

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

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| <p>GMO FREE USA, P.O. Box 458 Unionville CT, 06085, ORGANIC CONSUMERS ASSOCIATION, 6771 South Silver Hill Drive, Finland, MN 55603, and BEYOND PESTICIDES, 701 E Street, SE, Suite 200, Washington, DC 20003, on behalf of the general public,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>PRET A MANGER, LTD, 853 Broadway, 7th Floor New York, NY 10003, and JAB HOLDING COMPANY, S.À.R.L., 4, Rue Jean Monnet, L-2180 Luxembourg, Grand Duchy of Luxembourg,</p> <p style="text-align: center;">Defendants.</p> | <p>Case No. _____</p> <p><u>COMPLAINT</u></p> <p><u>DEMAND FOR JURY TRIAL</u></p> |
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COMPLAINT

On behalf of their members and the general public, Plaintiffs GMO Free USA (“GMO Free USA”); Organic Consumers Association (“OCA”); and Beyond Pesticides (“BP”) (collectively, “Plaintiffs”), by and through their counsel, bring this action against Defendants Pret A Manger, Ltd. and JAB Holding Company (collectively, “Pret A Manger” or “Defendants”) regarding the deceptive labeling, marketing, and sale of certain bread and other baked goods (the “Products,” as further defined below) as “Natural Food,” despite the fact that the Products contain traces of a synthetic biocide. Plaintiffs allege the following based upon information, belief, and the investigation of their counsel:

INTRODUCTION

1. Due to concerns about health, sustainability, and the increasing use of synthetically created chemicals in the production of food, consumers are increasingly considering how their

food is grown, processed, and prepared.

2. As a result, demand has increased for “natural” food products that are marketed with assurances regarding how they are produced and prepared—that is, products that are free from unnatural ingredients, synthetic chemicals, or other remnants of artificial or extensive processing. Consumers, as Pret A Manger knows, are willing to pay more for products marketed in this way than they are willing to pay for competing products that do not provide such assurances.

3. Pret A Manger produces sandwiches, baked goods, and other prepared foods that are sold to consumers through Pret A Manger’s retail outlets or restaurants and are advertised and promoted as “Natural Food.”

4. In contrast to Pret A Manger’s representations, certain food items sold at its retail outlets contain glyphosate, a synthetic biocide suspected, including by consumers, to have detrimental health effects.

5. Specifically, the Products at issue (the “Products”) are¹:

- (a) Harvest (Oatmeal Raisin) Cookie; and
- (b) Egg Salad and Arugula Sandwich, and other products made with Pret A Manger’s 9-Grain Granary Bread.

6. In sum, Pret A Manger is deceiving consumers into believing that the Products are “Natural Food” when they are not.

7. No reasonable consumer who sees Pret A Manger’s representations that it sells “Natural Food” would expect the Products to contain traces of an unnatural biocide.

¹ Discovery may demonstrate that additional Pret A Manger food items are within the scope of this Complaint. Plaintiff reserves the right to amend this complaint to include additional food items identified through the course of discovery.

8. By deceiving consumers about the nature, quality, and/or ingredients of the Products, Pret A Manger is able to sell a greater volume of the Products, to charge higher prices for the Products, and to take away market share from competing products, thereby increasing its own sales and profits.

9. Pret A Manger's false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act ("DC CPPA"), D.C. Code §§ 28-3901, et seq.

10. Because Pret A Manger's labeling and advertising of the Products tend to mislead and are materially deceptive about the true nature, quality, and ingredients of the Products, Plaintiffs bring this deceptive advertising case on behalf of their members and the general public, and seek relief including an injunction to halt Pret A Manger's false marketing and sale of the Products.

FACTUAL ALLEGATIONS

11. Plaintiffs bring this suit for injunctive relief under the DC CPPA against Pret A Manger, based on misrepresentations and omissions committed by Pret A Manger regarding the Products, which Pret A Manger markets as "Natural Food."

12. Pret A Manger's marketing of the Products is false and deceptive because the Products contain glyphosate, a synthetic biocide, the presence of which does not comport with consumers' perceptions of "Natural Food."

13. Pret A Manger knows that American consumers increasingly and consciously seek out, and will pay more for, "Natural" foods.

14. Accordingly, Pret A Manger cultivates an image of the Products as being natural.

The Presence of Glyphosate Renders Pret A Manger’s Advertising False and Deceptive.

15. Pret A Manger represents that the Products are “Natural” by representing itself as a purveyor of “Natural Food” in its retail locations and has also included this representation on its menus, bags, and website at various times.

16. Pret A Manger’s logo is often presented with a circle around it representing that it sells “Natural Food.”



17. The “Natural Food” representation has been prominently presented on the company’s website, social media, advertisements, and throughout its retail outlets, including but not limited to signage, employee uniforms, cups, napkins, product packaging, and takeaway bags.

18. In addition to its logo, prominent signage in its retail outlets state “Pret creates handmade natural food avoiding obscure chemicals, additives and preservatives common to so much of ‘prepared’ and ‘fast food’ on the market today.”

19. Pret A Manger’s representations are intended to, and do, portray to consumers that, at the very least, the ingredients in the product do not contain synthetic ingredients or chemicals.

20. Contrary to the representations made by Pret A Manger, quantitative testing revealed that the Products contain glyphosate, an unnatural biocide.

21. Tests conducted by an independent laboratory using liquid chromatography mass spectrometry (LCMS) revealed the amount of glyphosate in the Oatmeal Raisin cookie to be between 0.09-0.174 parts-per-million (ppm) and the amount of glyphosate in the 9-Grain Granary Bread to be between 0.199 and .250 ppm.

22. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name Roundup, after DDT was banned.

23. Glyphosate is derived from the amino acid glycine.

24. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group.

25. Glyphosate is not “Natural.”

26. Over the past several years, consumers have become increasingly conscious of the detrimental effects that glyphosate may have on human health.

27. Reasonable consumers do not expect a synthetic chemical with suspected health concerns to be found in a product marketed as “Natural,” which makes Pret A Manger’s “Natural Food” representation a misrepresentation.

28. Nowhere on Pret A Manger’s website or retail outlets does Pret A Manger mention that glyphosate may be in the Products, a material omission in the marketing of the Products.

Pret A Manger Has Deceived Consumers and Is Aware That Its Representations Were False.

29. Pret A Manger holds itself out to the public as a trusted expert in the production of “Natural Food.”

30. Pret A Manger knows what representations it makes regarding the Products.
31. Pret A Manger also knows how the Products are produced, including that glyphosate enters the Products sometime during the production process.
32. Consumers frequently rely on manufacturers, their reputation, and the information provided on manufacturers' websites in making purchase decisions, especially in purchasing food.
33. Reasonable consumers lack the information and scientific knowledge necessary to ascertain the true source, quality, and nature of ingredients in the Products.
34. Reasonable consumers must, and do, rely on Pret A Manger to honestly report what the Products contain and how they are made.
35. Reasonable consumers are misled and deceived by Pret A Manger's "Natural" representations into believing that they are purchasing products that are "Natural," or contain nothing unnatural.
36. Although reliance is not an element of claims under the DC CPPA, Pret A Manger made the false, misleading, and deceptive representations and omissions knowing that consumers would rely upon these representations and omissions in purchasing the Products.
37. In making the false, misleading, and deceptive representations and omissions at issue, Pret A Manger knew and intended for consumers to purchase the Products when consumers might otherwise purchase competing products.
38. In making the false, misleading, and deceptive representations and omissions at issue, Pret A Manger also knew and intended that consumers would pay more for products that were represented as "Natural Food," furthering Pret A Manger's private interest of increasing sales of its products and decreasing the sales of the truly "Natural" and/or glyphosate-free products that are truthfully marketed by its competitors.

39. Upon information and belief, Pret A Manger has profited enormously, including from consumers in the District of Columbia, from its falsely marketed products and its carefully orchestrated image.

40. Pret A Manger's conduct in representing the Products as being "Natural Food" deceived and/or is likely to deceive the public.

41. Consumers cannot discover the true nature of the Products from reading the label or visiting Pret A Manger's website marketing the Products. The Product labels, retail outlets, and Pret A Manger's website do not state anywhere that the Products may contain glyphosate residue.

42. Discovery of the true nature of the ingredients requires knowledge of chemistry and access to laboratory testing that is not available to the average reasonable consumer.

43. The production process Pret A Manger uses for the Products, including what would account for the presence of glyphosate, is known to Pret A Manger and its suppliers but has not been disclosed to GMO Free USA, OCA, BP, or to consumers in the District of Columbia.

44. To this day, Pret A Manger continues to conceal and suppress the true nature, identity, source, and method of production of the Products.

45. Pret A Manger's concealment tolls applicable statute of limitations.

46. Upon information and belief, Pret A Manger has failed to remedy the problems with the Products and their marketing, thus causing future harm to consumers, as well as real, immediate, and continuing harm.

47. Pret A Manger has failed to provide adequate relief to members of the District of Columbia consuming public as of the date of filing this Complaint.

48. Plaintiffs contend that the Products were sold pursuant to deceptive, unfair, and unlawful trade practices because the sale of the Products offends public policy and is immoral,

unethical, oppressive, unscrupulous, and caused substantial economic injuries to consumers.

49. Plaintiffs seek declaratory relief in the form of an order declaring Pret A Manger’s conduct to be unlawful, as well as injunctive relief putting an end to Pret A Manger’s deceptive and unfair business practices, including clear and full disclosure of the presence of glyphosate in the Products and/or a reformulation of the Products so that the Products no longer contain glyphosate.

Regulators Have Already Concluded That Pret A Manger’s Claims About Using Only “Natural” Ingredients Are Misleading.

50. In April 2018, the Advertising Standards Authority (“ASA”), the United Kingdom’s independent regulator of advertising, censured Pret A Manger for claiming that its sandwiches use “natural” ingredients.²

51. The ASA concluded that advertisements on Pret A Manger’s Facebook page and website (“Advertisements”), which included the promise that Pret A Manger made “proper sandwiches avoiding the obscure chemicals, additives and preservatives” used by other fast-food chains and talked about “good, natural food,” were misleading.

52. The ASA said consumers understood “natural” to mean foods made with ingredients straight from nature. “It is misleading to use the term to describe foods or ingredients that employ chemicals,” ASA said in its ruling.³

53. In response to allegations made during the ASA’s inquiry, Pret A Manger “confirmed that their sandwich bread contained three E-numbers: E472e (diacetyl tartaric acid esters of mono and diglycerides), E471 (mono and diglycerides of fatty acids) and E300 (ascorbic

² Advertising Standards Authority, “ASA Ruling On Pret A Manger (Europe) Ltd” (Apr. 18, 2018), <https://www.asa.org.uk/rulings/pret-a-manger--europe--ltd-a16-367959.html>.

³ *Id.*

acid).”⁴

54. The ASA concluded that “because [the Advertisements] contained some claims that Pret A Manger’s food was ‘natural’ when some products contained artificial additives, those claims were misleading[.]”⁵

55. The ASA ordered that the Advertisements should not appear again. “We told Pret a Manger to ensure their ads did not claim or imply that their food was ‘natural’, unless their products and ingredients were in line with consumer expectations of the term.”⁶

56. Thus, Pret A Manger is aware of the importance of ensuring that its ingredients and products match the “natural” representations with which it markets them.

JURISDICTION AND VENUE

57. This Court has personal jurisdiction over the parties in this case. Plaintiffs GMO Free USA, OCA, and BP, by filing this Complaint, consent to this Court having personal jurisdiction over them.

58. Plaintiffs each maintain a presence in the District of Columbia.

59. This Court has personal jurisdiction over Pret A Manger pursuant to D.C. Code § 13-423. Pret A Manger has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Pret A Manger is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Products in this District.

60. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

61. Venue is proper in this District under 28 U.S.C. § 1391(b). Substantial acts in

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature and quality of the Products, occurred within this District. The Products are available for purchase at retail locations in the District of Columbia.

PARTIES

62. GMO Free USA is a 501(c)(3) non-profit organization whose mission is to harness independent science and agroecology concepts to advocate for clean and healthy food and ecological systems. They educate consumers about the potential hazards of synthetic pesticides, biocides, and genetically engineered organisms.

63. GMO Free USA performs its work throughout the United States, including in the District of Columbia. GMO Free USA volunteer staff reside in or near the District of Columbia.

64. GMO Free USA was formed in 2012 with the intent of organizing national boycotts of food companies that use genetically modified ingredients and related synthetic herbicides and pesticides in their products, and pressuring companies to remove those ingredients.

65. Consequently, GMO Free USA firmly believes in food transparency. The organization diligently works to promote food and ecological systems that are clean, accessible, and free of contamination. To that end, GMO Free USA educates consumers, increasing their awareness and knowledge of glyphosate use in agricultural production and its effect on health and the environment.

66. Additionally, GMO Free USA's website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

67. OCA is a 501(c)(3) non-profit public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, genetic engineering, children's

health, corporate accountability, environmental sustainability, and related topics.

68. OCA performs its work throughout the United States, including in the District of Columbia. Some of the OCA's staff resides in or near the District of Columbia, including its political director. OCA has members who reside in the District of Columbia and who are targets of the misleading advertising and marketing in this case.

69. OCA was formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's controversial proposed national regulations for organic food. In its public education, network building, and mobilization activities, OCA works with a broad range of public interest organizations to challenge industrial agriculture, corporate globalization, and to inspire consumers to "Buy Local, Organic, and Fair Made." OCA's website, publications, research, and campaign staff provide an important service for hundreds of thousands of consumers and community activists every month. Its media team provides background information, interviews, and story ideas to television and radio producers and journalists on a daily basis.

70. Thus, OCA's focus is on representing the views and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to educate consumers, increasing their awareness and knowledge of the agricultural production, and to protect the environment by regenerating organic and/or sustainable agriculture. OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices, to the benefit of consumers.

71. Plaintiff Beyond Pesticides is a 501(c)(3) nonprofit public interest organization headquartered in the District of Columbia that works with allies in protecting public health and the environment to lead the transition to a world free of toxic pesticides. The organization's primary

goal is to effect change through local action, assisting individuals and community-based organizations to stimulate discussion on the hazards of toxic pesticides, while providing information regarding safe alternatives.

72. Beyond Pesticides, founded in 1981, promotes safe air, water, land, and food, and works to protect public health and the environment by encouraging a transition away from the use of toxic pesticides. With the resources of Beyond Pesticides made available to the public on a national scale, Beyond Pesticides contributes to a significant reduction in unnecessary pesticides use, thus improving public health and the environment.

73. Beyond Pesticides has historically taken a two-pronged approach to the pesticide problem by identifying the risks of conventional pest management practices and promoting non-chemical and least toxic management alternatives. For example, Beyond Pesticides produces the quarterly newsletter *Pesticides and You*, which provides in-depth articles and a voice for pesticide safety and alternatives.

74. Beyond Pesticides also holds an annual national conference that draws an attendance of around 200 people.

75. Finally, Beyond Pesticides has worked for more than 30 years to develop and uphold the standard associated with organic production, including raising consumer awareness as to what organic is, and why it is preferable to conventionally grown foods. The rampant use of the term “Natural” over the past decade by companies like Pret a Manger has undermined the organic system, prompting Beyond Pesticides and its allies to call on FDA to ban the word “Natural” on labeling, or to define via an official rulemaking what makes a product “Natural.”

76. Before filing this lawsuit, Plaintiffs GMO Free USA, OCA, and BP each purchased a sample of both of the Harvest Cookie and the Egg Salad and Arugula Sandwich from Pret A

Manger retail outlets located in the District of Columbia and reviewed Pret A Manger's marketing in order to evaluate the marketing of the Products as "Natural Food."

77. At all times mentioned herein, Defendant Pret A Manger, Ltd. was and is a corporation headquartered in the United Kingdom⁷ and Defendant JAB Holding Company was and is a corporation headquartered in Germany. Pret A Manger was, at all relevant times, engaged in commercial transactions throughout the District of Columbia.

78. Pret A Manger manufactures and/or causes the manufacture of the Products and markets and distributes the Products in retail outlets in the District of Columbia and throughout the United States.

79. Upon information and belief, Pret A Manger has caused harm to the general public of the District of Columbia.

80. Plaintiffs are acting on behalf of their members and for the benefit of the general public as private attorneys general pursuant to D.C. Code § 28-3905(k)(1). Plaintiffs are each a non-profit organization pursuant to D.C. Code § 28-3901(a)(14) and OCA is a public-interest organization pursuant to D.C. Code § 28-3901(a)(15).

CAUSE OF ACTION

VIOLATION OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

81. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), Plaintiffs bring this Count against Pret A Manger on behalf of their members and the general public of the District of Columbia, for Pret A Manger's violation of DC CPPA, D.C. Code § 28-3901, *et seq.*

82. Plaintiffs incorporate by reference all the allegations in the preceding paragraphs of this Complaint.

⁷ Defendant Pret A Manger, Ltd. was acquired by JAB Holding Company, a German corporation, in May 2018.

83. Pret A Manger has labeled and advertised the Products as “Natural Food” and has otherwise presented an image and marketing materials suggesting that the Products are natural, when in fact the Products contain an unnatural chemical biocide.

84. Pret A Manger’s advertising of the Products misrepresents, tends to mislead, and omits facts regarding the source, characteristics, standard, quality, and grade of the Products.

85. The Products lack the characteristics, ingredients, benefits, standards, qualities, or grades that Pret A Manger states and implies in their advertisements.

86. These misstatements, innuendo, and omissions are material and have the tendency to mislead.

87. Pret A Manger knowingly did not sell the Products as advertised.

88. The facts as alleged above demonstrate that Pret A Manger has violated the DC CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Pret A Manger has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead; . . .
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; . . . [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

89. The DC CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

90. Though Plaintiffs need not show proof of deception to succeed on its DC CPPA claim, consumers were in fact deceived. Pret A Manger knows and should have known that reasonable consumers would believe that the Products are “Natural Food,” as advertised.

91. Plaintiffs each have a sufficient nexus to consumers of the Products to adequately represent those interests.

92. Because Pret A Manger misrepresents the characteristics, ingredients, and benefits of the Products; misrepresents the standard, quality, and grade of the Products; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Products; and advertises the Products without the intent to sell the Products as advertised, Pret A Manger’s marketing of the Products as “Natural Food” violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

93. Pret A Manger is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a merchant under § 28-3901(a)(3), and provides “goods” within the meaning of § 28-3901(a)(7).

94. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

95. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

96. Via §§ 28-3905(k)(1)(C) and (k)(1)(D)(i), the DC CPPA allows for non-profit organizational standing and public interest organizational standing to the fullest extent recognized

by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

97. Plaintiffs are each a “person” within the meaning of D.C. Code § 28-3901(a)(1), and a “non-profit organization” within the meaning of D.C. Code § 28-3901(a)(14). OCA is a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Pret A Manger and request the following relief:

- A. a declaration that Pret A Manger’s conduct is in violation of the DC CPPA;
- B. an order enjoining Pret A Manger’s conduct found to be in violation of the DC CPPA, as well as corrective advertising;
- C. an order granting Plaintiffs costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- D. such further relief, including equitable relief, as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: September 21, 2018



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