

Exhibit B

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 1

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11/22/2022 12:10 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022CH09136
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

MICHAEL DALY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

UNILEVER UNITED STATES, INC.,
AND SCHMIDT’S DEODORANT
COMPANY, LLC, d/b/a SCHMIDT’S
NATURALS

Defendant.

Case No. 2022CH09136

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY DEMANDED

Now comes the Plaintiff, MICHAEL DALY (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, and for his Class Action Complaint against the Defendants, UNILEVER UNITED STATES, INC. and SCHMIDT’S DEODORANT COMPANY, LLC, (“Defendant”), Plaintiff alleges and states as follows:

PRELIMINARY STATEMENT

1. This is an action for damages, injunctive relief, and any other available legal or equitable remedies, for violations of Illinois Consumer Fraud and Deceptive Businesses Practices Act (“ILCFDA”), 815 ILCS 505/1 *et seq.*, common law fraud, and unjust enrichment, resulting from the illegal actions of Defendants, in intentionally labeling their products with false and misleading claims that they are natural, when Defendant’s products contain synthetic ingredients. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

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PARTIES

2. Plaintiff is an individual who was at all relevant times residing in Chicago, Illinois.

3. Defendant Unilever is a Delaware Corporation, whose principal place of business is located in Englewood Cliffs, New Jersey.

4. Defendant Schmidt's is a South Dakota limited liability company, whose principal place of business is located in Jupiter, Florida.

5. At all times relevant hereto, Defendants were engaged in the marketing, manufacturing, and sale of deodorant.

FACTS COMMON TO ALL COUNTS

6. Defendants manufacture, advertise, market, sell, and distribute deodorant throughout the United States.

7. During the Class Period Defendants sold the following deodorant sticks (the "Products") labeled, marketed, and advertised as natural but which contain the artificial ingredient Jojoba Esters:

- a. Schmidt's Bergamot & Lime
- b. Schmidt's Lavender & Sage
- c. Schmidt's Rose & Vanilla
- d. Schmidt's Charcoal & Magnesium
- e. Schmidt's Fresh Fir & Spice
- f. Schmidt's Sandalwood and Citrus
- g. Schmidt's Fresh Cucumber
- h. Schmidt's Clean Powder
- i. Schmidt's Clean Coconut

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8. All of the Products listed in Paragraph No 6. above are substantially similar because all of the products are under arm deodorant sticks, all of the products function the same way to achieve the same benefits, the challenged ingredients of each product is shared among all of the products, and all Products contain the same false “Natural” labeling.

9. On June 6, 2022, Plaintiff purchased a Product from a Jewel Osco located at 1202 State Street, Lemont, IL 60439.

10. Jojoba Esters is a complex mixture of esters produced by the transesterification/interesterification of Simmondsia Chinensis (Jojoba) Oil, Hydrogenated Jojoba Oil, or a mixture of the two. ¹

11. Transesterification is defined as the chemical conversion process of triglycerides with alcohol into alkyl esters with the help of a catalyst.² Transesterification is not a natural process.

12. Hydrogenation is a process by which unsaturated fatty acids in vegetable oil are converted to saturated fatty acids. ³

13. During the hydrogenation process unsaturated double bonds in the fatty acids of vegetable oils react with hydrogen atoms in the presence of a metal catalyst, typically nickel catalysts are used in commercial hydrogenation of edible oils. ⁴

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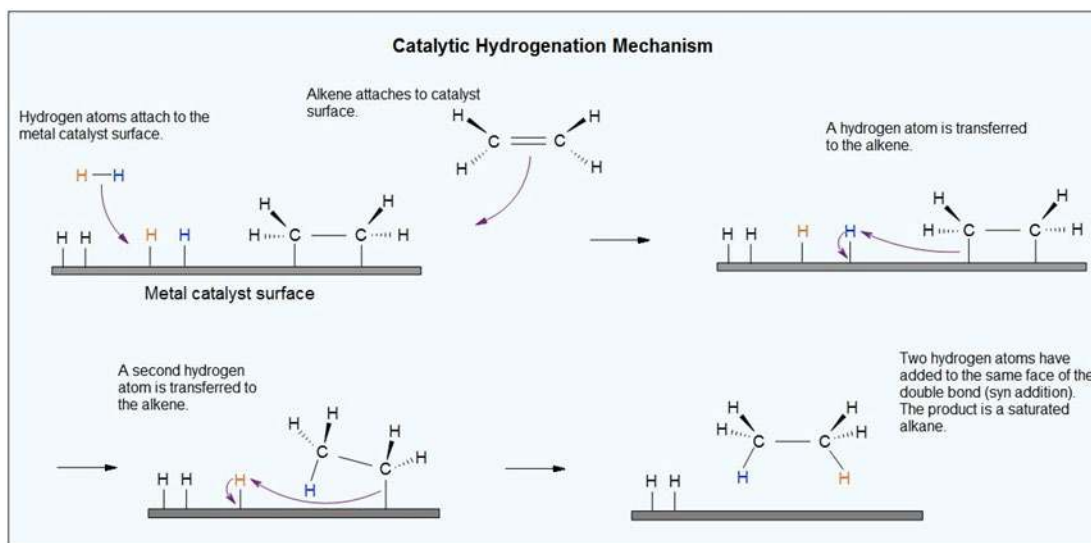
¹ Information about jojoba esters found at https://www.ewg.org/skindeep/ingredients/703268-SIMMONDSIA_CHINENSIS_JOJOBA_ESTERS/

²

³ Monoj K Gupta, Practical Guide To Vegetable Oil Processing, <https://www.sciencedirect.com/book/9781630670504/practical-guide-to-vegetable-oil-processing>

⁴ Monoj K Gupta, Practical Guide To Vegetable Oil Processing <https://www.sciencedirect.com/book/9781630670504/practical-guide-to-vegetable-oil-processing>

14. The following diagram depicts the hydrogenation process: ⁵



15. As shown above in paragraphs 11 through 14, hydrogenation is not a natural process.
16. Therefore, Jojoba Esters are synthetic ingredients.
17. The following are examples of the Products' fraudulent labeling:



⁵ Catalytic Hydrogenation of Alkenes,
[https://chem.libretexts.org/Bookshelves/Organic_Chemistry/Supplemental_Modules_\(Organic_Chemistry\)/Alkenes/Reactivity_of_Alkenes/Catalytic_Hydrogenation](https://chem.libretexts.org/Bookshelves/Organic_Chemistry/Supplemental_Modules_(Organic_Chemistry)/Alkenes/Reactivity_of_Alkenes/Catalytic_Hydrogenation)

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18. Persons, like Plaintiff herein, have an interest in purchasing products that do not contain false and misleading claims with regards to the contents of the Products.

19. Plaintiff, like any reasonable consumer, understands that natural products do not contain synthetic ingredients.

20. By making false and misleading claims about the Products, Defendant impaired Plaintiff's ability to choose the type and quality of products he chose to buy.

21. Therefore, Plaintiff has been deprived of his legally protected interest to obtain true and accurate information about his consumer products as required by law.

22. As a result of Defendants' fraudulent labeling, Plaintiff and the Class have been misled into purchasing Products that did not provide them with the benefit of the bargain they paid money for, namely that the Products would be natural.

23. As a result of Defendants' fraudulent labeling, Plaintiff and the Class paid a price premium for a premium natural Product, but instead received a non-premium Product with artificial ingredients.

24. Plaintiff and the Class purchased Defendants' Products because Defendants' advertising claimed that the Products were natural.

25. Furthermore, due to Defendant's intentional, deceitful practice of falsely labeling the Products as natural when they are not, Plaintiff could not have known that the Product was not natural.

26. Plaintiff was unaware that the Product contained artificial ingredients when he purchased it.

27. Worse than the lost money, Plaintiff, the Class, and Sub-Class were deprived of their protected interest to choose the type and quality of products they use on their skin.

28. Defendants, and not Plaintiff, the Class, or Sub-Class, knew or should have known that labeling, marketing, and selling the Products as natural was false, deceptive, and misleading, and that Plaintiff, the Class, and Sub-Class members would not be able to tell the Products they purchased were not natural unless Defendants expressly told them.

29. On information and belief, Defendants employ professional chemists to create the chemical formulas of Defendants' Products. Therefore, Defendants through their employees knew

or should have known that Jojoba Esters are not natural, and that by adding Jojoba Esters to its Products they would not be natural.

30. On information and belief, Defendants did know that Products were not natural but chose to label the Products as natural because it did not believe its customers were well educated enough to know the difference.

31. As a result of Defendants' acts and omissions outlined above, Plaintiff has suffered concrete and particularized injuries and harm, which include, but are not limited to, the following:

- a. Lost money;
- b. Wasting Plaintiff's time; and
- c. Stress, aggravation, frustration, loss of trust, loss of serenity, and loss of confidence in product labeling.

CLASS ALLEGATIONS

32. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (the "Class"), defined as follows:

All persons within the United States who purchased the Products within five years prior to the filing of the original Complaint through the date of class certification.

33. Plaintiff also brings this action on behalf of himself and all others similarly situated, as a member of the proposed sub-class (the "Sub-Class"), defined as follows

All persons within the State of Illinois who purchased the Products within five years prior to the filing of the original Complaint through the date of class certification.

34. The Class and the Sub-Class satisfy all of the requirements of the Illinois Code of Civil Procedure for maintaining a class action, specifically:

- a. Upon information and belief, the Class and the Sub-Class are so numerous that joinder of all members is impracticable. On information and belief there are hundreds, if not thousands of individuals in the United States and the State of Illinois who purchased the products within the applicable statute of limitations period.
- b. There are questions of fact and/or law which are common to the Class and the Sub-Class, and which predominate over questions affecting any individual Class or Sub-Class members. These common questions of fact and law include, but are not limited to:
 - i. Whether Defendant disseminated false and misleading information by claiming the Products were natural when they were not;
 - ii. Whether the Class and Sub-Class members were informed that the Products were not natural;
 - iii. Whether the Products were natural;
 - iv. Whether Defendant's conduct was unfair and deceptive;
 - v. Whether Defendant unjustly enriched itself as a result of the unlawful conduct alleged above;
 - vii. Whether there should be a tolling of the statute of limitations; and
 - viii. Whether the Class and Sub-Class members are entitled to restitution, actual damages, punitive damages, and attorneys' fees and costs.
- c. Plaintiff's claims are typical of the Class and the Sub-Class, which all arise from the same operative set of facts and are based on the same legal theories

- d. Plaintiff has no interests adverse or antagonistic to the interests of the other members of the Class and the Sub-Class.
- e. Plaintiff will fairly and adequately protect the interests of the Class and the Sub-Class and Plaintiff has retained experienced and competent attorneys to represent the Class and the Sub-Class.
- f. This class action is a fair and efficient adjudication of the controversy alleged herein. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- g. This class action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. This class action will also permit the adjudication of relatively small claims by many Class and Sub-Class members who would not otherwise be able to afford to seek legal redress for the wrongs complained of herein. Absent a class action, Class and Sub-Class members will continue to suffer losses of legally protected rights, as well as monetary damages. If Defendant's conduct is allowed proceed to without remedy, Defendant will continue to benefit financially from such conduct.
- h. Defendant has acted on grounds generally applicable to the entire Class and Sub-Class, thereby making it appropriate for the Court to order final monetary, injunctive, and declaratory relief with respect to the Class and the Sub-Class as a whole.

35. Defendants, their employees and agents are excluded from the Class and Sub-Class. Plaintiff does not know the number of members in the Class and Sub-Class, but believes the members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

36. The size and definition of the Class and Sub-Class can be identified by Defendants' own records.

COUNT I
VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, et seq.

37. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 36 above as if fully reiterated herein.

38. Plaintiff is a "person" as defined in 815 ILCS 505/1(c), as he is a natural person.

39. Defendants are both a "person" as defined in 815 ILCS 505/1(c), as they are both a company and a business entity and/or association.

40. 815 ILCS 505/2 states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

41. Through its representation that the Products were natural, Defendants made false promises, misrepresentations, concealments, suppressions, and omissions of material facts, with the intent that Plaintiff rely upon said false promises, misrepresentations, concealments, suppressions, and omissions of material facts.

42. 815 ILCS 505/10a states:

(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper...

(c) [T]he Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

43. In taking the actions and omissions set forth above, and making the false promises, misrepresentations, concealments, suppressions, and omissions of material facts set forth above, Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act, including, but not limited to, 815 ILCS 505/2.

44. Defendant failed to comply with the requirements of the ILCFA, including, but not limited to, 815 ILCS 505/2 as to the Class and Sub-Class members with respect to the above-alleged transactions

45. By reason thereof, Plaintiff is entitled to a judgment against Defendants, declaring that Defendants' conduct violated 815 ILCS 505/2, enjoining Defendants from engaging in similar conduct in the future, and awarding actual damages, punitive damages, injunctive relief, costs, and attorneys' fees.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendants as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;

- c. An order requiring Defendants, at their own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendants in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendants in the future;
- f. Judgment against Defendants for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

COUNT II
COMMON LAW FRAUD

46. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 36 above as if fully reiterated herein.

47. Through its false statements that the Products were natural, Defendants made false statements of material fact.

48. At the time Defendants made its statements to Plaintiff that the Products were natural, it knew, or reasonably should have known, that the statements described above were false.

49. At the time Defendants made the statements to Plaintiff, Defendants intended to induce Plaintiff to purchase the Products.

50. Plaintiff relied upon the truth of the statements described above and purchased the Product, only to find that the Product he purchased was not natural.

51. As a result of their reasonable reliance upon Defendants' false statements of material fact as set forth above, Plaintiff and other members of the Class and Sub-Class have

suffered concrete and particularized injuries, harm, and damages which include, but are not limited to, the loss of money spent on products they did not want to buy, and stress, aggravation, frustration, inconvenience, emotional distress, mental anguish, and similar categories of damages.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendants as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendants, at their own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendants in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendants in the future;
- f. Judgment against Defendants for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

COUNT III
UNJUST ENRICHMENT

52. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 36 above as if fully reiterated herein.

53. Plaintiff conferred monetary benefits to Defendants by purchasing the Products.

54. Defendants has been unjustly enriched by retaining the revenues derived from

Plaintiff's purchase of the Products based on the false statements that the Products were natural.

55. Defendants' retention of the revenue it received from Plaintiff, and the Class and Sub-Class members, is unjust and inequitable because Defendants' false statements caused injuries to Plaintiff, and the Class and Sub-Class members, as they would not have purchased the Products, or would not have paid a premium price, if they knew the Products were not natural.

56. Defendants' unjust retention of the benefits conferred on it by Plaintiff, and the Class and Sub-Class members, entitles Plaintiff, and the Class and Sub-Class members, to restitution of the money they paid to Defendants for the Products.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendants as follows:

- h. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- i. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- j. An order requiring Defendants, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- k. Judgment against Defendants in an amount to be determined at trial;
- l. An order for injunctive relief prohibiting such conduct by Defendants in the future;
- m. Judgment against Defendants for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- n. Any other relief deemed just and proper by this Court.

JURY DEMAND

Plaintiff demands a trial by jury on all issues in this action so triable, except for any issues relating to the amount of attorneys' fees and costs to be awarded should Plaintiff prevail on any of her claims in this action.

RESPECTFULLY SUBMITTED,

MICHAEL DALY



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