

IN THE DISTRICT COURT OF HARRIS
COUNTY

ANGIE CRUZ, individually, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

SENSA PRODUCTS, LLC, a Delaware
Corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

ORIGINAL PETITION – CLASS ACTION

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff, ANGIE CRUZ (“Plaintiff”), individually and on behalf of those similarly situated, brings this class action against SENSA PRODUCTS, LLC, (“Sensa” or “Defendant”).

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under T.R.C.P. 190, Level. 3.

PARTIES

2. Plaintiff, Angie Cruz is an adult resident of Houston, Texas. The Defendant’s false, misleading, and deceptive marketing and advertising promoting Sensa caused Plaintiff to purchase the product and was damaged by her purchases of Sensa. Had Plaintiff known the true facts, she would not have purchased Sensa, nor paid the inflated price for Sensa. Plaintiff purchased Sensa during the class period described below; used Sensa as directed by the Defendant; and did not receive the promised benefits of Sensa use.

3. The class is so numerous that joinder of all persons is impracticable, there are questions of law and fact common to the class, and the claims of Plaintiff are typical of the claims of the class. Plaintiff, as the representative party, will fairly and adequately represent the interests of the class.

4. Sensa Products, LLC (“Sensa Products”) is a Delaware corporation that does business throughout Texas and the United States.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the parties and the subject matter of this litigation under the Tex. Bus. & Comm. Code § 14.41 *et seq.* There is no federal diversity jurisdiction. The sum or value of the amount in controversy is in excess of the minimum jurisdictional limits of this Court, but is less than \$5,000,000, exclusive of interests and costs. The total benefit and/or value to Plaintiff of the equitable relief sought herein and the class is less than the \$5,000,000 including attorneys’ fees incurred through the filing of this lawsuit. In particular, Plaintiff does not necessarily seek a full refund. The total detriment and/or cost to the Defendant of the equitable relief sought herein is minimal. The class only includes Texas citizens who purchased Sensa in Texas.

6. Venue is proper in Harris County, Texas pursuant to Tex. Civ. Practice & Rem. Code Sect. 15.002(a)(2) and 15.005. Plaintiff resides in Texas and the Defendant conducts business within this Court’s domain.

ACTS OF AGENTS

7. At all times herein mentioned, Defendant and each of them were the agents, principals, servants, employees and subsidiaries of each of the remaining Defendants and were at all times acting within the purpose and scope of such agency, service, and employment and directed, consented, ratified, permitted, encouraged and approved the acts of each remaining Defendant.

CONDITIONS PRECEDENT

8. All conditions precedent to filing of this case, have been performed, have occurred, or have been satisfied.

FACTS

9. This is a class action on behalf of Texas consumers seeking redress for Defendant's deceptive trade practices of misrepresenting the claims of its dietary product "Sensa". Defendants market this product as a dietary supplement.

10. This is an action for damages, declaratory judgment, and injunctive relief under DTPA.

11. Defendant markets, distributes, and sells Sensa as a weight loss product that uses "tastants". These tastants are sprinkled onto food and the tastants "trigger your 'I feel full' signal, so you eat less and feel more satisfied." Defendant claims that Sensa will allow a consumer to "Lose 30 Pounds Without Dieting" by "Eat[ing] your favorite foods," with "no restrictive dieting," "no calorie counting," and "no sacrifice."

12. More specifically, Defendant makes the following misleading and deceptive claims on Sensa labels and in advertising:

- No stimulants
- No food restrictions
- No calorie counting
- No skipping meals or fasting
- No drastic lifestyle changes
- No intense cravings
- No jittery side effects
- No dangerous "yo-yo" effect
- No mood swings
- [Sensa] is clinically proven
- [Sensa] is guaranteed

13. Defendant advertises that Sensa has been clinically proven to result in an average weight loss of 30.5 pounds in just 6 months. This weight loss is “guaranteed” and requires no change in diet or exercise routine.

14. The aforementioned claims by Defendant are deceptive, misleading, false, and unfair to the average consumer. The average consumer, when reading the aforementioned claims, believe that Sensa is a proven weight loss system that will allow them to continue their eating and exercise habits and still lose considerable weight (30.5) pounds over just a few months.

15. As a direct and proximate result of Defendant’s advertising and marketing, Plaintiff purchased and used Sensa as directed. Despite using Sensa as directed, Plaintiff did not experience the promised benefits. Accordingly, Plaintiff has been damaged by her purchase of Sensa. Plaintiff, however, does not necessarily seek a full refund.

16. Defendant’s labels, marketing, and advertising are more than puffery and are not merely exaggerated claims; rather, they market Sensa in ways that induces consumers to purchase Sensa.

17. In sum, Defendant’s labeling, marketing, and advertising of Sensa violated the law.

CLASS ACTION ALLEGATIONS

18. This action is brought pursuant to Rule 42 of the Texas Rules of Civil Procedure and is properly maintainable as a class action. Plaintiff brings this class action for injunctive relief and damages on behalf of the following class:

All Texas purchasers of Sensa Products at any time during the applicable statute of limitations (the “Class”).

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19. Excluded from the Class are governmental entities, Defendants, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

20. **Numerosity:** The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the total number of Class members is at least in the thousands and members of the Class are numerous and geographically dispersed across Texas and the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

21. **Common Question of Law and Fact Predominate:** There are many questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members. Common questions of fact and law include, but are not limited to, the following:

- a. Whether Defendant's marketing and advertising were and are misleading.
- b. Whether Defendant's representations were likely to mislead and did in fact mislead Plaintiff and Class members;
- c. Whether Defendant was willful, deceptive and oppressive in its conduct;
- d. Whether Defendant engaged in unlawful, unfair, or fraudulent business practices;
- e. Whether the members of the Class have been injured by Defendant's conduct;

- f. Whether the members of the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and, if so, what is the proper measure and appropriate formula to be applied in determining such damages and restitution; and
- g. Whether the members of the Class are entitled to injunctive relief.

22. These common questions of law and fact predominate over questions that may affect individual Class members in that the claims of all Class members for each of the claims herein can be established with common proof. Additionally, a class action would be "superior to other available methods for the fair and efficient adjudication of the controversy," because (1) Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings; (2) Plaintiff is not aware of other lawsuits against Defendants commenced by or on behalf of members of the Class; and (3) because the disputed advertisements are common to all Class members and because resolution of the claims of Plaintiff will resolve the claims of the remaining Class, certification does not pose any manageability problems.

23. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct since they all relied on Defendant's the identical representations concerning Sensa weight loss products and purchased the products based on those representations.

24. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interest of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so.

25. **Superiority of Class Action:** Plaintiff and the members of the Class suffered and will continue to suffer harm as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings. In sum, for many, if not most, Class members, a class action is the only feasible mechanism that will allow them an opportunity for legal redress and justice.

26. Adjudication of individual class members' claims with respect to the Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

FIRST CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

27. Plaintiff repeats and incorporates the allegations of the proceeding paragraphs.

28. To make a claim for negligent misrepresentation, the Plaintiff must show the following:

- a. Defendant made representations in the course of its business;
- b. Defendant supplied "false information" for the guidance of others in their business;
- c. Defendant did not exercise reasonable care or competence in obtaining or communicating the information; and
- d. Plaintiff suffered pecuniary loss by justification relying on the misrepresentation.

29. All these factors exist here. Defendant advertised and made false, misleading, and deceptive claims about Sensa. Namely, Defendant claimed that Sensa tastants are sprinkled onto food and the tastants “trigger your ‘I feel full’ signal, so you eat less and feel more satisfied.” Defendant claims that Sensa will allow a consumer to “Lose **30 Pounds Without Dieting**” by “Eat[ing] your favorite foods,” with “no restrictive dieting,” “no calorie counting,” and “no sacrifice.”

30. Defendant’s representations were not true and Defendant did not exercise reasonable care or competence in obtaining or communicating this information. In fact, Defendant’s claims in connection with Sensa are inconsistent with and/or conflict with the guidelines and/or statements of the U.S. Food and Drug Administration (“FDA”) which, in an effort to promote real weight loss and to prevent Americans from being defrauded by “miracle pills,” instructs that “[t]he only proven way to lose weight is either to reduce the number of calories you eat or to increase the number of calories you burn off through exercise.

31. Plaintiff and the class relied on Defendant’s representations of a guaranteed weight loss without dieting upon purchasing Sensa. There would be no other reason to purchase a weight-loss product, other than for weight-loss. As a result, Plaintiff and the class were damaged by their purchase of Sensa.

SECOND CAUSE OF ACTION
MONEY HAD AND RECEIVED

32. Defendant received money belonging to the Plaintiff. Sensa benefits from the receipt of the money. Sensa is thereby obligated to make restitution to Plaintiff, for which Plaintiff hereby prays.

33. Sensa received money belonging to other class members and benefits from receipt of the money, and is therefore obligated to make restitution to other class members whose identities are known to or ascertainable by Defendant, for which Plaintiffs hereby prays.

THIRD CAUSE OF ACTION
BREACH OF IMPLIED WARRANTIES

34. Defendant knew that Plaintiff and other class members were buying Sensa products for a particular purpose – to lose weight – and that Plaintiff and other class members relied on Defendant’s skill and judgment to select goods fit for that purpose.

35. Sensa products are not fit for this purpose because they do not produce the results that it promises, despite the promises that Defendant made on its advertising, labeling, and packaging.

36. For the same reasons, Sensa products were unmerchantable at the time they left the location they were created, and remain unmerchantable at all times after that. This unmerchantability is inherent in the products.

37. Plaintiff notified Defendant of the acts constituting breach of the implied warranties of fitness for a particular purpose and merchantability, both for herself and the class.

38. Plaintiff and other class members suffered injury as a result of these breaches of warranty, for which Plaintiff hereby prays, because they paid for and received Sensa products that were not as warranted. These breaches of warranty are also violations of the Deceptive Trade Practices Act, and relief is sought pursuant to that Act, as set forth below.

PRAYER FOR RELIEF

39. If left unchecked, Defendant’s ongoing acts are certain to damage Plaintiff and the Class in the future. As a result, Plaintiff and the Class are entitled to an order enjoining such future conduct.

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for judgment as follows:

a. For certification of the proposed Class, and appointing Plaintiff and her undersigned counsel of record to represent the Class;


- b. An order requiring Defendant to notify each affected Class member and the general public of the wrongful conduct to which they have been subjected;
- c. For preliminary and permanent injunctive relief enjoining Defendant, its agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the unfair and/or deceptive business practices alleged above and that may yet be discovered in the prosecution of this action;
- d. For restitution and disgorgement of all money or property wrongfully obtained by Defendant by means of its herein-alleged unfair and/or deceptive business practices;
- e. For an accounting by Defendant for any and all profits derived by Defendant from unfair and/or deceptive business practices alleged herein;
- f. An award of compensatory damages;
- g. An award of punitive damages according to proof;
- h. For attorneys' fees and expenses ;
- i. For costs of suit; and
- j. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

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

DATED this 15th day of November, 2011.

By: _____


Aashish Y. Desai
(TX Bar No. 24045164)
MOWER, CARREON & DESAI, LLP
701 Brazos St., Suite 500
Austin Texas 78701
Tel.: (512) 716-8930
Fax.: (949) 474-9001
Email: desai@mocalaw.com