COMPLAINT

Plaintiff Beyond Pesticides (“Beyond Pesticides”) brings this action against Defendant Sargento Foods Inc. (“Sargento”) regarding the deceptive marketing and sale of Sargento’s cheese products (the “Products”) with the claim “No Antibiotics” when the Products are made with milk from cows raised with antibiotics and when the Products sometimes contain antibiotics. Beyond Pesticides alleges the following based upon personal knowledge, information, and belief. This Complaint is on behalf of the general public of the District of Columbia, in the interests of consumers.

INTRODUCTION

1. This is a consumer protection case concerning the deceptive marketing of dairy cheese products. The case is brought by Beyond Pesticides, a nonprofit, public interest organization dedicated to consumer protection. Beyond Pesticides seeks no monetary damages, only an end to the deceptive marketing and advertising at issue.
2. Consumers are increasingly interested in and aware of how their food is produced due to concerns about public health, the environment, and animal welfare. In particular, consumers are growing more concerned about the excessive use of antibiotics in industrial animal agriculture and how this contributes to the growing threat of antibiotic resistance.

3. According to the Centers for Disease Control and the World Health Organization, antibiotic resistance—the ability of germs to defeat the drugs designed to kill them—is one of the greatest and most urgent public health risks of our time. More than 2.8 million antibiotic-resistant infections occur in the United States each year, and more than 35,000 people die as a result. The problem of antibiotic resistance has only been exacerbated by the COVID-19 pandemic due to the widespread use of antibiotics in patients diagnosed with COVID-19.

4. Antibiotics are used extensively in factory-style dairy production because the treatment and conditions to which cows are subjected impair their health and cause infections. The majority of dairy cows in the United States are confined indoors and not allowed to graze on pasture. Teat trauma caused by milking machines, genetic selection for high milk yields, and unsanitary conditions make cows susceptible to clinical mastitis from pathogenic bacteria, which is the most commonly reported health problem in the dairy industry.

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5. Id. at 5.
5. The use of antibiotics in livestock production causes residues of antibiotics and antibiotic-resistant bacteria to emerge on agricultural lands, move through the environment, contaminate waterways, and reach consumers in food.⁶

6. Antibiotics do not have to end up in food to pose a public health risk. Current science shows that a major cause of the development and spread of antibiotic resistance in human pathogens is environmental contamination from agricultural use.⁷ As antibiotic residues move through the environment, they promote the transfer of antibiotic resistance genes between different species of bacteria. Through horizontal gene transfer, a pool of antibiotic-resistant soil bacteria, for example, can provide the genetic material for human pathogens to develop antibiotic resistance.⁸

7. Sargento is one of the United States’ largest producers of dairy cheese products, which it sells under the Sargento name brand.⁹

8. Sargento knows that consumers seek out and wish to buy cheese products made by cows raised without antibiotics. To capture this growing market of consumers, Sargento labels the front or back of the retail packaging of the Products¹⁰ with the label “No Antibiotics.” Sargento makes the same representation throughout its website.

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¹⁰ The Sargento products at issue in this Complaint include: Monterey Jack Natural Cheese, Natural Double Cheddar Cheese, Natural White Cheddar Cheese, Colby Natural Cheese, Colby-Jack Natural Cheese, Medium Cheddar Cheese, Medium Natural Cheddar Cheese, Havarti Natural Cheese, Pepper Jack Natural Cheese, Swiss Natural Cheese, Baby Swiss Natural Cheese, Aged Swiss Natural Cheese, Asadero Natural cheese, Sharp White Cheddar Cheese, Mild Yellow Natural Cheddar Cheese, Sharp Natural Cheddar Cheese, Extra Sharp Natural Cheddar
9. Sargento’s representations mislead D.C. consumers to believe that the Products are not made with milk from cows raised with antibiotics and that the Products never contain antibiotics. In reality, the Products are made with milk from cows raised with antibiotics, and the Products sometimes contain antibiotics. Thus, Sargento’s marketing of the Products is false and misleading to D.C. consumers.

STATUTORY FRAMEWORK

10. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, et seq.

11. The CPPA makes it a violation for “any person” to, inter alia:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

Cheese, 4 State Natural Cheddar Cheese, Natural Double Cheddar Cheese, Taco Natural Cheese, Nacho & Taco Natural Cheese, Authentic Mexican Natural Cheese, Provolone with Natural Smoke Flavor Natural Cheese, 4 Cheese Pizzeria Natura Cheese, 4 Cheese Mexican Natural Cheese, Cheddar Jack Natural Cheese, Mozzarella Natural Cheese, Parmesan Natural Cheese, 4 Cheese Italian Natural Cheese, 18-Month Aged Natural Cheddar Cheese, Aged Italian Blend Natural Cheese, 14-Month Aged Parmesan Natural Cheese, Tomato & Basil Jack Cheese, Smokehouse Cheddar Natural Cheese, Garlic & Herb Jack Cheese, Reduced Fat Pepper Jack Natural Cheese, Reduced Fat Medium Natural Cheddar Cheese, Reduced Fat Colby Jack Natural Cheese, Fresh Asiago Natural Cheese, Gouda Natural Cheese, Muenster Natural Cheese, Sharp, Sharp Non-Smoked Provolone Natural Cheese, Cheddar-Mozzarella Natural Cheese, Aged Gouda Natural Cheese, Sharp White Natural Cheese, Aged White Natural Cheddar Cheese, Part-Skim Mozzarella Natural Cheese, Colby-Pepper Jack Natural Cheese, and Ricotta Natural Cheese. Discovery may reveal that additional Sargento products should be included within the scope of the allegations in this Complaint, and Beyond Pesticides reserves the right to add such products.
D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

12. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

13. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). The statute “shall be construed and applied liberally to promote its purpose.” *Id.*

14. Because Beyond Pesticides is a public interest organization, it may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

   [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.

   *Id.* § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

15. A public interest organization may act on behalf of the interests of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, see *infra* ¶¶ 40-43, Beyond Pesticides is an organization dedicated to consumer advocacy, and Beyond Pesticides has previously represented D.C. consumers in similar actions under the CPPA. Beyond Pesticides thus has a sufficient nexus to D.C. consumers to adequately represent their interests.

16. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by Beyond Pesticides on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.
17. This action does not seek damages. Instead, Beyond Pesticides seeks to end the unlawful conduct directed at D.C. consumers, i.e., Sargento’s false and deceptive labeling and marketing of its Products. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice.” Id. § 28-3905(k)(2)(D), (F). Beyond Pesticides also seeks declaratory relief in the form of an order holding Sargento’s conduct to be unlawful.

FACT ALLEGATIONS

I. Sargento’s “No Antibiotics” Representations Suggest to Consumers That the Products Are Not Made with Milk from Cows Raised with Antibiotics and That the Products Never Contain Antibiotics.

18. Sargento labels the Products “No Antibiotics.” This label appears prominently on the front or back of the packaging.

19. In an apparent effort to qualify the “No Antibiotics” label, the Products’ packaging also includes the fine print statement: “Our cheese is made from milk that does not contain antibiotics.” An example of the Product packaging is shown below.
20. Sargento makes the same “No Antibiotics” representations in numerous pages on its website, www.sargento.com. An example is provided below.

![Image of a sandwich with a sign that says *NO ANTIBIOTICS*]

*Our cheese is made from milk that does not contain antibiotics

21. Sargento’s “No Antibiotics” representations suggest to D.C. consumers that the Products are not made with milk from cows raised with antibiotics and that the Products never contain antibiotics.

22. A 2018 nationally representative consumer survey conducted by Consumer Reports Survey Group found that 67% of consumers believe the claim “no antibiotics” means that no antibiotics were administered to the animals under any circumstances.

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23. This understanding is consistent with the United States Department of Agriculture Food Safety and Inspection Service’s policy for use of the similar claim “antibiotics free” on food labels. Such a claim is permitted only with evidence that the source animals have not been administered antibiotics.¹³

24. Sargento’s packaging and advertising fail to inform consumers that the Products are made with milk from cows who are raised with antibiotics.

25. This is a material omission, given that Sargento’s prominent labels and website representations suggest that Sargento’s Products are made without the use of antibiotics.

26. Thus, Sargento’s “No Antibiotics” representations mislead D.C. consumers to believe that the Products are produced without the use of antibiotics and that the Products never contain antibiotics. At a minimum, these representations tend to mislead D.C. consumers as to a fact that is material to them.

II. Sargento Sources Its Milk from Farms That Use Antibiotics, and the Products Sometimes Contain Antibiotics.

27. Sargento sources the milk in its Products from dairy farms that use antibiotics. Contrary to Sargento’s “No Antibiotics” representations, Sargento does not attempt to ensure that the milk used in the Products comes only from cows who were not given antibiotics.

28. In addition, at least some of the Products, in their final form as sold to consumers, still contain detectable levels of antibiotics, which are then ingested by consumers.

29. Independent laboratory testing conducted in July 2020 has confirmed that Sargento’s Products contain milk from cows who are administered antibiotics. In testing

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Sargento’s Mild Cheddar sliced cheese product, which is marketed with the claim “No Antibiotics,” the laboratory found detectable levels (0.985 ppb) of the antibiotic sulfamethazine.

30. Accordingly, Sargento’s “No Antibiotics” representations are false and/or tend to mislead D.C. consumers as to a material fact, i.e., that the Products are made with the use of antibiotics and sometimes contain antibiotics.

31. Sargento’s fine print disclaimer, “Our cheese is made from milk that does not contain antibiotics,” is also false, as evidenced by the fact that the Products sometimes contain antibiotics.

III. Sargento’s Representations Are Material to D.C. Consumers.

32. Sargento’s false and misleading representations are material to D.C. consumers.

33. Consumers are aware of, and concerned about, the health threat posed by antibiotic-resistant bacteria. The 2018 Consumer Reports survey found that most consumers are aware that antibiotic use in farmed animals may diminish their effectiveness in humans, and 43% of consumers were “highly concerned” about this.\(^\text{14}\)

34. Given these concerns, consumers seek out and are willing to pay more for dairy products that they believe are made without the use of antibiotics. The 2018 Consumer Reports survey cited above found that more than 60% of consumers would pay more for animal products labeled as being raised without antibiotics.\(^\text{15}\)

35. Consumers further seek out and are willing to pay more for Products that are guaranteed to contain no antibiotics.

36. Consumers are also concerned about antibiotic use in dairy farming because the inhumane practices and conditions are harmful to the cows’ health and welfare, which necessitates

\(^\text{14}\) Natural and Antibiotics Label Survey: 2018 Nationally Representative Phone Survey, supra note 12, at 5.

\(^\text{15}\) Id. at 4.
the use of antibiotics. A 2015 Consumer Reports survey found that consumers deem it important that food not be produced through standard factory farm methods. For example, 84% of food shoppers believe it is “important” or “very important” to provide better living conditions for animals.16

PARTIES

37. Defendant Sargento Foods Inc. is incorporated in Wisconsin and has its headquarters and principal place of business in Plymouth, Wisconsin.

38. Sargento produces, processes, markets, and distributes Sargento brand dairy cheese products.

39. The Products are available in a wide variety of food retail outlets, including stores in the District. The Products can also be purchased online and delivered to D.C. consumers.

40. Plaintiff Beyond Pesticides is a 501(c)(3) nonprofit, public interest organization that is based in the District of Columbia and performs its work throughout the United States, including in D.C.

41. Beyond Pesticides was formed in 1981 as a nonprofit organization with the goal of informing the public of the dangers of toxic pesticides and advocating on behalf of the public against their use.

42. Beyond Pesticides’ mission is to protect public health and the environment and to lead the transition to a world free of toxic pesticides. As part of its mission, Beyond Pesticides advocates for and educates consumers about reducing antibiotic use in agriculture.17

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43. Through its work, Beyond Pesticides promotes food transparency and accurate labeling of consumer goods. Beyond Pesticides educates the public so that consumers can make informed choices when they shop. Beyond Pesticides’ website, publications, public education, research, networking building, and mobilization activities provide an important service to consumers and community activists.

**JURISDICTION**

44. This Court has personal jurisdiction over the parties in this case. Beyond Pesticides consents to this Court having personal jurisdiction over the organization.

45. This Court has personal jurisdiction over Sargento because it has purposefully directed its conduct to the District and has availed itself of the benefits and protections of District of Columbia law.

46. Sargento aims marketing at consumers within the District. The Products can be, and are, purchased in the District by District consumers. Sargento’s internet advertising is accessible in the District.

47. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq*.

**CAUSE OF ACTION**

*Violations of the District of Columbia Consumer Protection Procedures Act*

48. Beyond Pesticides incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

49. Beyond Pesticides is a nonprofit, public interest organization that brings these claims on behalf of the general public of D.C. consumers. See D.C. Code §§ 28-3905(k)(1)(D).

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50. Through § 28-3905(k)(1)(D), the CPPA explicitly allows for public interest standing and allows a public interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

51. Sargento is a “person” and a merchant that provides “goods” within the meaning of the CPPA. See id. § 28-3901(a)(1), (3), (7).

52. Sargento has falsely and deceptively labeled and marketed the Products with “No Antibiotics” representations when, in reality, Sargento’s Products are made with milk from cows who were given antibiotics, and the Products themselves sometimes contain antibiotics.

53. Thus, Sargento has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” See id. § 28-3904(a), (d), (e), (f), (f-1), (h).

**JURY TRIAL DEMAND**

54. Beyond Pesticides hereby demands a trial by jury.

**PRAYER FOR RELIEF**

*Wherefore*, Beyond Pesticides prays for judgment against Sargento and requests the following relief:

a. A declaration that Sargento’s conduct is in violation of the CPPA;

b. An order enjoining Sargento’s conduct found to be in violation of the CPPA; and
c. An order granting Beyond Pesticides costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

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### NATURE OF SUIT:  
*(Check One Box Only)*

#### A. CONTRACTS

- **01** Breach of Contract
- **02** Breach of Warranty
- **05** Negotiable Instrument
- **07** Personal Property
- **13** Employment Discrimination
- **15** Special Education Fees

#### B. PROPERTY TORTS

- **01** Automobile
- **02** Conversion
- **07** Shoplifting, D.C. Code § 27-102 (a)

#### C. PERSONAL TORTS

- **01** Abuse of Process
- **02** Alienation of Affection
- **03** Assault and Battery
- **04** Automobile- Personal Injury
- **05** Deceit (Misrepresentation)
- **06** False Accusation
- **07** False Arrest
- **08** Fraud

- **10** Invasion of Privacy
- **11** Libel and Slander
- **12** Malicious Interference
- **13** Malicious Prosecution
- **14** Malpractice Legal
- **15** Malpractice Medical (Including Wrongful Death)
- **16** Negligence- (Not Automobile, Not Malpractice)
- **17** Personal Injury- (Not Automobile, Not Malpractice)

- **18** Wrongful Death (Not Malpractice)
- **19** Wrongful Eviction
- **20** Friendly Suit
- **21** Asbestos
- **22** Toxic/Mass Torts
- **23** Tobacco
- **24** Lead Paint

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