

United States District Court
 Eastern District of New York

1:18-cv-01674

Chris Richburg individually and on behalf of all
 others similarly situated

Plaintiff

- against -

Complaint

Rebbl, Inc.

Defendant

The above-named plaintiff individually and on behalf of all others similarly situated, by attorneys, alleges upon information and belief, except for those allegations pertaining to plaintiff, which are based on personal knowledge:

1. Rebbl, Inc. (“defendant”) manufactures and sells plant-based beverage products under the “Rebbl” brand (the “Products”).

2. The Products are 12-oz. “Elixirs” and “Proteins,” centered on the presence of one or more “super herbs” or adaptogens, medium chain tryglyceride (MCT) oil and coconut milk.

| <u>Product Type</u> | <u>Product Name</u> | <u>Super Herb or Adaptogen</u> |
|---------------------|-----------------------|--------------------------------|
| Elixirs | Turmeric Lemon Tart | Turmeric |
| | Turmeric Golden-Milk | |
| | Reishi Cold-Brew | Reishi |
| | Reishi Chocolate | |
| | Maca Cold-Brew | Maca |
| | Maca Mocha | |
| | Matcha Latte | |
| | Ashwaganda Spicy Chai | Ashwaganda |
| Proteins | Cold Brew Coffee | Maca, Reishi, Ashwaganda |
| | Dark Chocolate | |
| | Vanilla Spice | |

3. The Products have common label representations across the varieties, except for those elements relating to that specific variety, such as the color pattern and a protein claim on the Proteins.



4. Reasonable consumers understand the term “Super Herbs” to refer to “adaptogens” because media reports, articles and professional literature refer to them interchangeably. *See Superherbs: The Best Adaptogens to Reduce Stress and Improve Health, Beauty and Wellness*, Rachel Landon, Little, Brown Book Group, 2017

5. For example, querying the two terms via Google produces approximately 336,000 search results containing both terms, which are unrelated to defendant’s Products.

6. An example of a search result is a page titled “5 Balancing and Strengthening Super Herbs.” (“Super herbs have two impacts on the body – they are adaptogenic or tonifying. Adaptogenic herbs bring balance to the body while tonifying herbs facilitate strength. Both balance and strength are necessary for lasting health.”).

7. Where defendant uses “super herbs,” the intent is for consumers to recognize it as another word for adaptogens, as defendant’s website does:

- “adaptogenic herbs are essential to the very foundation on which REBBL was built”
- “herbal adaptogens”
- identifying “Ashwagandha,” “Reishi,” “Maca,” “Eleuthero,” “Cat’s Claw” and “Ginseng” as Superherbs and in another section entitled “Adaptogenic Roundup,” describing Ashwagandha root and Reishi mushroom
- “Adaptogens like ashwagandha, reishi, and maca are believed to act as body-system modulators and promoters of homeostasis”
- “We decided to round up a few recent adaptogen sightings in the media and share our favorites. Read on to discover the unparalleled power of these special herbs – ashwagandha, reishi, and maca”
- “Of the 1000s of healing plants, only a handful have earned a very special place within traditional healing modalities – the adaptogens”
- “REBBL’s ‘Adaptogen Powered’ elixirs are enhanced by the power of adaptogenic herbs”

8. The Products and marketing materials promote and emphasize the benefits of adaptogens or super herbs as they relate to the body’s health and functioning.

9. This is evident from the name attributed to the Products – “Super Herb Powered Coconut-Milk Elixir” and the phrase “Righteous Plant Alchemy” in the center of the label – “Super Herb” referring to “adaptogens” while an “Elixir” connotes a beverage with restorative qualities.

10. The first paragraph of the supplemental panel emphasizes the benefits of the super herbs/adaptogens contained in the Products:

In the beginning, the Plant Queendom was the ultimate healer – her super herb magic revered and respected. Over the last few centuries some of her best secrets faded almost to obscurity. If we hold one fervent belief, it’s that the time has come to celebrate, share and reunite with these eternal botanical treasures. We have found our purpose. Welcome to REBBL.

11. The Products’ website reinforces the numerous claims of health and bodily benefits, stating that adaptogens “strengthen the body’s own adaptive resilience to stressors,” and “fortify the body’s own adaptive resilience to stressors.”

12. Moreover, each Product contains specific representations on the supplemental panel as to the characterizing super herb of that beverage, a sampling which is re-stated below.

Maca Cold-Brew
Maca, the famous Andean super herb, has long been held as a gift from the Gods' by the Incan people. Renowned for its energy promoting and stamina enhancing properties - and carefully crafted with exceptionally smooth cold-brewed coffee and coconut-milk - this plant-powered super-brew is ready to support your balance, your revive, and your all day thrive.

Golden Turmeric
Turmeric has been used for over 4,000 years to support joint health, respiratory health, and digestive wellness. We add black pepper to help increase the bioavailability of curcumin, the compound credited with its body harmonizing benefits. Our golden-milk is lovingly crafted with ginger, coconut [rather than dairy], and a touch of wild forest honey.

Sacred Reishi
Divine mushroom of immortality? Not a description handed out lightly, but reishi has earned it. This pillar of Chinese medicine has been supporting a healthy immune system, healthy aging, and strong cardiovascular function since before the dawn of our Western world. Its earthy

flavors blend so effortlessly with dark cocoa that your taste buds will never suspect the potency of this super herb elixir.

Ashwagandha Chai

In Ayurveda, ashwagandha is one of only a handful of substances bestowed with a classification of rasayana - literally meaning that which enters the essence. Its energy is so balanced that it is believed to build strength and vitality under all conditions. Our extract is produced according to strict vedic preparation principles and blended with assam, ayurvedic spices, and creamy coconut-milk.

13. According to their proponents, adaptogens are defined as substances which strengthen the human body's resistance against physical, chemical, and biological stressors and generate a faster response towards stress conditions.

14. Adaptogens are found in plants and their principal active ingredients are from the chemical groups terpenoids and aromatic compounds.

15. Their mechanism of action is said to be the result of effecting the up-regulating and mimetic effects on the 'stress sensor' protein, Hsp70, key to cell survival and apoptosis.

16. The Products promote the health and bodily benefits of MCT (medium chain triglyceride) oil, derived from coconuts (supplemental panel).

FIT-BODY FATS (COCONUT MCTs)

MCTs* from coconut are the famed fit-body fats that support an efficient metabolism, providing a sustained source of smooth, clean energy.

*Medium Chain Triglycerides

17. The above-referenced statements and representations relating to super herbs/adaptogens and MCTs (“relevant components”) constitute health and structure/function claims with respect to their positive effects on joint health, fatigue, immunity, cardiovascular strength, etc., among other bodily systems/conditions.

18. The Products’ labels and advertising are false and deceptive because the claims (1) are not supported by sound scientific evidence and are unsubstantiated and (2) imply the Products are healthier than other, less costly beverages that do not contain the relevant components and imply that same contribute more to health and condition than they actually do.

19. Multiple valid scientific studies have been conducted on the relevant components which have revealed they are not reliable means of promoting and/or positively impacting health and improving the functioning of bodily systems as described.

20. Defendant’s representations have enabled them to command a substantial premium in comparison to alternative beverages that do not contain the relevant components.

21. The Products are identified as “coconut milk” on the front label, even though the ingredient list shows the components of coconut milk to be “Water, Coconut Creme.”

22. Coconut milk is the liquid derived from grating of the white coconut flesh with the addition of water for steeping.

23. Approximately 5-10 hours after coconut milk has been obtained, it will separate into cream and serum layers, known as coconut cream and coconut skim milk.

24. The Products identify coconut creme as a sub-ingredient, which means that after the coconut milk has already separated into the cream layer, defendant takes that cream (which was previously milk) and dilutes it, purportedly transforming it back into milk.

25. It is deceptive and misleading to label diluted coconut cream as coconut milk because coconut milk was the product which created the coconut cream through its natural separation.

26. Defendant's claims and representations with respect to the super herbs (adaptogens), MCTs, and coconut milk are misleading because their presence and alleged effects has a material bearing on price and consumer acceptance, evidenced by the Product's names and marketing.

27. Excluding tax, the Products cost no less than \$4.99, a premium price compared to other similar products.

Jurisdiction and Venue

28. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2).

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

30. This Court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

31. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and in New York.

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

Class Allegations

33. The classes consist of (1) all consumers in all states and (2) all consumers in New York State who purchased any Products bearing any actionable representations during the statutes of limitation periods.

34. A class action is superior to other methods for the fair and efficient adjudication of this controversy.

35. The class is so numerous that joinder of all members, even if permitted, is impracticable, as there are likely hundreds of thousands of members.

36. Common questions of law or fact predominate and include whether the representations were likely to deceive reasonable consumers and if plaintiff and class members are entitled to damages.

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

38. Plaintiff is an adequate representative because his/her interests do not conflict with other members.

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

40. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest.

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

42. Plaintiff seeks class-wide injunctive relief because the practices continue, with the injunctive class maintained as a class action because it meets the same criteria as the non-injunctive class.

Parties

43. Plaintiff is a citizen of Kings County, New York.

44. Defendant is a Delaware corporation with a principal place of business in Emeryville, California.

45. In 2017, plaintiff purchased the Product(s) for no less than \$4.99 per Product(s), excluding tax, at a store within this District.

Plaintiff paid this premium because prior to purchase, plaintiff saw and relied on the misleading representations.

Violations of New York General Business Law §§ 349 & 350

46. Plaintiff repeats and realleges all allegations in foregoing paragraphs.

47. Defendant's acts, practices, advertising, labeling, packaging, representations and omissions are not unique to the parties and have a broader impact on the public.

48. The representations, descriptions and identifications of the Products as are false and misleading for the reasons described herein.

49. The representations and omissions were relied on by plaintiff and class members, who paid more than they would have without getting all they bargained for.

Breach of Express Warranty and Implied Warranty of Merchantability

50. Plaintiff repeats and realleges all allegations in foregoing paragraphs.

51. Defendant manufactures and sells beverage products purporting to consist of ingredients which provide positive health and other effects and actual coconut milk and warranted same to plaintiff and class members.

52. The Products did not conform to their affirmations of fact and promises, wholly due to defendant's actions.

53. Plaintiff and class members relied on defendant's claims, paying more than they would have otherwise.

Fraud

54. Plaintiff repeats and realleges all allegations in foregoing paragraphs.

55. Defendant described and identified the Products in a deceptive way when it could have used non-misleading terms, names or descriptions.

56. Defendant's purpose was to mislead consumers who increasingly seek products with health and functional benefits as opposed to beverages like iced tea, juices or sodas.

57. Defendant's intent was to distinguish its Products in the marketplace amongst the numerous other companies producing functional beverage products.

58. Plaintiff and class members observed and relied on the representations.

59. Plaintiff and class members paid more than they would have due to the false representations, entitling them to damages.

Unjust Enrichment

60. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

61. Defendant obtained benefits and monies because the Products were not as represented, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of such inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, plaintiff, individually and on behalf of all others similarly situated, prays for judgment:

1. Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct its practices to comply with the law;
3. Awarding monetary damages and interest, including treble and punitive damages, pursuant to the common law and GBL claims;

4. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
5. Such other and further relief as the Court deems just and proper.

Dated: March 16, 2018

Respectfully submitted,

Levin-Epstein & Associates, P.C.
/s/Joshua Levin-Epstein
Joshua Levin-Epstein
1 Penn Plaza, Suite 2527
New York, NY 10119
Tel: (212) 792-0046

Sheehan & Associates, P.C.
/s/Spencer Sheehan
Spencer Sheehan
891 Northern Blvd., Suite 201
Great Neck, NY 11021
Tel: (516) 303-0552
spencer@spencersheehan.com

1:18-cv-01674
United States District Court
Eastern District of New York

Chris Richburg individually and on behalf of all others similarly situated

Plaintiff

- against -

Rebbl, Inc.

Defendant

Complaint

Levin-Epstein & Associates, P.C.
1 Penn Plaza # 2527
New York, NY 10119
Tel: (212) 792-0046
Fax: (212) 563-7108

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: March 16, 2018

/s/ Joshua Levin-Epstein
Joshua Levin-Epstein

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

Chris Richburg individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Levin Epstein & Associates, P.C., 1 Penn Plaza, Suite 2527, New York, NY 10119, (212) 792-0046/Sheehan & Associates, P.C., 891 Northern Blvd. Suite 201, Great Neck, NY 10010 (516) 303-0552

DEFENDANTS

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 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 \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/16/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Joshua Levin-Epstein

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 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.

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

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? 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? 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

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? _____

(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/ Joshua Levin-Epstein

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

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

Chris Richburg individually and on behalf of all others
similarly situated

Plaintiff(s)

v.

Rebbl, Inc.

Defendant(s)

Civil Action No. 1:18-cv-01674

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Rebbl, Inc.
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

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: Levin Epstein & Associates, P.C. 1 Penn Plaza, # 2527, New York, NY 10119

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.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk