SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

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LANITA STINNIE

Plaintiff,

- v -

ALDI INC.,

Defendant.

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INDEX NO. 156378/2024

MOTION DATE 12/23/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 23, 24, 25, 26, 27, 28, 36, 37, 38, 39, 50

were read on this motion to/for DISMISS.

In this consumer fraud putative class action relating to a graham cracker product sold by defendant grocery store chain Aldi Inc. (Aldi), defendant moves pursuant to CPLR §§ 3211(a)(1) and (7) to dismiss the complaint, asserting one cause of action for violation of General Business Law (GBL) §§ 349 and 350.

BACKGROUND

Aldi operates 129 grocery stores in New York (NYSCEF Doc No 2 ¶ 131). It sells products under a variety of national brand names, as well as products under its own private label brands, including Benton's (*id.* ¶ 132). Aldi sells one such Benton's-branded product, graham crackers, in navy blue box packages, and the front label displays the following: (a) the Benton's brand logo in the top left-hand corner; (b) "GRAHAM crackers" written in the largest font, in white lettering outlined in brown and yellow; (c) an illustration of a honey dipper, with a falling drop of honey; (d) a photographic depiction of the product, as a rectangular, coarse, toasted tan, dimpled cracker; (e) "NO high fructose corn syrup" written in smaller font in the bottom right-hand corner, with "high fructose corn syrup" in white in contrast with the navy blue background

and "NO" in a lighter shade of blue; and (f) just below, "8g of whole grains per serving / USDA recommends consuming 48g or more whole grains per day," with "8g" being in a large, light blue font, "of whole grains" in white, and the remainder of the text in a smaller, thinner, light blue font (*id.* ¶ 43; NYSCEF Doc No 26). The "Nutrition Facts" on the side of the box state, *inter alia*: (g) a serving size is "2 full cracker sheets (31g)"; (h) "Total Sugars 8g / Includes 8g of Added Sugars 15%"; and (i) "**INGREDIENTS:** ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMIN MONONITRATE, RIBOFLAVIN, FOLIC ACID), GRAHAM FLOUR (WHOLE WHEAT FLOUR), SUGAR, . . . HONEY, [AND] 2% OR LESS OF: . . . NATURAL FLAVOR" (*id.* ¶ 44; NYSCEF Doc No 26).

Plaintiff alleges that this packaging and naming the product "graham crackers" misled her, and other Aldi shoppers, to form the false belief that the graham crackers contained a significant amount of whole grain graham flour, as opposed to refined flours, and were predominantly sweetened by honey, as opposed to refined sugar (*id.* ¶¶ 107-108, 143). Plaintiff, believing whole grains and honey to be healthier than refined grains and sugars, alleges that she "paid more for the Product than she would have, had she known" the actual makeup of the product (*id.* ¶¶ 150-152).

DISCUSSION

When reviewing a "motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), [courts] must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every reasonable inference, and determine only whether the facts, as alleged fit within any cognizable legal theory" (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60, 85-86 [1st Dept 2024] [internal quotations omitted]). "In making this determination, [a court is] not authorized to assess the merits of the complaint or any of its

factual allegations" (*id*. at 86 [internal quotations omitted]). "However, factual allegations that do not state a viable cause of action [or] consist of bare legal conclusions . . . are not entitled to such consideration" (*Doe v Bloomberg, L.P.*, 178 AD3d 44, 47 [1st Dept 2019], quoting *Skillgames, LLC v Brody*, 1 AD3d 247, 250 [1st Dept 2003]).

GBL §§ 349 and 350 prohibit "[f]alse advertising" and "[d]eceptive acts or practices in the conduct of any business, trade or commerce" (GBL §§ 350 and 349[a]). Under these GBL sections, a plaintiff "must prove three elements: first, that the challenged act or practice was consumer-oriented; second, that it was misleading in a material way; and third, that the plaintiff suffered injury as a result of the deceptive act" (*Stutman v Chemical Bank*, 95 NY2d 24, 29 [2000]). Importantly, the false advertising or deceptive practice must be "likely to mislead a *reasonable* consumer" (*id.* [quotation omitted; emphasis provided]). "In determining whether a reasonable consumer would be misled, courts view each allegedly misleading statement in light of its context on the product label or advertisement as a whole" (*Barreto v Westbrae Nat., Inc.*, 518 F Supp 3d 795, 802 [SDNY 2021] [internal quotation marks and citation omitted]).

Product Representations

Defendant first argues that the product label representations as to honey and whole wheat flour are not deceptive to reasonable consumers, and even if they are, the nutrition label dispels any potential confusion (NYSCEF Doc No 27). Plaintiff argues that based on the front-side packaging, it is reasonable for consumers to expect that the product would contain a significant amount of whole grain and would be predominately sweetened with honey, and the ingredients list is insufficient to rectify those misrepresentations (NYSCEF Doc No 36).

The parties discuss analogous cases alleging GBL §§ 349 and 350 violations based on representations regarding graham crackers like those at issue here, with varying results (*Feldman*

v Wakefern Food Corp., 716 F Supp 3d 71 [SDNY 2024] [denying dismissal of plaintiff's claims as to "graham" representations]; *Brockington v Dollar Gen. Corp.*, 695 F Supp 3d 487 [SDNY 2023] [denying dismissal of plaintiff's claims as to both "honey" and "graham" representations]; *Warren v Stop & Shop Supermarket, LLC*, 592 F Supp 3d 268 [SDNY 2022] [granting dismissal of plaintiff's claims as to the "honey" representations and denying dismissal as to the "graham" representations]; *Campbell v Whole Foods Mkt. Grp., Inc.*, 516 F Supp 3d 370 [SDNY 2021] [denying dismissal of plaintiff's claims as to both "honey" and "graham" representations]; *Valcarcel v Ahold U.S.A., Inc.*, 577 F Supp 3d 268 [SDNY 2021] [denying dismissal of plaintiff's claim as to the "graham" representations]; *Kennedy v Mondelez Global LLC*, 2020 US Dist LEXIS 124538 [EDNY 2020] [granting dismissal of plaintiff's claims as to both "honey" and "graham" representations]) (collectively, the graham cracker cases).[1] Other cases discuss similar representations, though made in reference to different products (*Mantikas v Kellogg Co.*, 910 F3d 633 [2nd Cir 2018] [whole grain Cheez-Its]; *Venticinque v Back to Nature Foods Co., LLC*, 2024 US App LEXIS 17096 [2024] ["Back to Nature" wheat crackers]; *Taylor v Reckitt Benckiser Pharms. Inc.*, 2025 US Dist LEXIS 17997 [EDNY 2025] [honey Mucinex cough and cold medicine]; *Vazquez v Walmart, Inc.*, 704 F Supp 3d 417 [SDNY 2023] [Walmart's Oats & Honey Crunchy Granola Bars]; *Hoffmann v Kashi Sales, L.L.C.*, 646 F Supp 3d 550 [SDNY 2022] [baked breakfast bars "Made with Wildflower Honey"]).

i. Honey Representations

As defendant notes, in contrast with the graham cracker cases where honey representations were considered deceptive, the word "honey" does not appear anywhere on the

[1] These federal court cases apply the same standard for reviewing alleged violations of the New York GBL, which "borrows the substantive standards of the Federal Trade Commission Act and applies them to intrastate transactions in New York" (*Goshen v Mut. Life Ins. Co.*, 98 NY2d 314, 325 [2002] [*quoting* GBL § 350 Bill Jacket, L 1980, ch 346).

front side of the box (NYSCEF Doc No 26). However, as plaintiff notes, there is an illustration of a honey dipper with a falling drop of honey right over/through the "GRAHAM crackers" text. Plaintiff argues that this imagery results in "purchasers understanding the food's name as being modified [to] read as 'Honey Graham Crackers,'" and that when combined with the "NO high fructose corn syrup" (HFCS) text, it further suggests that the product contains "more than a de minimis or negligible amount of honey, as a sweetening ingredient, instead of traditional sugar" (NYSCEF Doc No 36, quoting the complaint).

While the honey dipper illustration clearly refers to honey, a label's imagery (as opposed to text) is reasonably interpreted to represent a product's flavor, rather than the use of a specific ingredient (*Taylor*, 2025 US Dist. LEXIS 17997 at *17-18]). Thus, the imagery of a honey dipper on the package, on its own, does not convey an ingredient claim (*id.*). Since the label does not use any language such as "made with honey," it only represents that the product is honey *flavored*, and plaintiff acknowledges this is an accurate representation of the product's taste (*Warren*, 592 F Supp 3d at 278; NYSCEF Doc No 2 ¶ 52 [referring to "the Product's honey taste"]). Moreover, the label does not claim that honey is the predominant source of the honey flavor (*Barreto v Westbrae Nat., Inc.*, 518 F Supp 3d 795, 802 [SDNY 2021]).

Plaintiff asserts that "[i]n the context of Honey Graham Crackers, purchasers understand 'No High Fructose Corn Syrup' as supporting the representations and expectations that honey is the predominant sweetening ingredient, or at least present in a significant amount, even though this tends to mislead" (NYSCEF Doc No 36). However, she provides no support for this factual assertion (*id.*; *see also* NYSCEF Doc No 2 ¶¶ 55-56 [stating that an unidentified report "noted that companies often promote the absence of [HFCS], because consumers understand this as not having a significant amount of added sugars"]), nor has she established that reasonable

consumers understand the product to be *honey* graham crackers as opposed to simply graham crackers. While the court "must accept the facts as alleged in the complaint as true" (*Bangladesh Bank*, 226 AD3d at 85-86), "factual allegations that . . . consist of bare legal conclusions . . . are not entitled to such consideration" (*Bloomberg, L.P.*, 178 AD3d at 47]). Absent any evidence supporting the inferences plaintiff alleges, the phrase "no high fructose corn syrup" is merely a factually correct statement (*Kennedy*, 2020 US Dist LEXIS 124538 at *36, n.21).

In sum, plaintiff does not adequately allege that a reasonable consumer would believe the product was predominantly sweetened with honey (*Warren*, 592 F Supp 3d at 280). Therefore, defendant has not violated GBL §§ 349 or 350 by virtue of the honey representations on the product's front label. Accordingly, defendant's motion will be granted to the extent that plaintiff's claims will be dismissed with respect to the honey representations.

ii. Whole Grain Representations

As plaintiff notes, "GRAHAM" is the largest word on the front label; the product name includes the word "graham," which refers to graham flour; the product is depicted in a distinctive "tan hue, evocative of the darker colors associated by consumers with whole grains"; and the front label touts the product's whole grain content (NYSCEF Doc No 2 ¶ 106). Plaintiff alleges that the product's packaging thus "causes purchasers to expect that whole grain graham flour, from whole wheat, is the predominant flour ingredient, or at least present in a significant amount" (*id.* ¶ 59). Plaintiff further notes that the "dictionary definitions" of graham crackers are "a slightly sweet cracker made of whole wheat flour" or "semisweet cracker, usually rectangular in shape, made chiefly of whole-wheat flour" (*id.* ¶ 58).

Defendant acknowledges that in most of the graham cracker cases, the plaintiffs' deceptive practice and fraudulent advertising claims regarding similar graham representations

have survived dismissal. Defendant argues, however, that "those courts incorrectly concluded that they had to set aside common sense and defer to the plaintiff's alleged idiosyncratic interpretation of the product name" (NYSCEF Doc No 27). Defendant urges that the court's reasoning in *Kennedy* was correct that a reasonable consumer would not associate "graham" with graham *flour*, but rather a sweet cracker product like the one at issue here (2020 US Dist LEXIS 124538 at *28).

Plaintiff offers insufficient support for her allegation that the graham and whole grain representations are misleading. She does not allege any facts showing that reasonable consumers expect the product at issue to match the dictionary definition of "graham crackers" or that they are even aware of that definition of the term. Instead, she focuses on the "whole grain" representation, alleging generally that "there is consumer confusion about wholegrain content" and that "companies exploit the whole grain halo by tacking it on products mostly made with white refined flour" because "consumers are increasingly seeking whole grain foods due in part to their recognized health benefits" (NYSCEF Doc No 2 ¶¶ 12-13, 104 [internal quotation marks omitted]; *Lanzi v Dollar Gen. Corp.*, 2025 NY Misc LEXIS 2396, * 4 [SC Kings Co 2025]).

Regardless of whether consumers seek out whole grain foods, plaintiff has not adequately alleged that they the product name or the "8g of whole grains per serving" claim would mislead those consumers to believe that the product was made predominately with wheat flour. Notably, while she asserts that "the FTC and FDA[] determined that many reasonable consumers will likely understand 'whole grain' claims, such as '8g of Whole Grains Per Serving,' . . . to mean that . . . all of the grain ingredients in the [Product] are whole grains" (*id.* ¶ 65 [internal quotation marks omitted]), this is an inaccurate summarization of the commentary. The document plaintiff cites states that "[m]any consumers may interpret [] *unqualified* claims to mean that all or nearly

all of the grain in the product is whole grain" and suggested that the FDA promulgate "[a]dditional guidance [] on the appropriate use of '100% whole grain,' 'whole grain,' 'made with whole grain,' and similar terms" (*In the Matter of Draft Guidance for Industry and FDA Staff: Whole Grains Label Statements*, Docket No 2006-0066, Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the FTC [Apr 18, 2006] [emphasis provided]). Here, the whole grain claim is explicitly qualified by the "8g [] per serving" language. This disclosure, combined with the nutrition label showing that a serving size is 31g, "makes clear that 23 other grams are something else and leaves no room for the consumer to think there is any more whole grain content than the eight grams listed" (*Kennedy*, 2020 US Dist LEXIS 124538 at *34).

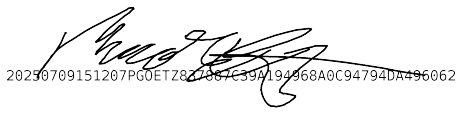
In assessing the front label as a whole, the graham and whole grain representations are, at best, ambiguous. Where this is the case, the "additional information [on the nutrition label] cures any potential ambiguity from the front label" (*Baines v Nature's Bounty (NY), Inc.*, 2023 US App LEXIS 32630, *7-8 [2nd Cir 2023]). Although "a reasonable consumer should not be expected to consult the Nutrition Facts panel on the side of the box to correct misleading information set forth in large bold type on the front of the box" (*Mantikas*, 910 F3d at 637), here, "unlike in *Mantikas*, the challenged labeling statements at issue [] are not alleged to be affirmatively inaccurate, or contradictory to the Nutrition Facts Panel" (*Bates v Abbott Labs.*, 2025 U.S. App. LEXIS 496, *5 [2nd Cir 2025]). Reasonable shoppers seeking to limit their consumption of refined wheat flour, or seeking to consume more whole grain, would simply turn to the nutrition label to assess the product's proportions of various flours. Therefore, plaintiff fails to plausibly allege violations of GBL §§ 349 and 350 based on the graham representations.

CONCLUSION

Based on the foregoing, it is

ORDERED that defendant's motion is granted and the complaint is dismissed; and it is further

ORDERED that the clerk is directed to enter judgment accordingly with costs and disbursements to defendant as taxed by the clerk.



7/9/2025
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION			
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER		SUBMIT ORDER			
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE	