

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Lisa Lindberg, on behalf of herself and the
Proposed Rule 23 Class,

Plaintiff,

v.

PepsiCo, Inc., and Izze Beverage Co.,

Defendants.

Case No:

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

Plaintiff Lisa Lindberg, by her undersigned counsel, for herself and the Proposed Rule 23 Class as defined herein, hereby commences this class action suit against Defendants PepsiCo, Inc. (“Pepsi”) and Izze Beverage Co. (“Izze”) (collectively, “Defendants”) for punitive, statutory, compensatory, equitable, injunctive, and declaratory relief. Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. This nationwide consumer class action seeks damages and declaratory and injunctive relief from Defendants under the New York consumer protection laws due to Defendants’ false and misleading labeling and advertising of their Izze brand beverages (“Izze Sodas”).¹

2. Izze Sodas consist of various product types, but Defendants describe them all as sparkling juice drinks. The Izze brand is intended to appeal to consumers who are concerned about the healthfulness of the products they consume. Defendants market Izze Sodas to those consumers by making false and materially misleading statements of fact in the products’ labeling and advertising.

¹ Plaintiff also brings alternative claims under the California consumer protection laws, which she asserts if the Court declines to apply New York law to all consumers’ claims for all purchases of Izze Sodas in the United States.

3. First, the front and the back of the label on all Izze Soda bottles and cans wrongly states: “NO PRESERVATIVES.” Defendants also advertise this claim on the Izze website.

4. In truth, Izze Sodas all contain citric acid or ascorbic acid, both of which are preservatives.

5. Second, the back of the label on glass Izze Soda bottles wrongly states: “Each bottle delivers two servings of fruit based on USDA’s 2010 Dietary Guidelines.”

6. Defendants’ “two servings of fruit” claim is false because the USDA did away with this measure of servings in its 2010 Guidelines precisely because it misleads consumers about how much of various food groups they should eat or drink.

7. Even putting aside the changes to the 2010 USDA Guidelines, Defendants’ “two servings of fruit” claim is deceptive and misleading to reasonable consumers. It falsely suggests that Izze Sodas contain the nutritional value and health benefits that can be obtained by eating fruit. Whole fruit contains fiber, vitamins, and minerals. Even if Izze Sodas were originally manufactured with real fruit, they no longer contain any of the nutritional value and health benefits that can be obtained by eating whole fruit. Instead, from a health and nutrition viewpoint, they are simply soda: carbonated, sugary, flavored beverages.

8. Defendants’ false and misleading labeling and advertising are material to consumers. Defendants have been able to brand Izze Sodas as more healthful products than other sodas or more healthful than they actually are. As a result, Defendants have been able to charge a price premium to all consumers throughout the United States who purchased Izze Soda products.

9. Through this class action, Plaintiff seeks to put a stop to Defendants’ false and deceptive labeling and advertising of Izze Sodas. Plaintiff also seeks damages, in the form of a

refund of the unlawful price premium she and the proposed class members paid, as well as punitive and statutory damages.

PARTIES

10. Plaintiff Lisa Lindberg is a resident of Redlands, California and a former resident of Cassville, New York. During the Class Period (defined below), Plaintiff purchased Izze Sodas (in both glass bottles and cans) in New York and California. Plaintiff read the Izze Soda label and reasonably relied on it, believing it contained truthful statements that were not misleading or deceptive. Plaintiff believed that Izze Sodas are more natural and more healthful than other sodas, and the “two servings of fruit” claim is why she tried Izze Sodas in the first place.

11. Defendant PepsiCo, Inc., is a North Carolina corporation with its principal place of business located at PepsiCo, Inc., 700 Anderson Hill Road, Purchase, NY 10577.

12. Defendant Izze Beverage Co., is a Delaware corporation with its principal place of business located at PepsiCo, Inc., 700 Anderson Hill Road, Purchase, NY 10577.

13. Based on Pepsi’s own public statements, Pepsi owns and controls Izze. Both Defendants share the same corporate headquarters, which they both identify as being located at “PepsiCo, Inc.” In addition, Pepsi describes Izze as one of its “brands” in its 2013 Annual Report. In its 2014 Annual Report, Pepsi states that it owns the “Izze” trademark and again identifies Izze as one of its brands. The conduct alleged in this Complaint is attributable to both Defendants.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1332(d)(2) because there is minimal diversity, there are more than 100 members in the

class, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of attorneys' fees, interest, and costs.

15. This Court has personal jurisdiction over Defendants because their principal place of business is located in this District.

16. Venue is proper in this District because both Defendants reside in this District, and a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

FACTUAL ALLEGATIONS

17. Defendants label and market Izze Sodas in an effort to take advantage of increasing consumer demand for more healthful alternatives to sodas and other processed beverages and do this despite the fact that Izze Sodas do not have the health benefits claimed and implied by their labels and are no more healthful than other sodas.

18. The front and the back of the label on all Izze Soda bottles and cans states: "NO PRESERVATIVES." Defendants also advertise this claim on the Izze website.²

19. Further, the back of the label on glass Izze Soda bottles states: "Each bottle delivers two servings of fruit based on USDA's 2010 Dietary Guidelines."

20. Both of these claims are false and materially misleading to health-conscious consumers, who are willing to pay a price premium for food and beverage options that purport to be more consistent with their lifestyle choices.

21. All Izze Sodas contain citric acid or ascorbic acid. Citric acid and ascorbic acid are both recognized as chemical preservatives by regulators, the food and beverage industry, and the scientific community.

² See <http://www.izze.com/> (last visited Aug. 12, 2016).

22. The U.S. Food and Drug Administration (“FDA”) identifies citric acid and ascorbic acid as chemical preservatives in its regulations, guidance statements, and regulatory enforcement warning letters. For example, on October 6, 2010, the FDA sent a warning letter to Chiquita Brands International, Inc. advising that Chiquita’s “Pineapple Bites” products are misbranded within the meaning of section 403(k) of the Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. § 343(k), because “they contain the chemical preservatives ascorbic acid and citric acid but their labels fail to declare these preservatives with a description of their functions.”³

23. The FDCA requires food labels to indicate the presence of chemical preservatives. 21 U.S.C. § 343(k). In its formal regulations promulgated pursuant to the FDCA, the FDA has identified ascorbic acid as a chemical preservative. 21 C.F.R. § 182.3013.

24. Food and beverage manufacturers market and label food-grade citric acid and ascorbic acid as preservatives. Food-grade citric acid and ascorbic acid are sold as standalone products, and they are expressly marketed as preservatives.

25. Scientifically, citric acid and ascorbic acid are both antioxidant preservatives. They inhibit the oxidation of other molecules. Antioxidants are commonly used as food additives to help prevent deterioration.

26. Citric acid and ascorbic acid are both commonly used food and beverage additives. Citric acid, in particular, is commonly used as a flavor and preservative in food and beverages—particularly sodas or soft drinks—because it is one of the stronger edible acids. Citric acid is the more commonly used preservative. Citric acid is less expensive than ascorbic

³ FDA, Warning Letter to Chiquita Brands International, Inc. and Fresh Express Incorporated (Oct. 6, 2010), *available at* <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm228663.htm> (last visited June 27, 2016).

acid, it is readily available in large commercial quantities, and its more tart and sour flavor is preferred for some foods and beverages.

27. Ascorbic acid is sometimes used instead of citric acid because it does a better job of preserving the color of certain foods—such as fruits, vegetables, and some meats—that turn brown when they are exposed to oxygen.

28. Defendants’ “no preservatives” claims are material to consumers. Congress and the FDA have recognized that the presence of preservatives in foods has been important to consumers for over a century. Further, the food industry has long recognized that “no preservatives” claims are material to consumers as part of a “clean label” marketing strategy that meets consumer demand for foods containing “no MSG, no preservatives, no artificial colors,” and no other undesirable ingredients.⁴

29. Izze Sodas have always been marketed under a “clean label” advertising campaign designed to appeal to health-conscious consumers. As one marketing expert observed, “By using clear bottles, and very subtle labels, Izze instantly separates itself from the pack and shows off its healthier natural side.”⁵ Everything about the way Izze Sodas are advertised is designed to make consumers think that they are a more healthful option than other sodas.

30. Defendants’ false “two servings of fruit” claim is independently false and misleading, but it also plays right into this core deceit and amplifies the problem. A consumer is supposed to think, “This carbonated juice drink contains two servings of fruit, and it is

⁴ Ryan Atkinson, *The Clean Label Conundrum*, Food Business News, June 9, 2015, http://www.foodbusinessnews.net/articles/news_home/Consumer_Trends/2015/06/The_clean_label_conundrum.aspx?ID={243876D9-653E-4444-9FFE-BE8EAA7D0658}&cck=1 (last visited June 24, 2016).

⁵ Stephanie Silver, *How Izze Takes a Healthy Approach to Branding*, Envision Creative Group, May 16, 2012, <http://www.envision-creative.com/how-izze-takes-a-healthy-approach-to-branding/> (last visited June 24, 2016).

preservative free; it must be a relatively healthful option!” And, due to Izze Soda’s no-preservatives and two-servings-of-fruit claims, consumers actually do believe that Izze soda is relatively more healthful than other soda alternatives.

31. When the United States Department of Agriculture (“USDA”) released its *Dietary Guidelines for Americans, 2010* (“2010 Dietary Guidelines”), it did so in response to a “crisis” resulting from the fact that more than one-third of children, and more than two-thirds of adults, in the United States are overweight or obese. The 2010 Dietary Guidelines were intended to “give individuals the information to make thoughtful choices of healthier foods in the right portions.”⁶

32. Along with the release of the 2010 Dietary Guidelines, the USDA replaced the well-known food pyramid with MyPlate, which was designed to be easier to understand and to give better advice about which foods to consume, and in what proportion.⁷ Instead of telling people how many servings of each food group they should consume, MyPlate advises, for example: “Make half your plate fruits and vegetables.” MyPlate also recommends that, when eating out, people “[c]hoose dishes that include vegetables, fruits, and/or whole grains.”⁸

33. On the MyPlate website, ChooseMyPlate.gov, the USDA specifically explained that it was doing away with the old “servings” system of, for example, telling people how many

⁶ USDA Office of Communications, Press Release, *USDA and HHS Announce New Dietary Guidelines to Help Americans Make Healthier Food Choices and Confront Obesity Epidemic*, Jan. 31, 2011, available at http://www.cnpp.usda.gov/sites/default/files/dietary_guidelines_for_americans/PressRelease.pdf (last visited June 24, 2016).

⁷ MyPlate, <http://www.cnpp.usda.gov/MyPlate> (last visited June 24, 2016).

⁸ MyPlate, *Let’s Eat for the Health of It*, http://www.cnpp.usda.gov/sites/default/files/dietary_guidelines_for_americans/DG2010Brochure.pdf (last visited June 24, 2016).

servings of fruit they should eat each day, because that system was potentially misleading to consumers. The USDA explained:

USDA Food Patterns no longer use the term ‘servings’ to identify recommended amounts from each food group. Therefore, to avoid confusion, the term ‘servings’ should not be used in relation to food group amounts provided by a packaged food product.⁹

34. Because of these changes made as part of the 2010 Dietary Guidelines, it is flatly untrue to say that Izze Sodas contain two servings of fruit under the 2010 Dietary Guidelines. A bottle of soda cannot deliver two servings of fruit under the 2010 Dietary Guidelines, because the 2010 Guidelines do not recognize servings of food groups in that manner.

35. The USDA has explained that “[e]ating fruit provides health benefits.” Specifically, fruits contain “essential nutrients that are underconsumed, including potassium, dietary fiber, vitamin C, and folate.” These help maintain blood pressure, reduce blood cholesterol levels, may reduce the risk of heart disease, help bowel function, help people feel full while consuming fewer calories, help grow and repair body tissues, and help form red blood cells.¹⁰

36. Izze Sodas contain none of these nutritional benefits. They do not contain fiber or other important nutrients. Rather, they are void of nutritional value and are simply sugary soft drinks, even if fruit was used in the manufacturing process rather than cane sugar or high fructose corn syrup.

⁹ USDA Center for Nutrition Policy and Promotion, *Guidance on Use of USDA’s MyPlate and Statements About Amounts of Food Groups Contributed by Foods on Food Product Labels*, May 2013, available at <http://www.choosemyplate.gov/sites/default/files/printablematerials/MyPlateOnFoodLabels.pdf> (last visited June 24, 2016).

¹⁰ USDA, *Fruit: Nutrients and Health Benefits*, <http://www.choosemyplate.gov/fruits-nutrients-health> (last visited June 27, 2016).

37. Because Izze Sodas do not possess any of the nutritional benefits of fruit, it is materially misleading to say that they contain two servings of fruit. This claim tells consumers that the drink has health benefits, or nutritional value, when it does not.

38. Since 1902, when Congress appropriated a grant to the Bureau of Chemistry to study the use of preservatives in food, Congress has recognized that consumers want to know whether the foods they consume contain chemical preservatives.

39. The FDA more recently recognized the importance to consumers of knowing whether a food or beverage contains preservatives: “The agency continues to believe . . . that claims about the absence of certain substances that do not function as nutrients, such as preservatives and artificial colors, provide information important to certain consumers”¹¹

40. The food industry has also long recognized that the presence of preservatives in food is material to consumers. For instance, in 1997, the then-director of food safety for Nestle USA, Inc., wrote an article explaining:

Food industry marketers perceive that consumers want foods that are convenient; fresh (less-processed and less-packaged); all natural—with no preservatives (a so-called “clean label”); without a perceived negative (i.e., foods without high fat, high salt, and high sugar); and healthy.¹²

41. A news report published in 2015 recognized that consumer aversion to preservatives, as well as artificial color and flavors, antibiotics, growth hormones, genetically modified organisms, and similar food ingredients, was “part of Big Food’s multibillion-dollar

¹¹ Food and Drug Administration, *Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food*, 58 Fed. Reg. 2302, 2369 (Jan. 6, 1993)

¹² Don L. Zink, *The Impact of Consumer Demands and Trends on Food Processing*, 3 *Emerging Infectious Diseases* 467, 467 (1997), available at <http://wwwnc.cdc.gov/eid/article/3/4/pdfs/97-0408.pdf> (last visited June 27, 2016).

problem.” As a result, “almost all” traditional packaged food companies “are radically rethinking their own products,” such as by “removing synthetic colors and artificial preservatives.”¹³

42. Defendants’ conduct, including their own labeling, marketing, and advertising efforts, further demonstrates that it is material to consumers throughout the United States that beverages be preservative-free and healthful.

CLASS ACTION ALLEGATIONS

43. Pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), Plaintiff brings this action on behalf of herself and all others similarly situated, as members of a proposed nationwide plaintiff class (“Class”) defined as follows:

All consumers in the United States who purchased one or more Izze Sodas at any time from six years prior to the filing of this lawsuit through the date that the class is certified.

44. Alternatively, in the event that the Court does not apply New York law to all claims of the members of the Class, Plaintiff will seek certification of the following subclasses:

New York Subclass: All consumers who purchased one or more Izze Sodas in the State of New York at any time from six years prior to the filing of this lawsuit through the date that the class is certified.

California Subclass: All consumers who purchased one or more Izze Sodas in the State of California at any time from four years prior to the filing of this lawsuit through the date that the class is certified.

45. Excluded from the Class, the New York Subclass, and the California Subclass are Defendants or their affiliates, officers, directors, agents, or employees; governmental entities; and the Court to which this case is assigned or its personnel.

¹³ Beth Kowitt, *Special Report: The War on Big Food*, Fortune (May 21, 2015), <http://fortune.com/2015/05/21/the-war-on-big-food/> (last visited June 27, 2016)

46. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or division into additional subclasses after Plaintiff has had an opportunity to conduct discovery.

47. Numerosity: The Class is so numerous that individual joinder of all of its members is impracticable. While the exact number and identification of Class members is unknown to Plaintiff at this time, the Class is believed to number in the thousands or more.

48. Commonality: There are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

- a. Whether Defendants falsely or misleadingly misrepresented Izze Sodas as being preservative free.
- b. Whether Defendants falsely or misleadingly misrepresented Izze Sodas as containing two servings of fruit under the 2010 Dietary Guidelines.
- c. Whether Defendants' misrepresentations and omissions are likely to deceive reasonable consumers.
- d. Whether Defendants violated N.Y. Gen. Bus. Law § 349.
- e. Whether Defendants violated N.Y. Gen. Bus. Law § 350.
- f. Whether Defendants were unjustly enriched.
- g. Whether Defendants violated the California Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*
- h. Whether Defendants violated the California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17200 *et seq.*

- i. Whether Defendants violated the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17500 *et seq.*
- j. The nature of the relief, including damages, restitution, and other equitable relief, to which Plaintiff and the Class members are entitled.

49. Typicality: Plaintiff's claims are typical of the claims of the Class. Plaintiff and other Class members must prove the same facts in order to establish the same claims, which apply to all Class members.

50. Adequacy: Plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the Class members she seeks to represent. Plaintiff has retained counsel competent and experienced in the prosecution of complex class action and consumer protection litigation, and together Plaintiff and her counsel intend to prosecute this action vigorously for the benefit of the Class. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

51. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation. Individual litigation of the claims of all Class members is impracticable. A class action will allow for the fair, efficient, economical, and consistent adjudication of numerous equally meritorious claims. There will be no difficulty in the management of this action as a class action.

52. Injunctive and Declaratory Relief: Defendants have acted or refused to act on grounds generally applicable to the entire Class, thereby making appropriate final declaratory and injunctive relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

**Deceptive Acts and Practices
N.Y. Gen. Bus. Law § 349
(On behalf of the Class and New York Subclass)**

53. Plaintiff incorporates the allegations in each above numbered paragraph.

54. As set forth in more detail above, Defendants' labeling, marketing, advertising, and branding of Izze Sodas is deceptive, false, and misleading because Izze Sodas contain preservatives, do not contain two servings of fruit under the 2010 Dietary Guidelines, and do not contain any of the nutritional value associated with eating fruit as part of a healthful, balanced diet.

55. Defendants' conduct violates N.Y. Gen. Bus. Law § 349(a), which makes unlawful all "[d]eceptive acts or practices in the conduct of any business, trade or commerce . . . in this state."

56. Defendants' deceptive practices would mislead a reasonable consumer.

57. Defendants' deceptive practices have enabled Defendants to charge an unwarranted price premium for Izze Sodas.

58. On behalf of herself and the proposed Class, Plaintiff seeks injunctive relief and the maximum damages allowed by law, including actual damages, statutory damages, and punitive damages, as well as reasonable attorneys' fees and costs pursuant to N.Y. Gen. Bus. Law § 349(h).

SECOND CAUSE OF ACTION

**False Advertising
N.Y. Gen. Bus. Law § 350
(On behalf of the Class and New York Subclass)**

59. Plaintiff incorporates the allegations in each above numbered paragraph.

60. As set forth in more detail above, Defendants' labeling, marketing, advertising, and branding of Izze Sodas is deceptive, false, and misleading because Izze Sodas contain preservatives, do not contain two servings of fruit under the 2010 Dietary Guidelines, and do not contain any of the nutritional value associated with eating fruit as part of a healthful, balanced diet.

61. Defendants' conduct constitutes false advertising, as defined by N.Y. Gen. Bus. Law § 350-a(1).

62. Defendants' false advertising of Izze Sodas violates N.Y. Gen. Bus. Law § 350, which makes unlawful all "[f]alse advertising in the conduct of any business, trade or commerce . . . in this state."

63. Defendants' false advertising of Izze Sodas would mislead a reasonable consumer.

64. Defendants' false advertising has enabled Defendants to charge an unwarranted price premium for Izze Sodas.

65. On behalf of herself and the proposed Class, Plaintiff seeks injunctive relief and the maximum damages allowed by law, including actual damages, statutory damages, and punitive damages, as well as reasonable attorneys' fees and costs pursuant to N.Y. Gen. Bus. Law § 350-e(3).

THIRD CAUSE OF ACTION

**California Consumer Legal Remedies Act
Cal. Civ. Code § 1750 *et seq.*
(On behalf of the California Subclass)**

66. Plaintiff incorporates the allegations in each above numbered paragraph.

67. As set forth in more detail above, Defendants' labeling, marketing, advertising, and branding of Izze Sodas is deceptive, false, and misleading because Izze Sodas contain preservatives, do not contain two servings of fruit under the 2010 Dietary Guidelines, and do not contain any of the nutritional value associated with eating fruit as part of a healthful, balanced diet.

68. Under the California Consumer Legal Remedies Act ("CLRA"), it is unlawful to represent that a product has "characteristics, ingredients, uses, benefits, or quantities which they do not have." Cal. Civ. Code § 1770(a)(5).

69. It is unlawful under the CLRA to represent that a product is "of a particular standard, quality, or grade" if it is not. Cal. Civ. Code § 1770(a)(7).

70. It is unlawful under the CLRA to "[a]dvertise goods . . . with intent not to sell them as advertised."

71. Defendants' deceptive, false and misleading labeling, marketing, advertising and branding of Izze Sodas violates the above provisions of the CLRA.

72. Plaintiff is a consumer who has suffered damage as a result of these violations of Section 1770 because she has paid an unwarranted price premium for Izze Sodas.

73. Defendants' violations of the CLRA would mislead a reasonable consumer.

74. Plaintiff brings this action for injunctive relief pursuant to Cal. Civ. Code § 1782(d). After thirty days, Plaintiff will amend her Complaint to seek all available damages, restitution, and other relief available under Cal. Civ. Code § 1780(a).

FOURTH CAUSE OF ACTION

**California False Advertising Law
Cal. Bus. & Prof. Code § 17200 *et seq.*
(On behalf of the California Subclass)**

75. Plaintiff incorporates the allegations in each above numbered paragraph.

76. As set forth in more detail above, Defendants' labeling, marketing, advertising, and branding of Izze Sodas is deceptive, false, and misleading because Izze Sodas contain preservatives, do not contain two servings of fruit under the 2010 Dietary Guidelines, and do not contain any of the nutritional value associated with eating fruit as part of a healthful, balanced diet.

77. Defendants violated the False Advertising Law ("FAL") by selling Izze Sodas and making statements about Izze Sodas that are "untrue or misleading," and which are or reasonably should be known to be untrue or misleading. Cal. Bus. & Prof. Code § 17500.

78. Defendants' violations of the FAL have allowed them to charge an unwarranted price premium for Izze Sodas, and caused Plaintiff and Class members to pay for a product that they did not receive.

79. Defendants' violations of the FAL would mislead a reasonable consumer.

FIFTH CAUSE OF ACTION

**California Unfair Competition Law
Cal. Bus. & Prof. Code § 17500 *et seq.*
(On behalf of the California Subclass)**

80. Plaintiff incorporates the allegations in each above numbered paragraph.

81. As set forth in more detail above, Defendants' labeling, marketing, advertising, and branding of Izze Sodas is deceptive, false, and misleading because Izze Sodas contain preservatives, do not contain two servings of fruit under the 2010 Dietary Guidelines, and do not

contain any of the nutritional value associated with eating fruit as part of a healthful, balanced diet.

82. Defendants violated the Unfair Competition Law (“UCL”) through their unlawful, unfair, and fraudulent business practices and their unfair, deceptive, untrue and misleading advertising, described above. Cal. Bus. & Prof. Code § 17200.

83. Defendants’ conduct is also unlawful under the UCL because it violates the CLRA and the FAL.

84. Defendants’ violations of the UCL have allowed them to charge an unwarranted price premium for Izze Sodas, and caused Plaintiff and Class members to pay for a product that they did not receive.

85. On behalf of herself and the proposed Class, Plaintiff seeks injunctive relief and restitution.

SIXTH CAUSE OF ACTION

Unjust Enrichment (On behalf of the Class and New York Subclass)

86. Plaintiff incorporates the allegations in each above numbered paragraph.

87. As the result of their false and misleading labeling, advertising, and marketing of Izze Sodas, Defendants were unjustly enriched at the expense of Plaintiff and the Class members.

88. On behalf of herself and the proposed Class, Plaintiff seeks restitution or restitutionary disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and all others similarly situated, prays for relief as follows:

A. An order certifying the Class and any appropriate subclasses thereof under the appropriate provisions of Federal Rule of Civil Procedure 23, and appointing Plaintiff and her counsel to represent the Class.

B. Declarations that the actions of Defendants, as set out above, are unlawful.

C. Appropriate injunctive and equitable relief, including an order enjoining Defendants from engaging in the conduct described in this Complaint and requiring Defendants to perform a corrective advertising campaign.

D. Actual damages.

E. Statutory damages.

F. Punitive damages.

G. Restitution and/or disgorgement.

H. Costs, disbursements, expenses, and attorneys' fees.

I. Pre- and post-judgment interest, to the extent allowable.

J. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury in this case as to all issues so triable.

Dated: August 19, 2016

NICHOLS KASTER, PLLP

s/Michele R. Fisher

Michele R. Fisher, NY Bar # 4505822
Anna P. Prakash, MN Bar # 0351362*
Eleanor E. Frisch, MN Bar # 0397776*
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Facsimile: (612) 338-4878
Email: fisher@nka.com
aprakash@nka.com
efrisch@nka.com

GUSTAFSON GLUEK PLLC

Amanda M. Williams, MN Bar # 0341691*
Joseph C. Bourne, MN Bar # 0389922, CA
Bar # 308196*
Canadian Pacific Plaza
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
Facsimile: (612) 339-6622
Email: awilliams@gustafsongluek.com
jbourne@gustafsongluek.com

*applications for admission *pro hac vice*
forthcoming

**ATTORNEYS FOR PLAINTIFF AND
THE PROPOSED CLASS**