

DEC 22 2011

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF YOLO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

CONAGRA FOODS, INC.,
a Delaware Corporation

Defendant.

NO. CV11-2794

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, AND OTHER
RELIEF**

JEFF W. REISIG, District Attorney of Yolo County, by LAWRENCE BARLLY, Deputy
District Attorney; JAN SCULLY, District Attorney for the County of Sacramento, by Deputy
District Attorney RUTH YOUNG and VERN PIERSON, District Attorney of El Dorado County,
by JAMES A. CLINCHARD Deputy District Attorney; acting on information and belief, allege:

The PEOPLE of the State of California v. CONAGRA FOODS, INC., Complaint

JURISDICTION AND VENUE

1. Acting to protect the general public from untrue and misleading representations and unlawful business practices, plaintiffs brings this suit in the name of THE PEOPLE OF THE STATE OF CALIFORNIA. Plaintiffs, by this action and pursuant to Business and Professions Code sections 17200, 17203, 17204, 17205, 17206, 17500, 17535 and 17536, seek to enjoin defendant from engaging in unfair and unlawful business practices as alleged herein and seek to obtain civil penalties and remedies for the defendant's violation of the above statutes, and seek to recover its costs and cost of investigation pursuant Business and Professions Code section 12015.5.

2. At all times mentioned herein, defendant has transacted business and committed violations of law as hereinafter described within the Counties of Sacramento, El Dorado, and Yolo, in the State of California.

DEFENDANT

3. Defendant, ConAgra Foods, Inc., is, and was at all times mentioned herein, a Delaware corporation, with its principal offices located at One ConAgra Drive, Omaha Nebraska, 68102.

4. At all times herein mentioned in this Complaint, defendant has been, and is engaged in the business of manufacturing, and/or packaging, and/or distributing food products which are offered for sale to California consumers.

5. When reference is made to any act or omission of defendant or its officers, agents or employees, such allegations shall be deemed to mean that the officers, directors, employees or representatives of defendant did, or authorized, such act while engaged in the management, direction, representation or control of the affairs of said defendant, and did so while acting within the course and scope of their duties.

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FIRST CAUSE OF ACTION

UNTRUE OR MISLEADING STATEMENTS
(Business and Professions Code section 17500)

6. Plaintiff incorporates paragraphs 1 through 5 of this Complaint herein by reference.

7. Beginning on an exact date unknown to the plaintiff, but at least within three (3) years prior to the date of filing of this Complaint, defendant, with the intent to induce members of the general public to purchase its "Slim Jim" food products (hereinafter "products"), made or caused to be made representations to the public which were untrue and misleading. Said untrue or misleading statements, which are unlawful under Business and Professions Code section 17500, included, but were not limited to, advertizing and packaging of products in containers which had:

(a) void space not visible by consumers, referred to as "nonfunctional slack fill." This nonfunctional slack fill packaging, when displayed for sale to the public of the State of California, caused false representations to the public by implying that defendant's products filled the entire package.

(b) net weight statements that were not in the lower one-third of the principal display panel which, when displayed for sale to the public of the State of California, caused false representations to the public by obfuscating the net weight of the products being considered for purchase.

(c) weight statements that were greater than the actual weight of the product, referred to as "short weight" which, when displayed for sale to the public of the State of California, caused false representations to the public by misleading the public as to the correct weight of the products.

8. The representations and statements made by defendant, as set forth in the paragraphs above, were untrue or misleading when made, and were known, or should have been known, by defendant to be untrue or misleading.

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1 9. Unless enjoined by order of this court, defendant will retain the ability to and
2 could make untrue or misleading statements in violation of Business and Professions Code
3 section 17500.

4 **SECOND CAUSE OF ACTION**
5 **UNFAIR COMPETITION**

6 **(Business and Professions Code section 17200)**

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8 10. Plaintiff re-alleges and incorporates herein by reference all allegations contained
9 in paragraphs 1 through 9 inclusive, of this Complaint.

10 11. Beginning on an exact date unknown to plaintiff, but at least within four (4) years
11 prior to the filing of this Complaint, defendant engaged in unlawful acts or practices in the
12 conduct of its business, which acts or practices constituted unfair competition within the meaning
13 of section 17200 of the Business and Professions Code, and which included, but are not limited
14 to:

15 (A) Defendant made, or caused to be made, untrue or misleading
16 representations regarding the packaging of its products as more fully
17 described in paragraph 7 above, in violation of Business and Professions
18 Code section 17500.

19 (B) Defendant violated section 12602 of the Business and Professions Code,
20 in that defendant packaged its products in non-conforming type packages.
21 Said non-conforming packages contained extra space by volume in the
22 interior of the package. The extra space provided no benefit to the
23 contents of the packaging and misled consumers.

24 (C) Defendant violated section 12606.2 of the California Business and
25 Professions Code, in that defendant is packaged its products in containers
26 made, formed, or filled as to be misleading to a potential customer as to
27 the actual size and filling of the package with defendant's products.
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1 (D) Defendant violated section 12606.2 of the California Business and
2 Professions Code, in that defendant packaged its products in containers
3 made, formed or filled as to mislead a potential customer by using
4 packaging which created a void space not filled with defendant's product,
5 and which was not viewable or discernable by the potential consumer.

6 13. The conduct of defendant as set forth above demonstrates the necessity for
7 granting injunctive relief restraining such and similar acts of unfair competition pursuant to
8 California Business and Professions Code section 17203 and 17535. Unless enjoined and
9 restrained by order of the court, defendant will retain the ability to, and may engage in, said acts
10 of unfair competition, and misleading advertising.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

13 1. Pursuant to California Business & Professions Code sections 17204 and 17535,
14 defendant and its officers, directors, agents, employees, representatives, and all persons acting in
15 concert or participating with it, with actual or constructive notice of this injunction, be
16 permanently enjoined and restrained from engaging in the following acts while advertising or
17 attempting to sell any of its candy products to The People Of The State Of California:

18 (A) Making any oral or written representations in violation of California
19 Business and Professions Code section 17500 including, but not limited to,
20 those acts set forth in the first cause of action of this complaint.

21 (B) Engaging in any business practices in violation of California Business and
22 Professions Code section 17200 including, but not limited to, those acts
23 set forth in the second cause of action of this complaint.

24 2. Defendant herein be assessed a civil penalty of Two Thousand Five Hundred
25 Dollars (\$2,500) for each act of false or misleading advertising engaged in, in violation of
26 California Business and Professions Code section 17500 as provided in section 17536.

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3. Defendant herein be assessed a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each act of unlawful or unfair business practice engaged in, in violation of California Business and Professions Code section 17200 as provided in section 17206.

4. Plaintiff recover its costs.

5. Plaintiff have such other and further relief as the nature of the case may require, and the Court deems proper to fully and successfully dissipate the false and misleading representations, and the unfair, unlawful and fraudulent business practices complained of herein, and the effects thereof.

DATED: December 20, 2011

Respectfully submitted,

JEFF W. REISIG
DISTRICT ATTORNEY

By:

Lawrence Barlly
LAWRENCE BARLLY
Deputy District Attorney
Attorney for Plaintiff

DATED: 12-20-11

Respectfully submitted,

JAN SCULLY
DISTRICT ATTORNEY

By:

Ruth Young
RUTH YOUNG
Deputy District Attorney
Attorney for Plaintiff

DATED: 12/21/11

Respectfully submitted,

VERN PIERSON
DISTRICT ATTORNEY

By:

James A Clinchard
JAMES A CLINCHARD
Deputy District Attorney
Attorney for Plaintiff