the exercise of jurisdiction by the District of Columbia courts permissible under traditional notions of fair play and substantial justice. Dr. Hoyte does not seek judgment for himself or for any D.C. Consumer of more than \$74,000 total per person, for all recovery, damages, interest, costs, or any other thing or type. Similarly, the total benefit or value to Dr. Hoyte or any D.C. Consumer is not more than \$74,000 total per person, for all recovery, damages, interest, costs, or any other thing or type. The cost to defendant of all relief sought herein is less than \$74,000 per person.

3. Venue is proper in the District of Columbia as the acts upon which this action is based occurred in the District of Columbia. Dr. Hoyte and all other D.C. Consumers purchased food items at KFC locations in the District of Columbia, which were prepared in oil containing trans fat, and were thereby injured and subjected to irreparable harm in this venue. KFC received substantial compensation and profits from sales of such food items in the District of Columbia. Thus, KFC's liability arose and continues in the District of Columbia.

PRELIMINARY STATEMENT

4. Dr. Hoyte brings this class action under the laws of the District of Columbia for various forms of relief for injuries sustained as a result of KFC's use of dangerous trans fats to prepare its food items for sale to consumers in the District of Columbia.

5. Dr. Hoyte sues for himself, in the interests of the general public, and on behalf of all persons who purchased any food item at a KFC restaurant in the District of Columbia that was prepared with products containing trans fat ("D.C. Consumers").

6. All conditions precedent to the filing of this case have been performed, have occurred, or have been satisfied.

PARTIES

7. Plaintiff Arthur Hoyte, M.D. (“Dr. Hoyte”) is a resident of Maryland. In 2004 and 2005 Dr. Hoyte purchased food products at the KFC store located at 2 Florida Ave, NE Washington, DC, 20002. This store is owned by KFC and not by a franchisee.

8. Defendant Yum! Brands, Inc. is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business located at 1441 Gardiner Lane, Louisville, Kentucky 40213. Defendant is the parent company for KFC (formerly Kentucky Fried Chicken), Pizza Hut, Long John Silver’s, Taco Bell, and A&W All American Food. Because this Complaint involves KFC’s ownership and operation of multiple KFC restaurants in the District of Columbia, Defendant is herein referred to as “KFC.”

9. Various individuals, partnerships, corporations and associations not named as Defendant in this Complaint have participated in the violation alleged herein and have performed acts and made statements in furtherance thereof.

REPRESENTATIVE ACTION

10. Dr. Hoyte brings this action for himself and as a representative plaintiff acting for the interests of the general public, seeking relief pursuant to and from KFC’s use of trade practices in violation of laws of the District of Columbia, pursuant to D.C. Code §28-3905(k)(1).

CLASS ACTION

11. Dr. Hoyte also brings this action as a class action pursuant to Superior Court Rules of Civil Procedure 23, on behalf of himself and all other persons who purchased any food item at a KFC restaurant in the District of Columbia that was prepared with products containing trans fat (“D.C. Consumers” or “Class”), from 3 years prior to filing this case until the date of class certification (“the Class Period”).

12. The Class is so numerous that joinder of all members is impracticable. There are thousands of members of the Class who are geographically dispersed throughout the District of Columbia.

13. Dr. Hoyte's claims are typical of the claims of the members of the Class because Dr. Hoyte and all Class members were injured by the same wrongful conduct of KFC alleged herein.

14. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. Common questions include whether:

- (a) This case is actionable pursuant to D.C. Code § 28-3905(k)(1),
- (b) KFC's conduct violated D.C. Code § 28-3904,
- (c) KFC's conduct violated D.C. Code § 28:2-314,
- (d) KFC's food items prepared with trans fat are merchantable,
- (e) Dr. Hoyte and members of the Class are entitled to damages,
- (f) KFC should pay attorneys fees,
- (g) KFC should pay punitive damages,
- (h) KFC should be ordered to restore to the Class all of the monies which may have been acquired by means of KFC's unlawful trade practices, and
- (i) *Cy pres* distribution on behalf of the Class as is appropriate.

15. Because Dr. Hoyte's claims are typical of the claims of the Class, and he has no interests adverse to or which irreconcilably conflict with the interests of other members of the Class, Dr. Hoyte is an adequate class representative.

16. Dr. Hoyte will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of complex class action litigation.

17. A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against large corporate defendants. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

FACTS ABOUT TRANS FAT

18. All KFC locations in the District of Columbia, both company-owned and franchised, use partially hydrogenated oil, which is very high in trans fat.

19. Although small amounts of trans fat occur naturally in beef and dairy products, the United States Food and Drug Administration (“FDA”) estimates that 80 percent of the trans fat in Americans’ diets comes from partially hydrogenated oil. Treating oil with hydrogen gas results in an artificial fat that is solid or semi-solid at room temperature and has a long shelf life.

20. In 2003, the National Academy of Health’s Institute of Medicine concluded that the only safe level of trans fat in the diet is zero, and in 2004 an FDA advisory panel concluded that trans fat is even more harmful to humans than saturated fat.

21. Health experts agree. Dr. Walter Willett, professor of nutrition and epidemiology at the Harvard School of Public Health says, “When partially hydrogenated vegetable oil was first used in foods many decades ago, it was considered safe. Now that studies have demon-

strated that partially hydrogenated oil is a major cause of heart disease, it should be phased out of the food supply as rapidly as possible and replaced with more-healthy oils.”

22. The amount of trans fat in KFC food items, including, but not limited to the following items, is significant:

- Three-piece Extra Crispy fried chicken dinner with a biscuit and potato wedges: 15 grams of trans fat
- Pot Pie: 14 grams of trans fat
- Large Popcorn Chicken: 7 grams of trans fat

23. Partially hydrogenated oil is absolutely unnecessary and harmful in the food supply of products offered for public sale to the unknowing consuming public.

24. Specifically, KFC does not need to use partially hydrogenated oil in its restaurants, and should forthwith cease and desist from this practice. There are other oils available from various suppliers that are completely free of trans fat and completely suitable for use in commercial food preparation.

25. The only reason KFC has not made the change is economic: (1) there is a small cost of converting equipment to use liquid oil (less than \$8,000 per location), and (2) liquid oil may be slightly more costly than partially hydrogenated oil.

26. This minor cost to KFC is no excuse for using partially hydrogenated oil and exposing consumers to the deadly dangers inherent in the use of trans fat.

27. KFC’s practice is made far worse by the fact that it does not properly warn, disclose, or even tell its customers that they are eating food items prepared with the worst oil available and imaginable. No consumer can tell that partially hydrogenated oil is used, because it appears as merely a hot liquid in the frying equipment seen by consumers.

28. Moreover, KFC has deceptively advertised and misrepresented to its customers and consumers, both in its stores and on its website, that KFC gives consumers “the best food”

and that KFC food products could be consumed as part of a nutritionally healthy lifestyle, yet even their “Tender Roast” and “Honey BBQ” Sandwiches contain trans fats, unknown to D.C. Consumers.

29. American consumers have a growing awareness of trans fat and the need to avoid it. Accordingly, KFC’s failure to (1) discontinue its use of products containing trans fats and (2) warn its customers that it is subjecting them to serious and unnecessary health risks, is outrageous, all to the damage of Dr. Hoyte and D.C. Consumers. It is also a violation of District of Columbia consumer protection and warranty laws, thereby entitling Dr. Hoyte and the Class to the relief requested.

FACTS AS TO DR. HOYTE

30. In 2004 and 2005, on more than one occasion, Dr. Hoyte purchased food products at the KFC store located at the intersection of Florida Ave. and North Capitol Street, in Northeast Washington, D.C, and from time to time at other KFC locations in the District.

31. When Dr. Hoyte purchased KFC food products, he was unaware that the products had been prepared with trans fat.

32. KFC did not display any warning or disclaimer to advise consumers that the food products it was selling were prepared with trans fat.

33. Dr. Hoyte was aware that the FDA had advised that trans fats were unhealthy and was trying to avoid consuming products that contained trans fat.

34. By failing to disclose and warn as to its use of partially hydrogenated oil in its products, KFC damaged Dr. Hoyte by selling products that KFC knew or should have known were unhealthy, inferior, and dangerous to the health of consumers, including Dr. Hoyte. In addition, by not disclosing the use of trans fats in its food products, KFC failed to provide D.C. Con-

sumers with the information they needed to make informed decisions regarding the food products and trans fats they were consuming.

COUNT I

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY Common Law and D.C. Code §§ 28:2-314

35. Dr. Hoyte repeats and realleges each and every prior allegation contained in this Complaint with the same force and effect as if fully set forth herein.

36. D.C. Code §28:2-314 provides:

(1) Unless excluded or modified (section 28:2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

- (a) pass without objection in the trade under the contract description; and
- (b) in the case of fungible goods, are of fair average quality within the description; and
- (c) are fit for the ordinary purposes for which such goods are used; and
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (section 28:2-316), or implied warranties may arise from course of dealing or usage of trade.

37. KFC's practices violate D.C. Code §§ 28:2-314.

38. KFC created an implied warranty of merchantability to Dr. Hoyte and to other similarly situated D.C. Consumers that its food products were (1) of at least fair, average quality, (2) fit for their ordinary purpose of human consumption, and (3) adequately packaged and labeled so as to advise Dr. Hoyte and D.C. Consumers that they were consuming significant amounts of trans fat.

39. Dr. Hoyte and D.C. Consumers, relying on KFC's implied warranty, purchased KFC food products.

40. Notwithstanding KFC's guarantees and implied warranties, the food products purchased by Dr. Hoyte and D.C. Consumers were not (1) of at least fair, average quality, (2) fit for human consumption, and (3) adequately labeled to advise Dr. Hoyte and D.C. Consumers that they were consuming dangerous trans fat products and exposing their health to serious injury. Accordingly, KFC breached its implied warranties to Dr. Hoyte and to D.C. Consumers.

41. As a direct, proximate and foreseeable result of KFC's breaches, Dr. Hoyte and the Class have been damaged in an amount to be determined at trial.

COUNT II

BREACH OF D.C. CONSUMER PROTECTION PROCEDURES ACT D.C. CODE § 28-3904, AND § 28-3905(K)(1)

42. Dr. Hoyte repeats and realleges each and every prior allegation contained in this Complaint with the same force and effect as if fully set forth herein.

43. D.C. Code § 28-3904 provides, in pertinent part:

It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

- (f) fail to state a material fact if such failure tends to mislead;
- (x) sell consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Official Code, or by operation or requirement of federal law.

44. D.C. Code §28-3905(k)(1) provides:

A person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia and may recover or obtain the following remedies:

- (A) treble damages, or \$1,500 per violation, whichever is greater, payable to the consumer;
- (B) reasonable attorney's fees;
- (C) punitive damages;
- (D) an injunction against the use of the unlawful trade practice;
- (E) in representative actions, additional relief as may be necessary to restore to the consumer money or property, real or personal, which may have been acquired by means of the unlawful trade practice; or
- (F) any other relief which the court deems proper.

45. KFC's practices violate D.C. Code § 28-3904, which is actionable both individually and in a representative action under D.C. Code § 28-3905(k)(1).

46. KFC violated the D.C. Consumer Protection Procedures Act by, among other things:

- a. Failing to state the material fact of the type of oils they were using for preparing food products, with the intent or effect of deceiving or misleading D.C. Consumers.
- b. Selling consumer goods in a condition or manner not consistent with the implied warranty of merchantability provided in D.C. Code §§ 28:2-312- 318.

47. Dr. Hoyte and the Class seek actual damages for their economic injuries caused by these violations in an amount to be determined at trial. They are entitled to have these damages trebled pursuant to the D.C. Code § 28-3905(k)(1)(A), but in no case less than \$1,500 per violation. Neither Dr. Hoyte nor any class member seeks any monetary recovery for any personal injury, emotional harm, pain and suffering, or any other form of non-economic damage.

48. Dr. Hoyte and the Class seek punitive damages pursuant to D.C. Code § 28-3905(k)(1)(C).

49. Dr. Hoyte seeks an order directing KFC to restore or disgorge all money that may have been acquired by means of its unlawful trade practices.

50. If there is no reasonable opportunity to award each individual member of the class an appropriate portion of the monetary relief, Dr. Hoyte seeks a *cy pres* distribution on behalf of the Class, pursuant to D.C. Code § 28-3905(k)(1)(E).

51. KFC's past and continued failures to disclose that its food items are prepared with trans fat have caused and continue to cause irreparable harm to the consuming public, thereby entitling Dr. Hoyte and the Class to equitable relief and an injunction ordering KFC (1) to cease using trans fat products for food preparation in its stores or, in the alternative, (2) to take all necessary actions to insure that D.C. Consumers know, immediately prior to purchasing any such food, that a food is prepared with trans fat, pursuant to D.C. Code § 28-3905(k)(1)(D).

52. KFC's acts and conduct, as described above, entitle Dr. Hoyte and the Class to an award of attorneys' fees pursuant to D.C. Code § 28-3905(k)(1)(B).

COUNT III

NEGLIGENT MISREPRESENTATION

53. Dr. Hoyte repeats and realleges each and every prior allegation contained in this Complaint with the same force and effect as if fully set forth herein.

54. At all relevant times, KFC was engaged in the business of marketing, selling, and supplying food products for retail sale and consumption to Dr. Hoyte and other D.C. Consumers.

55. By reason of KFC's knowledge and expertise about the nutritional values of its food products and the harmful health effects associated with consuming trans fats, KFC owed a duty of care to Dr. Hoyte and D.C. Consumers that required, among other things, that KFC be

truthful and accurate in its representations to Dr. Hoyte and D.C. Consumers about its use of trans fat products in preparing its food products.

56. KFC breached its duty of care to Dr. Hoyte and D.C. Consumers by negligently making material misrepresentations.

57. Specifically, KFC, knowing that its food products contained trans fats, represented to Dr. Hoyte and D.C. Consumers that it was providing the “best food” and that its food could be consumed as part of a healthy lifestyle, when KFC knew these representations were false, misleading and deceptive.

58. Dr. Hoyte and D.C. Consumers reasonably relied on KFC’s representations.

59. This reliance was not only foreseeable by KFC but also intended by it, and it was foreseeable to KFC that Dr. Hoyte and D.C. Consumers would rely upon its representations and that such reliance would cause injury to Dr. Hoyte and D.C. Consumers.

60. KFC’s conduct was intended to maximize sales and profit at the expense of the public’s health and safety, was outrageous and performed with evil motive, intent to injure, ill will and without legal justification or excuse and without regard for the health and well being of Dr. Hoyte and D.C. Consumers.

61. Other healthier alternatives are available to KFC for food preparation that would not expose Dr. Hoyte and D.C. Consumers to unhealthy trans fats

62. As a direct and proximate result of KFC’s marketing and sale of food products prepared with partially hydrogenated oil, Dr. Hoyte and D.C. Consumers were exposed to unknown amounts of unhealthy trans fats and have suffered or will suffer adverse health effects from said consumption.

63. Dr. Hoyte and D.C. Consumers are therefore entitled to damages in an amount to be proven at trial, punitive damages, plus interest and costs, including attorneys’ fees.

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of the Class, and in the interests of the general public, prays for judgment against KFC, as follows:

1. Awarding Plaintiff and the Class actual economic damages for defendant's violations of the D.C. Code.
2. Trebling these economic damages as provided in the D.C. Code, in an amount of at least \$1,500.00 for each violation.
3. Awarding Plaintiff and the Class their other economic damages as requested.
4. Awarding Plaintiff and the Class punitive damages for Defendant's willful and intentional violation of the D.C. Code.
5. Ordering Defendant to disgorge all money that has been acquired by means of its unlawful trade practices.
6. If there is no reasonable opportunity to distribute the amounts awarded individually to D.C. Consumers, direct a *cy pres* distribution on behalf of D.C. Consumers.
7. Enjoining Defendant's continued use of trans fats or in the alternative ordering Defendant to take all necessary actions to insure that D.C. Consumers are warned so that they may know, immediately prior to purchasing any food prepared using trans fat, that the food is prepared with trans fat products.
8. Granting Plaintiff and the Class the costs of prosecuting this action, together with interest and reasonable attorneys' fees and costs; and
9. Granting other relief as the Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff and the Class demand trial by jury on all claims for which there is a right to a jury trial.

Dated: June 12, 2006

Respectfully submitted,



RICHARD D. HEIDEMAN (#377462)
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