

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

Deborah Floyd, individually and on behalf of all  
others similarly situated,

Plaintiff,

- against -

Pepperidge Farm, Incorporated,

Defendant

3:21-cv-00525

Class Action Complaint

Jury Trial Demanded

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

1. Pepperidge Farm, Incorporated (“defendant”) manufactures, distributes, markets, labels and sells “Golden Butter [Crackers]” (“Product”).



2. When consumers see a food represented as “[Golden] Butter [Crackers],” they will understand that a “butter cracker” is a type of cracker, and that “butter” is its defining feature.

3. The meaning of compound words is greater than the sum of its parts, such that “butter cracker” does not mean “a cracker made with butter” but a cracker which is all or predominantly made with butter.

4. Wherever butter could be used in a food labeled as “Butter \_\_\_\_\_,” consumers will expect butter instead of its synthetic substitutes, vegetable oils.

5. Consumers prefer butter to chemically produced “vegetable” oils for reasons including taste, health and avoidance of highly processed artificial substitutes.

6. Butter is valued by consumers over vegetable oils because it does not contain the trans fats of vegetable oils.

7. Butter is less processed, since it is made by churning cow’s milk, instead of chemical reactions to make vegetable oils.

8. Butter is rich in nutrients like calcium and Vitamins A and D.

9. Butter costs more than vegetable oils like soybean, sunflower or canola oil.

10. The representations are misleading because even though the Product contains butter, it contains a non-de minimis amount of butter substitutes – vegetable oils – indicated on the ingredient list.

**MADE FROM: ENRICHED WHEAT FLOUR (FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), BUTTER (MILK), VEGETABLE OILS (CANOLA, SUNFLOWER AND/OR SOYBEAN), SUGAR, INVERT SYRUP, CONTAINS 2% OR LESS OF: SALT, MALTED BARLEY FLOUR, BAKING SODA, MONOCALCIUM PHOSPHATE.**

**MADE FROM: ENRICHED WHEAT FLOUR (FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), BUTTER (MILK), VEGETABLE OILS (CANOLA, SUNFLOWER AND/OR SOYBEAN), SUGAR, INVERT SYRUP, CONTAINS 2% OR LESS OF: SALT, MALTED BARLEY FLOUR, BAKING SODA, MONOCALCIUM PHOSPHATE**

11. The Product contains more vegetable oil than expected given the absence of any qualification of “Golden Butter” or disclosure of butter substitutes on the ingredient list.
12. Though crackers do not have high levels of fat, their fat content contributes to their taste and texture.
13. Defendant substitutes vegetable oils for butter, and consumers get less butter.
14. Companies may add vegetable oils to “butter” products and offer legitimate-sounding reasons.
15. For many crackers, immediately after they are taken from the oven, they are passed through a unit where they are sprayed with fats – vegetable oils or butter.
16. Assuming the Product uses vegetable oils as a topical spray, they are applied at around 8 – 18% of the cracker weight, which is consistent with the amount of vegetable oils in the Product, based on the Nutrition Facts.

17. The spray-on vegetable oils enhance the appearance of the Product to the “Golden” color touted on the label.

18. This is misleading, because consumers will expect that the cause of the golden hue of the Product is butter.

19. Though vegetable oils are described as “refined, bleached and deodorized,” and purportedly do not affect a food’s taste, the reality is different.

20. Vegetable oils, such as soybean, canola and sunflower oil, are highly susceptible to oxidation.

21. The result is “reversion” of their “neutral” flavor back to the original crude oil odor and aroma before they were refined, bleached and deodorized.

22. The result is a flavor described as “beany, ”“powdery” or “fishy.”

23. The Product’s added vegetable oils detract from their taste and push the butter taste to the background.

24. “Butter crackers” which are made only with butter and not vegetable oils exist in the marketplace and are technologically feasible.



**INGREDIENTS:** Enriched Unbleached Flour (wheat flour, malted barley flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid), **Butter** (cream [milk], salt), Cane Sugar, Non-GMO Baking Powder (monocalcium phosphate, sodium bicarbonate, corn starch), Sea Salt, Topping Salt.

25. The “Sweet Butter Crackers” in the above image contain butter and no butter substitutes.

26. Defendant did not have to name the Product “Golden Butter [Crackers],” but chose to, since this is more enticing to consumers.

27. Reasonable consumers must and do rely on a company to honestly identify and describe the components and features of the Product, relative to itself and other comparable products.

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

29. Defendant sold more of the Product and at a higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

30. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for it.

31. The Product is sold for a price premium compared to other similar products, no less than \$2.64 for 9.75 OZ, higher than it would otherwise be sold for, absent the misleading representations and omissions.

#### Jurisdiction and Venue

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

Diversity exists because Plaintiff and Defendant are citizens of different states.

32. Upon information and belief, the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

33. Plaintiff Deborah Floyd is a citizen of Illinois.

34. Defendant Pepperidge Farm, Incorporated is a Connecticut corporation with a principal place of business in Norwalk, Fairfield County, Connecticut and is a citizen of Connecticut.

35. Venue is proper because plaintiff resides in this judicial district, and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

#### Parties

36. Plaintiff Deborah Floyd is a citizen of Maryville, Madison County, Illinois.

37. Defendant Pepperidge Farm, Incorporated, is a Connecticut corporation with a principal place of business in Norwalk, Connecticut, Fairfield County

38. Defendant is one of the oldest producers of baked goods in the country, known by its iconic farmhouse logo.

39. Defendant is known for using the highest quality ingredients and not cutting corners.

40. The Product is sold at thousands of stores throughout this state including grocery stores, big box stores, convenience stores, and online.

41. Plaintiff bought the Product at or exceeding the above-referenced price, on one or more occasions at one or more locations, including Schnucks, 2222 Troy Rd, Edwardsville, IL 62025, on multiple occasions during 2019 and 2020.

42. Plaintiff bought the Product because she wanted to consume a cracker which contained more butter than it did and did not contain butter substitutes where butter could be used.

43. The Product was worth less than what Plaintiff paid and she would not have paid as much absent Defendant's false and misleading statements and omissions.

44. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that its representations are consistent with its components and qualities.

#### Class Allegations

45. The class will consist of all purchasers of the Product who reside in Illinois during the applicable statutes of limitations.

46. 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.

47. 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.

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

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

50. 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.

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

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

Illinois Consumer Fraud and Deceptive Business Practices Act  
("ICFA"), 815 ILCS 505/1, et seq.

(Consumer Protection Statute)

53. Plaintiff desired to purchase a product which contained more butter than it did and did not contain butter substitutes where butter could be used.

54. Defendant's false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions.

55. Defendant misrepresented the Product through statements, omissions, ambiguities, half-truths and/or actions.

56. Plaintiff relied on the representations.

57. 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.

58. The Product was manufactured, labeled and sold by defendant and expressly and impliedly warranted to plaintiff and class members that contained more butter than it did and did not contain butter substitutes where butter could be used.

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

60. This duty is based on Defendant's outsized role in the market for this type of Product.

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

62. Defendant received notice and should have been aware of these issues due to complaints by regulators, competitors, and consumers, to its main offices, and in legal proceedings.

63. The Product did not conform to its affirmations of fact and promises due to defendant's actions and were not merchantable because they were not fit to pass in the trade as advertised.

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

Negligent Misrepresentation

65. Defendant had a duty to truthfully represent the Product, which it breached.

66. This duty is based on defendant's position, holding itself out as having special knowledge and experience this area – a trusted seller of baked goods.

67. The representations took advantage of consumers' cognitive shortcuts made at the point-of-sale and their trust in defendant.

68. Plaintiff reasonably and justifiably relied on these negligent misrepresentations and

omissions, which served to induce and did induce, their purchases of the Product.

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

Fraud

70. Defendant misrepresented and/or omitted the attributes and qualities of the Product.

71. Defendant's fraudulent intent is evinced by its knowledge that the Product was not as advertised.

Unjust Enrichment

72. Defendant obtained benefits and monies because the Product was 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 the 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, and restitution and disgorgement for members of the class pursuant to the applicable laws;
4. Awarding monetary damages, statutory damages pursuant to any statutory claims and interest 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: May 31, 2021

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

60 Cuttermill Rd Ste 409

Great Neck NY 11021-3104

Tel: (516) 268-7080

Fax: (516) 234-7800

spencer@spencersheehan.com

CIVIL COVER SHEET

The 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

Deborah Floyd, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

DEFENDANTS

Pepperidge Farm, Incorporated

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Click here for: Nature of Suit Code Descriptions .

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 - 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 U.S.C. § 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 SIGNATURE OF ATTORNEY OF RECORD

May 31, 2021 /s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

UNITED STATES DISTRICT COURT

for the
Southern District of Illinois

Deborah Floyd, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Pepperidge Farm, Incorporated,

Defendant(s)

Civil Action No. 3:21-cv-00525

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Pepperidge Farm, Incorporated
c/o C T Corporation System
67 Burnside Ave
East Hartford, CT 06108-3408

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., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-
3104 (516) 268-7080

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

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 3:21-cv-00525

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: