

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA**

LINDA REX, individually and on behalf of)
all others similarly situated,)

Plaintiff,)

vs.)

Case No. _____

KRAFT FOODS, INC.)

Defendant.)

CLASS ACTION COMPLAINT

Plaintiff Linda Rex, on behalf of herself and as representative of the class pursuant to Florida Rule of Civil Procedure 1.220, makes the following allegations against Defendant Kraft Foods (“Kraft” or “Defendant”) for its engagement in the unfair and deceptive practice of describing Capri Sun products as “natural” when they contain the artificial ingredient High Fructose Corn Syrup.

I. INTRODUCTION

1. This case is about the deceptive manner in which Kraft markets its Capri Sun products to the general public. The term “All Natural” is regularly used by manufacturers to induce consumers into believing that the product has fewer chemically altered or man-made ingredients and therefore the product is a more healthy choice than competing products that contain processed ingredients – and perhaps worth spending a bit more for the Kraft product. The company is implying, of course, that natural products are safer and perhaps more nutritious

than non-natural ones. Common sense dictates that use of the term natural should be limited to those products that contain no artificial or synthetic ingredients and/or consist entirely of ingredients that are only minimally processed. However, some companies deceptively use the term natural to describe products containing ingredients that have been chemically altered from their natural state and cannot be considered “minimally processed.” The use of the term natural to describe such products creates consumer confusion, is deceptive, and detrimentally affects competing products that are actually naturally produced or contain only ingredients that are chemically unchanged from their natural state. Plaintiff alleges that Kraft inappropriately describes certain products as being “All Natural” when, in fact, they are not.

II. THE PARTIES

2. Plaintiff, Linda Rex, is an individual residing in Boynton Beach, Palm Beach County, Florida and is over the age of 21. Rex has been a consumer of Kraft’s Capri Sun Drinks (products) made the basis of this complaint. Specifically, Rex has purchased Capri Sun drinks in Palm Beach County, Florida.

3. Defendant Kraft Foods, Inc. is a Virginia corporation with its principal place of business located in Northfield, Illinois. Kraft develops, manufactures, and markets packaged foods and beverages throughout the world under a variety of brand names. Kraft produces and sells products under the brand name “All Natural Capri Sun” throughout the state of Florida, as well as the rest of the United States.

III. JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Plaintiff's claims against Kraft as Kraft is conducting business in this state and this judicial district and as this action accrued in whole or in part in this State.

5. Venue is properly laid in Palm Beach County as Plaintiff Rex resides in Palm Beach County and some or all of the purchases that are the subject matter of this litigation occurred in Palm Beach County, Florida.

IV. FACTS

6. This action seeks redress for Kraft's deliberate and unlawful misbranding of children's juice beverages as being "All Natural" when in fact the products contain at least one non-natural ingredient.

7. Kraft needs no introduction to this Court or to any consumer in America. Kraft is a giant in the food industry. Kraft is in the business of producing and marketing food and beverage products to the general public throughout the United States and the world.

8. Kraft developed a juice product in 1981 called "Capri Sun." Capri Sun was one of the first juice beverages sold in disposable pouches rather than cans or bottles. Capri Sun remains the best-selling pouch brand. Capri Sun has always been marketed as a lunchbox beverage and as a beverage for "active children."

9. Since its inception, Capri Sun has been labeled as "All Natural." Kraft's website describes Capri Sun as follows:

Capri Sun is All Natural, containing no artificial ingredients or preservatives. No artificial ingredients means that we do not add any ingredients that are not found in nature or not naturally derived. We use natural flavors and real fruit juice in All Natural Capri Sun. Capri Sun meets all Food and Drug (FDA) regulations for quality standards and labeling.

www.kraftfoods.com/CapriSunIcommonQuestions.aspx

10. The label on each juice pouch contains the words “All Natural” directly under the name Capri Sun. However, Capri Sun is not “All Natural” because it contains a highly processed sugar substitute known as High Fructose Corn Syrup (“HFCS”).

11. HFCS does not exist in nature and is not “minimally processed,” even though its two major constituents, glucose and fructose, are widely found in nature. If the glucose and fructose in Capri Sun had been obtained from nature, the labeling and advertising would be true. But to describe HFCS as an “All Natural” ingredient is deceptive and unfair to consumers and competitors.

12. HFCS is created from cornstarch, as opposed to sugar (sucrose), which is produced from sugar cane or beets. HFCS is produced by processing cornstarch to yield glucose, and then processing a significant portion of the glucose to produce fructose. Acids or enzymes are needed to break down cornstarch, which is composed of long chains of glucose molecules, into the simple sugar glucose and then, partially into fructose.

13. First, the cornstarch is treated with an enzyme, alpha-amylase, to produce shorter chains of sugars called polysaccharides. Alpha-amylase is industrially produced by a bacterium, usually *Bacillus* sp. The enzyme is purified and then shipped to HFCS manufacturers.

14. Second, an enzyme called glucoamylase breaks the sugar chains down even further to yield the simple sugar glucose. Unlike alpha-amylase, glucoamylase is produced

industrially by *Aspergillus*, a fungus. (Acids may be used by some companies instead of alpha-amylase and glucoamylase).

15. The third enzyme, glucose-isomerase, converts glucose to a mixture of about 42 percent fructose and 50 to 52 percent glucose with some other sugars (or short polymers of glucose) mixed in. While alpha amylase and glucoamylase are added directly to the slurry, pricey glucose-isomerase is packed into columns and the sugar mixture is then passed over it. The sweet liquid with 42 percent fructose is used as HFCS 42 in some applications.

16. If companies want a higher percentage of fructose in their HFCS, two more steps are necessary. First, a liquid chromatography step takes the mixture to 90 percent fructose. Next, the 90 percent mixture is back-blended with the original mixture to yield a final concentration of about 55 percent fructose. This mixture is what the industry calls HFCS 55, and is the industry standard.

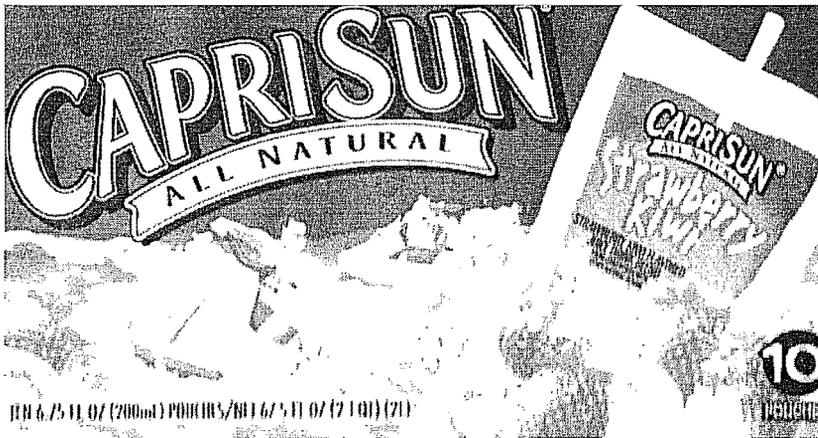
17. Isomerization to create HFCS generally takes place in large backed-bed reactors. These are cylindrical columns designed to give good flow distribution and flow control. Isomerization of dextrose to fructose is a thermodynamically controlled reaction.

18. Although the three enzymes Kraft uses to create HFCS are created from naturally occurring phenomenon such as fungi and bacteria, the process described above does not otherwise occur in nature. Indeed, the process was only just developed in the 1970's. Furthermore, even though the glucose and fructose molecules in HFCS do occur naturally in nature, the molecules in HFCS (and Capri Sun) were not extracted from natural sources, but created through enzymatically catalyzed chemical reactions in factories. Once the complicated process for creating HFCS is understood, it is clear why describing products that contain HFCS

as “All Natural” is misleading. HFCS is a man-made product and its use in All Natural Capri Sun products is deceptive and misleading to consumers.

19. The wrong is clear: Kraft is telling the consuming public that Capri Sun is “All Natural,” when it is not. This factor is exacerbated by Kraft’s marketing of Capri Sun to children. This action does not challenge Kraft’s use of HFCS in its products. Likewise, this action does not allege that HFCS has any adverse health effects. Instead, this action only challenges the use of the phrase “All Natural” to describe products that contain the un-natural sugar substitute, HFCS.

20. Kraft produces its Capri Sun drinks in several flavors, all of which are deceptively labeled. The principal display panels (“PDP”) of the product box prominently displays a banner proclaiming that the product is “ALL NATURAL.”



The individual pouches inside the box make similar claims:

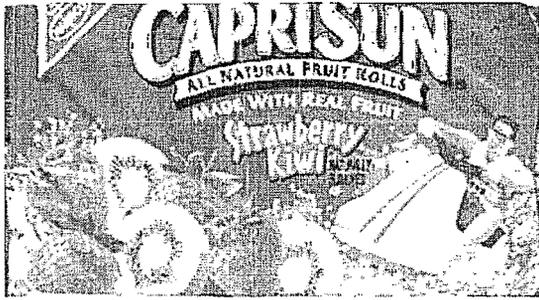


Kraft does not mention HFCS except in hard-to-read type in the “Ingredients” statement on the side of the package. HFCS is the primary ingredient other than water. The individual pouches do not contain any ingredient information at all.

21. Kraft also produces Capri Sun “ALL NATURAL FRUIT ROLLS,” which make similar claims. The PDP gives prominent placement to the “all natural” claim:



As with the drinks, the individual pouches make similar claims:



Kraft does not mention HFCS except in hard-to-read type in the “Ingredients” statement on the side of the package.

22. Kraft is purposefully manipulating the labeling of certain products in violation of the law and with the specific intent of misrepresenting that its Capri Sun products are “All Natural.” Such conduct is in direct violation of Florida consumer protections laws in that such conduct constitutes a deceptive and unfair trade practice.

23. Plaintiff Linda Rex purchased Kraft’s Capri Sun products as a special treat for her young cousin who was visiting from Ireland. She was looking for a healthy drink and came across Capri Sun, which attracted her because the label said that it was made from “All Natural” ingredients. Rex believed that “All Natural” products contain either ingredients found in nature or ingredients minimally processed from things found in nature. Rex does not consider HFCS to be a “natural” ingredient. In the store, Rex relied on the label and did not double-check those representations against the ingredient list in small type on the back of the box. However, when she got home, Rex did read the ingredient list, saw that the drink was sweetened with HFCS, and threw the drinks away. Had she not been deceived by the label and thus known that Capri Sun contains artificial ingredients, Rex would never have purchased the Capri Sun drink. She paid for a natural product, and got a product with artificial content, which had no value to her.

COUNT I

VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

24. Plaintiff re-alleges and incorporates by reference paragraphs 6 through 23 as if fully set forth herein.

25. Florida's Deceptive and Unfair Trade Practices Act, as codified at Fla. St. Ann §501.201 *et seq.*, declares unlawful any "unfair or deceptive acts or practices in the conduct or any trade or commerce." Fla. Stat. § 501.204(1).

26. Misrepresenting and mislabeling its Capri Sun products as being "All Natural" in order to induce consumers to purchase (and possibly pay more for) the products constitutes a deceptive and unfair trade practice.

27. As a result of Kraft's unfair and deceptive use of the phrase "All Natural," Plaintiff and the class purchased Capri Sun products instead of other -- truthfully labeled (and possibly less expensive) brands.

28. Plaintiff and the class were damaged by Kraft's deceptive and unfair practices in that they did not receive the full benefit of their bargain and/or were deceived into purchasing Kraft's Capri Sun products. In short, the product received by Plaintiff and the class did not reflect the product that was represented to them by Kraft in their marketing and packaging as being "All Natural" because it contains HFCS.

THEREFORE, Plaintiff and the absent class members pray for a declaratory judgment from this Court asserting that Kraft's use of the term "All Natural" on its Capri Sun products containing HFCS is a deceptive and unfair trade practice; an injunction prohibiting Kraft from continuing the practice of using the phrase "All Natural" to describe its products containing

HFCS; restitution to the class in the form of fluid recovery for Kraft's unfair and deceptive conduct; and compensatory damages, attorney fees, and litigation costs as may be allowed by law.

COUNT II

UNJUST ENRICHMENT COMMON LAW RESTITUTION

29. Plaintiff re-alleges and incorporates by reference paragraphs 6 through 23 as if fully set forth herein.

30. As a result of Kraft's wrongful and deceptive conduct, Plaintiff and the class have suffered a detriment while Kraft has received a benefit. Kraft should not be allowed to retain the millions of dollars in profits generated from the sale of intentionally mislabeled products. To allow Kraft to retain these profits would offend traditional notions of justice and fair play and induce companies to misrepresent key characteristics of their products in order to increase sales.

31. Thus, Kraft is in possession of funds which were wrongfully retained from consumers and which should be disgorged as illegally gotten gains.

THEREFORE, Plaintiff and the absent class members pray for a declaratory judgment from this Court declaring that Kraft's practice of describing its Capri Sun products as "All Natural" is an unfair, deceptive and illegal practice; an injunction prohibiting Kraft from describing its Capri Sun products as being "All Natural" as long as those products contain HFCS as an ingredient; an order requiring Kraft to disgorge its profits from products wrongfully labeled; and compensatory damages, attorney fees, and litigation costs as may be allowed by law.

COUNT III

BREACH OF EXPRESS WARRANTY

32. Plaintiff re-alleges and incorporates paragraphs 6 through 23 as if fully set forth herein.

33. Kraft expressly warranted on the label of its Capri Sun products that the product was “All Natural.”

34. Plaintiff purchased Capri Sun products containing the “All Natural” express representation. Plaintiff purchased Capri Sun products manufactured by Kraft believing them to include only ingredients occurring in nature and with minimal processing.

35. Kraft breached its express warranty contained on its label by including HFCS in its Capri Sun products, which is a man-made, highly processed ingredient that is manufactured by using enzymes (or acids) to alter the chemical structure of starch molecules.

36. As a proximate result of Kraft’s breach of their express warranty, Plaintiff and the class have been damaged in that they did not receive the product as specifically represented and/or paid more for the product because they believed it was “All Natural.”

THEREFORE, Plaintiff and the absent class members pray for a declaratory judgment from this Court that Kraft’s representation that its Capri Sun products are “All Natural” constitutes an express warranty that the product contains only ingredients occurring in nature and with minimal processing; that Kraft’s use of HFCS in its Capri Sun products constitutes a breach of its “All Natural” express warranty; an injunction prohibiting Kraft from continuing to market and promote its Capri Sun products as “All Natural” as long as they contain HFCS as an ingredient; and attorney fees and litigation costs as may be allowed by law

CLASS ALLEGATIONS

37. In addition to bringing this action on her own behalf, Plaintiff also brings this action in a representative capacity on behalf of a class defined as:

All consumers who purchased Capri Sun products in the State of Florida beginning four years before the date the Complaint is filed until the date of class certification.

38. This action is suitable for class treatment pursuant to Florida Rule of Civil Procedure 1.220 and in particular states as follows:

- A. Members of the class are so numerous and geographically disbursed that joinder of all members of the class is impracticable. Upon information and belief, Plaintiff alleges that there are hundreds of thousands of members in the proposed class.
- B. Common questions of law and fact exist as to all members of the class. These common questions include, but are not limited to:
 - 1. Whether HFCS is an “All Natural” ingredient.
 - 2. Whether Kraft’s use of the phrase “All Natural” to describe its Capri Sun products is unfair and deceptive because HFCS is an artificial, highly processed ingredient.
 - 3. Whether Kraft must disgorge to Plaintiff and members of the class the profits obtained from the sale of its deceptively labeled Capri Sun products through a method of fluid recovery.

4. Whether Kraft expressly warranted that its Capri Sun products contained ingredients occurring in nature or minimally processed by use of the phrase “All Natural.”
5. Whether Kraft breached its express warranty by using HFCS as an ingredient in its “All Natural” Capri Sun products.
6. Whether Kraft must make restitution to the Plaintiff and the members of the class for misrepresenting that its Capri Sun products are “All Natural” when they are not.

39. Plaintiff’s claims are typical of the claims of the class in that her claims arise out of a common scheme or course of conduct perpetrated by Kraft on the consuming public.

40. Plaintiff will fairly and adequately represent and protect the interests of the class. Plaintiff has no interest antagonistic to the absent class members. Plaintiff retained counsel experienced in conducting such litigation.

41. This action is suitable for class treatment pursuant to Florida Rule of Civil Procedure 1.220 Section (b)(2) because declaratory and injunctive relief is the primary relief being sought and is an appropriate catalyst for changing the conduct being complained of herein. Kraft has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief appropriate. The disgorgement of monies wrongfully collected and/or retained by Kraft is secondary to the declaratory and injunctive relief being sought.

THEREFORE, Plaintiff, on her own behalf and on behalf of the class, prays for the following relief:

1. An order that this action may be maintained as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2).

2. An order finding that Plaintiff, Linda Rex, is an appropriate class representative.

3. An order appointing the undersigned attorneys as class counsel in this action.

4. A declaration that High Fructose Corn Syrup (HFCS) does not occur in nature and is not minimally processed.

5. A declaration that Kraft unfairly and deceptively mislabeled its Capri Sun products as being "All Natural" when they are not.

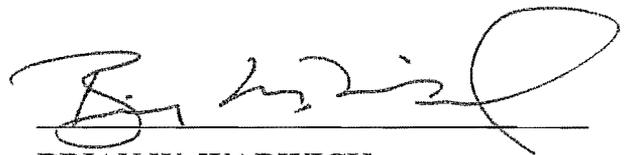
6. An order directing Kraft to disgorge profits obtained by these practices and to pay restitution to the Class.

7. An order enjoining Kraft from describing its Capri Sun products as "All Natural" as long as they contain HFCS.

8. An order directing Kraft to pay attorney fees and costs associated with this litigation.

LINDA REX, Plaintiff

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