

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

9
JOSEPH NACHIO, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

AMERICAN RICE INC., POMPEIAN INC.,
and SALOV NORTH AMERICA
CORPORATION,

Defendants.

Case No.: 10 33154

CLASS REPRESENTATION

JURY TRIAL DEMANDED

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CLASS ACTION COMPLAINT

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Plaintiff Joseph Nachio (“Plaintiff”), brings this action on behalf of himself and all others similarly situated against defendants American Rice Inc. (“American Rice”), Pompeian Inc. (“Pompeian”), and Salov North America Corporation (“Salov”), and alleges:

JURISDICTION AND VENUE

1. This action is brought as a class action pursuant to Florida Rule of Civil Procedure 1.220.

2. The damages suffered and sought to be recovered herein total, in the aggregate, in excess of the minimum jurisdictional limits of this Court. Plaintiff’s individual claims do not exceed the sum or value of \$75,000.00.

3. Venue is proper in Broward County, Florida because the causes of action asserted herein occurred and/or accrued, among other places, in Broward County, Florida. Venue is also appropriate in this Court because Defendants conduct substantial business in Broward County and have targeted consumers to purchase their products and has advertised in various media in Broward County.

4. This action is not removable pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332 (2005), pursuant to *Cappuccitti v. DirecTV, Inc.*, No. 09-14107, 2010 WL 2803093, at *5 (11th Cir. July 19, 2010).

NATURE OF THE ACTION

5. This is a consumer class action on behalf of purchasers of Defendants’ products that are falsely and deceptively labeled as “extra virgin olive oil” (“EVOO”), which is the highest and most expensive grade for olive oil product. Defendants market and sell for a substantial premium their products as being “extra virgin olive oil” when the products clearly do not meet or warrant this “extra virgin” olive oil product grade or the price premium for which they are sold.

6. The International Olive Counsel (“IOC”), the United States Department of Agriculture (“USDA”), and the state of California, the United States’ largest domestic olive oil producer, have delineated specific standards for the “extra virgin olive oil” grade. Although they are well aware of these standards, the Defendants do not meet these standards for their products, including the “organoleptic test” (herein referred to as “sensory test”).¹

7. Indeed, the University of California at Davis (“UC Davis”) recently conducted a comprehensive study delineating exactly how the Defendants’ products do not meet these standards (the “Davis Study”). Under the Davis Study, the Defendants’ products, which were advertised, marketed and sold for a premium as “extra virgin olive oil,” tested at lower grades of olive oil.

8. Upon information and belief, these same products tested in the Davis Study are sold to consumers throughout the state of Florida. Given the time-sensitive and fragile logistic processes involved in mass producing true extra virgin olive oil, the Defendants cannot produce nearly the quantities of extra virgin olive oil they claim to sell into the United States. Indeed, the Defendants do not even bother sending Americans true grade “extra virgin olive oil.” The Defendants use the precious little true extra virgin olive oil for sale to consumers in countries that have a longer history of consuming extra virgin olive oil and a taste pallet that commands only this true high quality product. The Defendants do not respect the American olive oil taste pallet as a whole and bank on the fact that Americans cannot discern between rancid or adulterated olive oil and true extra virgin olive oil.

¹ Since 1948, the USDA regulated olive oil grades and utilized chemical and sensory standards. In light of the volumes of olive oil imported into the United States, on October 25, 2010, the USDA will incorporate many of the IOC regulations.

9. To further this advertizing deception, the Defendants manipulate the chemistry of their olive oil and synthetically attempt to reach chemical balances that approximate what real “extra virgin olive oil” might look light underneath a microscope. But the Defendants cannot fake all the indicators of what true extra virgin olive oil really is, including the sensory test, which is exactly what the Davis Study revealed.

10. Plaintiff, like hundreds of thousands, if not millions, of other Floridians have been duped by the Defendants’ false, deceptive and unfair marketing campaign of their purportedly “extra virgin olive oil.” In short, Plaintiff and the class have not received the benefit of their bargains as a result of Defendants’ false, deceptive and unfair marketing campaign, including Defendants’ product labels. Plaintiff and the class have sought to purchase real “extra virgin olive oil” and have instead received rancid or adulterated olive oil. And, indeed, Plaintiff and the class have paid a premium price on the fake “extra virgin olive oil” sold to them by Defendants.

11. In this action, Plaintiff seeks to recover the benefit of the bargain for himself and the class and to enjoin the Defendants from continuing with their false, deceptive and unfair marketing campaign of products that do not meet the “extra virgin olive oil” standard as advertised.

PARTIES

12. At all times relevant to this matter, Plaintiff Joseph Nachio resided and continues to reside in this County. During the class period, Plaintiff was exposed to and saw Defendants’ advertising claims, purchased Pompeian Extra Virgin Olive Oil (also referred to herein as “Pompeian Brand”), Bertolli Extra Virgin Olive Oil (also referred to herein as “Bertolli Brand”), and Filippo Berio Extra Virgin Olive Oil (also referred to herein as “Filippo Berio Brand”), and suffered injury in fact and lost money because of the unfair and deceptive trade practices described herein. Plaintiff did not receive the benefit of his bargain in each purchase of

Pompeian Brand, Bertolli Brand, and Filippo Berio Brand. Plaintiff further paid a price premium for each purchase of Pompeian Brand, Bertolli Brand, and Filippo Berio Brand.

13. Defendant American Rice is a wholly owned subsidiary of Grupo SOS. Grupo SOS is a leading Spanish quoted food company, and the sales leader in the segments it operates in edible oils, with the Bertolli Brand being the strongest selling olive oil in the world. American Rice is incorporated in the State of Delaware and headquartered in Houston, Texas. American Rice promotes markets, distributes and sells Bertolli Extra Virgin Olive Oil to thousands of consumers in the State of Florida, including Broward County, Florida. Upon information and belief, Grupo SOS manufactures Bertolli Brand olive oil labeled as “Extra Virgin” and imports it to the United States where its operational unit, American Rice, markets, distributes, and sells the oil in the United States. The Bertolli Brand commands 40 percent of the U.S. market.

14. Defendant Pompeian is incorporated in Maryland and is headquartered in Baltimore. Defendant Pompeian promotes markets, distributes and sells Pompeian Extra Virgin Olive Oil to thousands of consumers in the State of Florida, including Broward County, Florida. Pompeian is a jointly held entity with Spanish and Moroccan owners. Pompeian imports a significant share of the EVOO consumed in the United States.

15. Defendant Salov is incorporated in New York and headquartered in Lyndhurst, New Jersey. Defendant Salov promotes markets, distributes and sells Filippo Berio Brand olive oil labeled as “Extra Virgin” to thousands of consumers in the State of Florida, including Broward County, Florida. Defendant Salov is a wholly owned subsidiary of Salov S.P.A and claims 20% of the world’s EVOO market.

CLASS REPRESENTATION ALLEGATIONS

16. Plaintiff brings this lawsuit on behalf of himself and the proposed Class members under Rules 1.220(b)(2) and (b)(3) of the Florida Rules of Civil Procedure. The proposed Class consists of:

All persons who purchased either Bertolli, Filippo Berio, or Pompeian brand products labeled as "extra virgin" olive oil in the State of Florida.

17. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are the Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by the Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with the Defendants and/or their officers and/or directors, or any of them; the Judge assigned to this action, and any member of the Judge's immediate family.

18. *Numerosity.* The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff. The true number of Class members is known by the Defendants, their distributors and retailers, however, and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by published notice.

19. *Existence and Predominance of Common Questions of Law and Fact.* Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

(a) whether Defendants had adequate substantiation for their claims prior to making them;

(b) whether the claims discussed above are true, or are misleading, or reasonably likely to deceive;

(c) whether Defendants' alleged conduct violates public policy;

(d) whether the alleged conduct constitutes violations of the laws asserted herein;

(e) whether Defendants engaged in false or deceptive advertising;

(f) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;

(g) whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

20. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in that the Defendants were unjustly enriched as a result of Plaintiff's and the Class' respective purchases of EVOO.

21. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

22. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against the Defendants. It would thus be

virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

23. In the alternative, the Class may also be certified because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for the Defendants;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) Defendants have acted or refused to act on grounds generally applicable to the Class thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

24. The claims asserted herein are applicable to all customers throughout the State of Florida who purchased EVOO. Adequate notice can be given to Class members directly using

information maintained in Defendants' records, the records of third parties, or through notice by publication.

25. Damages may be calculated, in part, from the sales information maintained in Defendants' records, or the records of third parties, so that the cost of administering a recovery for the Class can be minimized. However, the precise amount of damages available to Plaintiff and the other members of the Class is not a barrier to class certification.

26. Unless a class is certified, Defendants will retain monies received as a result of their conduct that was taken from Plaintiff and proposed Class members. Unless a class-wide injunction is issued, Defendants will continue to commit the violations alleged, and the members of the Class will continue to be misled.

SUBSTANTIVE ALLEGATIONS

Extra Virgin Olive Oil

27. American Consumers spend an amazing \$700 million a year on olive oil labeled as "extra virgin" not realizing that many of these products, including those purchased from Defendants, are not worthy of the benefit of the bargain, much less the premium prices attached to the products.

28. At the pinnacle of the olive oil industry sits extra-virgin olive oil — the gold standard. The term "extra virgin" is defined by the International Olive Counsel ("IOC"), the USDA, and the state of California, the United State's largest domestic olive oil producer.

29. Since each of the Defendants are required to comply with the IOC, the USDA, and the laws of the state of California, in those respective jurisdictions, Defendants clearly know what the term "extra virgin" means.

30. Specifically, the IOC defines “extra virgin” olive oil as: Extra virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and the other characteristics of which correspond to those fixed for this category in this standard. The IOC defines a sensory taster as an individual who is specialized in the sensory analysis of a specific product and has a basic understanding of the preparation of the product and market preferences. The IOC utilizes a protocol for its sensory testing which includes, but is not limited to, perception, sensation, and sensitivity.

31. Since 1948, the USDA has regulated olive oil grades and utilized both chemical and sensory standards to determine quality. Currently, quality is rated on a scale of A, which has the characteristics of what the IOC and others refer to as EVOO, B, and C. In light of the volumes of olive oil imported into the United States, on October 25, 2010, the USDA will incorporate many of the IOC regulations into an updated set of voluntary standards.

32. The new USDA standards define “U.S. Extra Virgin Olive Oil” as: virgin olive oil which has excellent flavor and odor (median of defects equal to zero and median of fruitiness greater than zero) and a free fatty acid content, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and meets the additional requirements as outlined in §52.1539, as appropriate. Section 52.1539 sets forth the criteria to ascertain the grade of the oil using both chemical and sensory standards.

33. The state of California defines “extra virgin” olive oil as:

Extra virgin olive oil means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams oil, has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil and would meet the sensory standards of extra virgin olive oil as determined by a taste panel certified by the International Olive Council, or, if the International Olive Council ceases to certify taste panels, would meet the sensory standards of a taste panel that is operated by the University of California or California State University according to guidelines adopted by the International Olive Council as of 2007.

34. Practically speaking, only olives picked fresh and slightly unripe, pressed within 24 hours of harvest, and carefully monitored will become extra virgin olive oil within each of the aforementioned standards. Otherwise, the oil will be among the lower grades of “virgin,” “pure,” or “light” olive oil. Indeed, the timing and processing olives to make real extra virgin olive oil is delicate and time-sensitive. And logistically, this is a problem for companies that use olives from small-scale olive farmers in places like Spain. Harvesting, collecting, and processing olives from many small-scale olive ranches can inhibit the production of true grade extra virgin olive oil.

Defendants’ Products Do Not Meet the “Extra Virgin” Olive Oil Standard

35. In early 2010, olive oil researchers at UC Davis conducted a study of Defendants’ products, as well as the products of other olive oil companies. The UC Davis study examined olive oil products that were marketed and labeled by Defendants and other olive oil companies as “extra virgin olive oil” to American consumers in retail stores. These same products examined by the UC Davis study are, upon information and belief, marketed and labeled by Defendants and other olive oil companies as “extra virgin olive oil” and are sold to millions of consumers in the state of Florida, including Plaintiff.

36. The researchers employed standardized olive oil testing methodologies for determining whether products meet the extra virgin olive oil grade:

| IOC/USDA ANALYSIS | DETERMINATIONS | INDICATORS* | ANALYSES | EXTRA VIRGIN STANDARDS |
|--|--|---|---|--|
| Free Fatty Acids (FFA) | Free fatty acids are formed by the hydrolysis of the triacylglycerols in oils during extraction, processing, and storage. | An elevated level of free fatty acid indicates hydrolyzed, oxidized and/or poor-quality oil. | Analytical titration (AOCS Co 5a-40). | Units: % as oleic acid. Limit: ≤ 0.8 . |
| Peroxide Value (PV) | Peroxides are primary oxidation products that are formed when oils are exposed to oxygen, producing undesirable flavors and odors. | An elevated level of peroxides indicates oxidized and/or poor-quality oil. | Analytical titration (AOCS Cd 8b-90). | Units: mEq O ₂ /kg oil. Limit: ≤ 20 . |
| UV Absorption (for conjugated double bonds) | Conjugated double bonds are formed from natural nonconjugated unsaturation in oils upon oxidation. | An elevated level of UV absorptions indicates oxidized and/or poor quality oil. | UV spectrophotometry (AOCS Ch. 5-91). | Units: K ²³² _{1cm} . Limits for K232, K268 and ΔK ≤ 2.50 , ≤ 0.22 , and ≤ 0.01 . |
| Stigmasterolene | Stigmasterolene are produced by thermal dehydration of beta-sitosterol, a natural sterol found in virgin olive oils. | An elevated level of stigmasterolene indicates adulteration with refined oil. | Gas chromatography (GC) (IOC CCI/T.20/Doc No. 11-2001) | Units: mg/kg oil. IOC limit ≤ 0.10 USDA limit ≤ 0.15 . |
| Fatty Acid Profile (FAP) | Fatty acids constitute the principal component of fats (saturated or unsaturated). Fatty acid profiles (FAP) are distinguishable markers between olive oils and some seed/nut oils (FAPs vary slightly depending on the varieties and growing region of olives). | Analysis of the fatty acid profile provides information on the authenticity of the olive oil; an indicator for adulteration with refined oils. | Gas chromatography (GC) (IOC CCI/T.20/Doc No. 24-2001). | Units: % of total fatty acids. Limits: See Appendix. |
| Sterols Profile | Sterols are minor constituents of oils and are distinguishable markers between olive oils and some seed/nut oils. | Analysis of sterols provides information on the purity of the olive oil; an indicator for adulteration with refined seed/nut oils, although some sterol values may exceed IOC limits due to climate and olive varietal. | Gas chromatography (GC) (IOC CCI/T.20/Doc No. 10-2001). | Units: % of total sterols (mg/kg). Limits: See Appendix. |
| Sensory (Organoleptic) | Sensory refers to taste, odor and mouthfeel. | Sensory assessment can help identify oils that are of poor quality, oxidized, and/or adulterated with other oils. | IOC-recognized panel of 8-12 people evaluates oils for sensory characteristics (IOC CCI/T.20/Doc No. 15/Rev. 2-2007, IOC CCI/T.15/NC No 3/Rev. 4, 11-2009). | Panel must find median of defects = 0 and median of the fruity attributes > 0 . |

* Hydrolyzed means oils in which triacylglycerols have been broken down via addition of water.
Oxidized means oils that have become stale and rancid through oxidation, a chemical reaction that is promoted by heat, light, and/or age.
Refined means cheaper, lower-grade oils that are solvent extracted, thermally deodorized and bleached.
Poor quality means oils that were made from poor-quality olives, improperly processed, and/or improperly stored after processing.

37. The UC Davis study also performed more-advanced techniques for determining whether products meet the extra virgin olive oil grade:

| OTHER ANALYSIS | DETERMINATIONS | INDICATORS* | ANALYSIS | EXTRA VIRGIN STANDARDS |
|--|---|---|--|---|
| Total Polyphenol Content | Polyphenols are important antioxidants that inhibit oxidation and improve the shelf-life of olive oils. | Polyphenol content decreases with prolonged storage, but because polyphenols are influenced by varietal, horticultural, and processing variables the content does not necessarily indicate oil authenticity or quality. | Modified Gutfinger (1981) method. Gutfinger, T. (1981). "Polyphenols in olive oils." <i>Journal of the American Oil Chemists' Society</i> 62: 895-898. | Units: mg caffeic acid/kg oil. Limits: Extra virgin standards have not been established. |
| Triacylglycerols (TAGs) | Triacylglycerols are the principal components (98%) of olive oil consisting of an ester of three fatty acids and glycerol. | The triacylglycerols method is still being evaluated as an indicator of olive oil purity. | Gas chromatography (GC) DGF Standard method C-VI 10b. | Units: % of total triacylglycerols. Limits: Extra virgin standards have not been established. |
| 1,2-Diacylglycerol Content (DAGs) | During the breakdown of triacylglycerols, diacylglycerols are formed. Fresh extra virgin olive oil contains a high proportion of 1,2-diacylglycerols to 1,2- and 1,3-diacylglycerols, while olive oil from poor quality fruits and refined olive oil have elevated levels of 1,3-diacylglycerols. | The ratio of 1,2-diacylglycerols to 1,2- and 1,3-diacylglycerols is an indicator for oil that is hydrolyzed, oxidized, of poor quality, and/or adulterated with refined oil. | Gas chromatography (GC) (DGF Standard Method C-VI 16(06) – ISO 29822:2009). | Units: % total 1,2- and 1,3-diacylglycerols. Australian Olive Association (AOA) limit: ≥ 40 . |
| Pyropheophytins (PPP) | Chlorophyll pigments break down to pheophytins and then pyropheophytins upon thermal degradation of olive oil. | An elevated level of pyropheophytins is an indicator for oil that is oxidized and/or adulterated with refined oil. | High performance liquid chromatography (HPLC) (DGF Standard Method C-VI-15(06) – ISO 29841:2009.) | Units: % total pheophytins. Australian Olive Association (AOA) limit: ≤ 15 . |

* **Hydrolyzed** means oils in which triacylglycerols have been broken down via addition of water.
Oxidized means oils that have become stale and rancid through oxidation, a chemical reaction that is promoted by heat, light, and/or age.
Refined means cheaper, lower-grade oils that are solvent extracted, thermally deodorized and bleached.
Poor quality means oils that were (1) made from poor-quality olives, (2) improperly processed, and/or (3) improperly stored after processing.

38. Defendants' products do not meet the extra virgin olive oil standards, as the UC Davis study has revealed:

Tests indicate that imported "extra virgin" olive oil often fails international and USDA standards
UC Davis Olive Center, July 2010
Table 3. Chemistry and sensory data provided by Australian Oils Research Laboratory

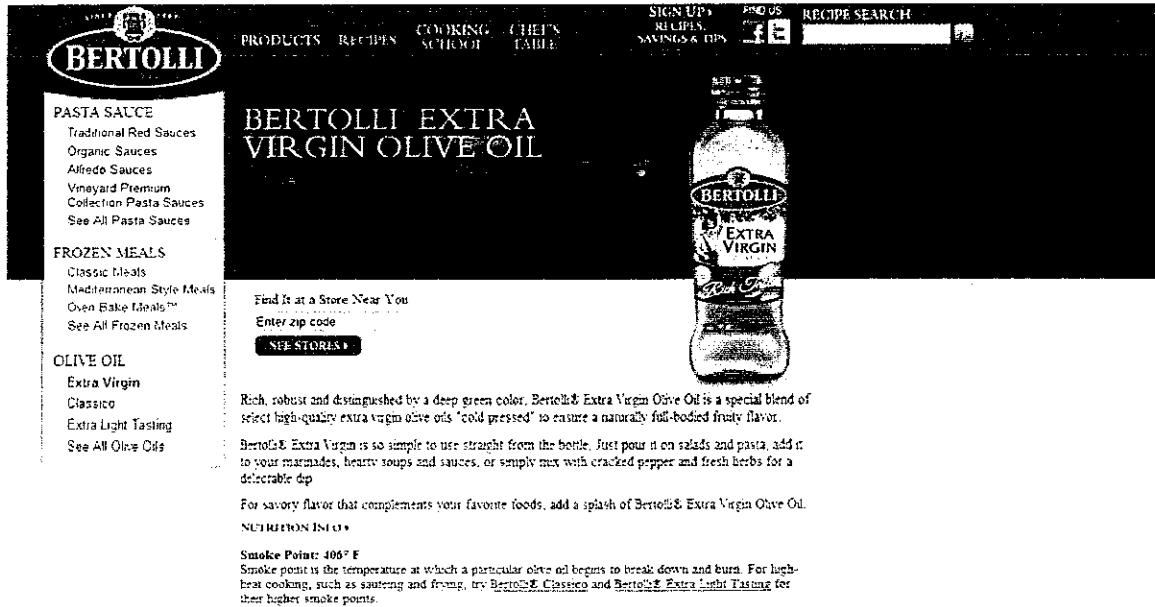
| Brand | | PV | K232 | K268 | ΔK | FFA | Stigma | Poly | PPP | DAGs | Sensory |
|-------------------------|-----|---------------|-----------------|-----------------|-----------------|----------------|-----------------|------|----------------|---------------|-----------------------------|
| Extra Virgin Standards* | | (≤ 20) | (≤ 2.50) | (≤ 0.22) | (≤ 0.01) | (≤ 0.8) | (≤ 0.10) | N/A | (≤ 1.5) | (≥ 40) | Defect = 0 Foiliness > 0 |
| Filippo Berio | SAC | 11 | 2.46 | 0.18 | <0.003 | 0.30 | <0.03 | 200 | 10.3 | 42.2 | EXTRA VIRGIN |
| | SF | 12 | 2.18 | 0.14 | <0.003 | 0.37 | <0.03 | 212 | 12.0 | 40.7 | VIRGIN |
| | IA | 11 | 2.12 | 0.15 | <0.003 | 0.35 | <0.03 | 247 | 13.7 | 42.0 | VIRGIN |
| Bertelli | SAC | 9 | 2.29 | 0.19 | <0.003 | 0.41 | <0.03 | 195 | 17.8 | 38.1 | VIRGIN |
| | SF | 9 | 2.24 | 0.16 | <0.003 | 0.38 | <0.03 | 266 | 14.3 | 39.2 | VIRGIN |
| | IA | 12 | 2.42 | 0.17 | <0.003 | 0.32 | <0.03 | 199 | 20.8 | 43.4 | VIRGIN |
| Pompeian | SAC | 11 | 2.50 | 0.19 | <0.003 | 0.59 | <0.03 | 132 | 12.1 | 38.5 | VIRGIN |
| | SF | 13 | 2.60 | 0.16 | <0.003 | 0.51 | <0.03 | 111 | 10.5 | 31.5 | VIRGIN |
| | IA | 13 | 2.56 | 0.17 | <0.003 | 0.49 | <0.03 | 188 | 16.3 | 35.9 | VIRGIN |

39. Despite this, the Defendants nonetheless market, advertise, and label their products when this claim is patently false.

Defendants' False, Unfair and Deceptive Advertising Claims

Defendant American Rice – the Bertolli Brand

40. Defendant American Rice sells Bertolli Brand olive oil labeled as “Extra Virgin” to American consumers, including consumers in the state of Florida. Defendant American Rice’s marketing campaign to Florida consumers for this product speaks for itself:

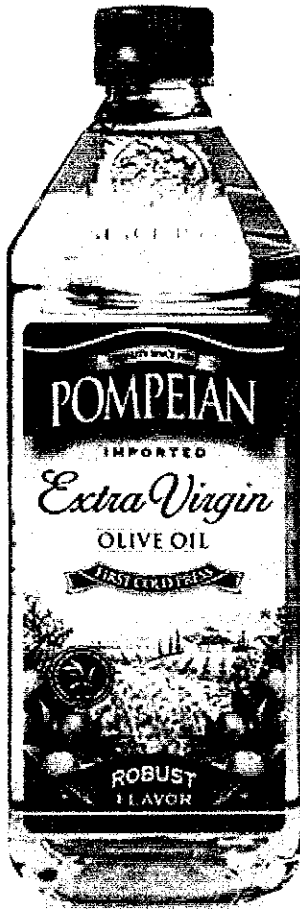


41. Defendant American Rice seeks to dupe consumers in Florida into believing that Bertolli Brand is true grade extra virgin olive oil, when this product does not meet the “extra virgin” standard. Defendant American Rice has successfully achieved this ploy by causing Florida consumers, including Plaintiff, to purchase this falsely advertised product with the belief that the product actually met the extra virgin olive oil grade, as advertised.

42. Defendant American Rice knows that its Bertolli Brand olive oil labeled as “Extra Virgin” does not meet the state, national or international standard for “extra virgin.”

Defendant Pompeian – the Pompeian Brand

43. Defendant Pompeian sells Pompeian Extra Virgin Olive Oil to American consumers, including consumers in the state of Florida. Defendant Pompeian’s marketing campaign to Florida consumers for this product also speaks for itself:



OLIVE OILS

Extra Virgin Olive Oil

Only the Mediterranean’s finest olives are selected for Pompeian Extra Virgin Olive Oil. Produced by the first pressing of these remarkable olives through the centuries-old cold pressing process, Pompeian Extra Virgin Olive Oil is extremely low in acidity, which accounts for its robust taste and heady fragrance. To fully appreciate the nuances of its flavor, you’ll especially enjoy it in dressings, salads, vinaigrettes or as a table condiment for dipping bread or crudités.

NAGOA Seal quality assurance.

The North American Olive Oil Association has created a special seal program. Pompeian is the first brand of olive oil to carry this seal. To learn more about this quality assurance, select the link in the left navigation bar.



44. Defendant Pompeian seeks to dupe consumers in Florida into believing that Pompeian is true grade extra virgin olive oil, when this product does not meet the “extra virgin” standard. Defendant Pompeian has successfully achieved this ploy by causing Florida consumers, including Plaintiff, to purchase this falsely advertised product with the belief that the product actually met the extra virgin olive oil grade, as advertised.

45. Defendant Pompeian knows that its Pompeian Brand olive oil labeled as “Extra Virgin” does not meet the state, national or international standard for “extra virgin.”

Defendant Salov – the Filippo Berio Brand

46. Defendant Salov sells Filippo Berio Brand olive oil labeled as “Extra Virgin” to American consumers, including consumers in the state of Florida. Like the other defendants, defendant Salov’s marketing campaign to Florida consumers for this product speaks for itself:

Filippo Berio Extra Virgin Olive Oil

For dressings, marinades and dip for breads



This fine aromatic oil is made from the first cold-pressing of the finest olives, and is distinguished by its full flavor, low acidity, and deep greenish-gold color. Filippo Berio Extra Virgin Olive Oil enhances the flavor of salad dressings, sauces, and marinades; is a wonderful finish to vegetables, rice dishes and soups and is perfect for dipping bread and seafood such as lobster. Try it tonight in Chicken Paillard Salad with Tomatoes and Basil.

Because of its distinctive, full flavor, Extra Virgin Olive Oil is extremely popular for home “olive oil tastings,” a social phenomenon quickly gaining popularity with food enthusiasts — almost as popular as wine tastings in many circles.

It's fun and easy to host your own tasting — click here for some basic guidelines.

Our Extra Virgin Olive Oil is also available as an easy-to-use and convenient spray.

47. Defendant Salov seeks to dupe consumers in Florida into believing that Filippo Berio Brand is true grade extra virgin olive oil, when this product does not meet the “extra

virgin” standard. Defendant Salov has successfully achieved this ploy by causing Florida consumers, including Plaintiff, to purchase this falsely advertised product with the belief that the product actually met the extra virgin olive oil grade, as advertised.

48. Defendant Salov knows that its Filippo Berio Brand olive oil labeled as “Extra Virgin” does not meet the state, national or international standard for “extra virgin.”

Defendants’ Profit Motives for Labeling their Products as “Extra Virgin” and the Geo-Political and Economic Climate in Which Defendants Make these False, Unfair and Deceptive Claims

49. Americans spend nearly a billion dollars a year consuming olive oil. Indeed, the United States is the world’s third-largest consumer of olive oil, 99% percent of which comes from foreign producers like Defendants.

50. In the last 20 years, the United States has become a worthy producer of olive oils, and especially extra virgin olive oils. Presuming that American consumers’ pallets are unsophisticated, olive oil producers’ worldwide took notice of American domestic olive oil production and in an effort to compete, many sophisticated foreign producers recognized that they could make greater profits if they utilized inferior ingredients. More importantly, foreign producers still continued to call their inferior grade olive oil products “extra virgin,” when it was not true.

51. To be sure, extra-virgin olive oil has earned the trust of consumers looking for better health and full-flavored oil. However, increased global competition tempts some producers to misrepresent their products in pursuit of profit, as has been done to American consumers. Consumers may think their EVOO is made using the best methods and ingredients possible, but it is actually counterfeit EVOO.

52. Over the years, there have been media reports of deception in the olive oil business, where extra virgin olive oil was diluted and is considered counterfeit. This dilution process with other olive oils makes detection of the adulteration difficult.

53. These manufacturers and producers, including but not limited to Defendants, are well aware of what constitutes EVOO as they are regulated in countries outside of the United States.

54. The methodology/process required to produce EVOO makes it impossible for the Defendants to sell the volume of EVOO they do. As stated above, because many of the olives come from small farmers in places like Spain, it is sometimes logistically impossible to make extra virgin olive oil from these olives, given the time-sensitive and delicate processes that are necessary to make true grade extra virgin olive oil. The Defendants use the precious little true extra virgin olive oil for countries whose consumers have a longer history of consuming extra virgin olive oil and have a taste pallet that commands only this true high quality product. While the Defendants save the “good stuff” for other consumer markets, such as European markets, the Defendants sell Americans the sub-standard and rancid olive oil, mixing and manipulating the chemistry of the oil so that it, under a microscope, approximates (but falls far short of) true grade olive oil.

55. The same foreign producers that stand to profit from these misleading and deceptive trade practices are in control of the very agencies regulating the oil producers outside of the United States. As such, these agencies have been slow to react.

56. In 1993, the FDA ordered a recall of Rubino U.S.A. Inc., (Cincinnati, Ohio) olive oils which were nothing more than canola oil.

57. In 1997, the Canadian Food Inspection Agency began conducting tests on 100 oils that claimed to be 100% olive oil and in 1999 the CFIA concluded that 20 per cent of the oils were fake.

58. In 2007, American supermarket chain ShopRite (United States) recalled certain olive oils after it was discovered that they were counterfeit.

59. In March 2008, 400 Italian police officers conducted “Operation Golden Oil,” arresting 23 people and confiscating 85 farms after an investigation revealed a large-scale scheme to relabel oils from other Mediterranean nations as Italian.

60. In April 2008, another operation impounded seven olive oil plants and arrested 40 people in nine provinces of northern and southern Italy for adding chlorophyll to sunflower and soybean oil and selling it as extra virgin olive oil, both in Italy and abroad. 25,000 liters of the fake oil were seized and prevented from being exported.

61. On December 22, 2008, the Guardia Civil in La Rioja (Spain) warned about the possible sale of adulterated olive oil in the area. This warning came after 550 liters of oil was found in a large container labeled “Astispumante 1510” in Rincón de Soto and after the theft of 1,750 liters of oil was reported in the area on December 18, 2008.

62. The detection of counterfeit olive oils is often complicated with no single test that can accomplish the task. The two primary categories of testing are chemical and sensory.

63. The accepted sensory standards require the oils have zero defects and greater than zero fruitiness. For years, trained olive oil tasters who have served on recognized sensory panels have reported that much of the olive oil sold in the United States as “extra virgin” does not meet this modest sensory standard.

64. Money is at stake. Extra-virgin oil is marketed as a premium consumer product.

65. At a Publix grocery store in Boca Raton, FL, a 750-milliliter bottle of Bertolli Brand extra-virgin olive oil costs \$9.99, while the same-size bottle of extra light olive oil costs \$8.99.

66. In addition, at the same Publix store, a 750-milliliter bottle of Filippio Berrio Brand extra-virgin olive oil costs \$8.99, while the same size bottle of extra light olive oil costs \$5.99.

67. Further, at the same Publix store, a 946-milliliter bottle of Pompeian Brand extra-virgin olive oil costs \$11.89, while the same size bottle of extra light olive oil costs \$10.99.

68. As such, sophisticated producers are able to fool many of the chemical tests. However, the sensory tests are not easily fooled.

69. While the misrepresentations concerning counterfeit EVOO is widespread and long standing, it was not until the researchers at UC Davis conducted extensive research on many brands, including but not limited to the Defendants' brands, that the public eye was keyed into the deception.

70. The UC Davis report is critical to unpacking the Defendants' scheme. What is really going on is that the Defendants do not respect American consumer pallets for olive oil and are banking on the fact that Americans will be duped by the label of "extra virgin" without the ability for themselves to be able to taste that it is not. The UC Davis report brought this advertising deception to light.

71. Plaintiff seeks to end the Defendants' scheme of selling fake extra virgin olive oil in the state of Florida.

COUNT I

For Violations of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes §§501.201, *et seq.*, On Behalf of Plaintiff and the Class

72. Plaintiff realleges and incorporates by reference the allegations contained in the above referenced paragraphs as if fully set forth herein.

73. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.* (the “Act”). The stated purpose of the Act is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

74. Plaintiff is a consumer as defined by Fla. Stat. §501.203. Pompeian Brand, Bertolli Brand, and Filippo Berio Brand are goods within the meaning of the Act.

75. Defendants are engaged in trade or commerce within the meaning of the Act.

76. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

77. Fla. Stat. §501.204(2) states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.” Defendants’ unfair and deceptive practices are likely to deceive – and have deceived – the consumer acting reasonably in the circumstances, and violate Fla. Stat. §500.04 and 21 U.S.C. §343. Further, FTC rules and regulations require that Defendants have the same level of substantiation for its advertisements at the time they are made as it claimed in the advertisement. Defendants’ claims lack reliable and competent proof.

78. Defendants have violated the Act by engaging in the unfair and deceptive practices as described herein which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

79. Plaintiff and the Class have been aggrieved by Defendants' unfair and deceptive practices in that they paid for Pompeian Brand, Bertolli Brand, and Filippo Berio Brand and did not receive the benefit of their bargains.

80. The damages suffered by Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendants, as more fully described herein.

81. Pursuant to Fla. Stat. §501.211(1), Plaintiff and the Class seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

82. Additionally, pursuant to Fla. Stat. §§501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorneys' fees and costs.

COUNT II

Breach of Express Warranty On Behalf of Plaintiff and the Class

83. Plaintiff realleges and incorporate by reference the allegations contained in all preceding paragraphs, except for the paragraphs of Count I, which are not incorporated by reference, as if fully set forth herein.

84. Plaintiff, and each member of the Class, formed a contract with Defendants at the time Plaintiff and the other members of the Class purchased Pompeian Brand, Bertolli Brand, and Filippo Berio Brand. The terms of that contract include the promises and affirmations of fact made by Defendants on their product labels and through its marketing campaign, as

described above. This product labeling and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendants on the other.

85. All conditions precedent to Defendants' liability under this contract, including notice, have been performed by Plaintiff and the Class.

86. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing the products as advertised and described above.

87. As a result of Defendants' breach of its contract and warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Pompeian Brand, Bertolli Brand, and Filippo Berio Brand they purchased.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment:

A. Certifying the Class as requested herein, and appointing Plaintiff and Class Representative and Plaintiff's counsel as Class Counsel;

B. Awarding Plaintiff and the proposed Class members damages;

C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the proposed Class members;

D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;

E. Ordering Defendants to engage in a corrective advertising campaign;

F. Awarding attorneys' fees and costs; and

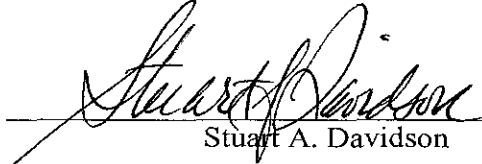
G. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: August 13, 2010

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