

JURY FEE PAID
THIS DATE:

BY:

7 2009

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

KAY READY, individually and on
behalf of a class of similarly situated individuals,

Plaintiff,

v.

KFC CORPORATION,
a Delaware corporation,

Defendant.

Ready, Kay v KFC CORPORATION
Hon. Amy P Hathaway 07/07/2009



09-018802-CZ

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FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK
2009 JUL -7 P 3:39

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this Court.

CLASS ACTION COMPLAINT

Plaintiff Kay Ready ("Ready") brings this Class Action Complaint against Defendant KFC Corporation ("KFC"), to obtain redress for all persons injured by Defendant's conduct in

connection with its recent “Kentucky Grilled Chicken” promotion, and to prevent Defendant from continuing to engage in such conduct.

For her Class Action Complaint, Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

NATURE OF THE CASE

1. In an on-going effort to promote itself as a healthy option in the highly competitive fast-food market, Defendant KFC, the world's most popular chicken restaurant chain, developed and began to heavily promote a new product line of grilled “chicken,” which it dubbed “Kentucky Grilled Chicken.” KFC claims that “Kentucky Grilled Chicken” is a “better for you option for health-conscious customers who love KFC’s finger-lickin’ flavor.” Although KFC advertises its new product only as “chicken,” it also contains beef – the ingredient list for the product indicates that it contains rendered beef fat and beef powder.

2. To gain maximum exposure for its new product, KFC developed a promotion in which KFC would give a free meal to any consumer who downloaded a coupon for the “Kentucky Grilled Chicken” from its website unthinkkfc.com. KFC publicized this promotion with an on-air segment on the highly popular “Oprah” show, hosted by Oprah Winfrey.

3. The promotion proved to be too much of a good thing for KFC. Faced with high demand for the free meals, KFC stopped honoring the coupons almost immediately and instead told consumers that they must go through a time-consuming and privacy-invading “rain check” application process in order to use the coupons.

4. In some instances, consumers were denied the ability to use their coupons, only to have KFC employees offer to sell them the same “Kentucky Grilled Chicken” meal that was supposed to have been free with the coupon.

5. Consumers throughout the country were drawn to KFC’s website and to KFC restaurants because of the offer of a free chicken meal, only to have KFC refuse to honor its commitment. These consumers were injured not only in KFC’s refusal to honor its offer, but also in the waste of their time, energy and resources in responding to the offer, and in the invasion of their privacy by forcing such consumers to engage in a subsequent “rain check” application where consumers were required to divulge personally-identifying information to KFC and had to prove the validity of the coupons that KFC had made available.

6. KFC appears indifferent to the inconvenience and injury it has inflicted upon consumers through this promotion, and views the entire episode as “transformational” because the promotion is “bringing in a lot of new customers” despite the fiasco it caused. KFC President Roger Eaton, evincing a Machiavellian delight at the results, bragged to the Associated Press that “the critical thing for us was to get people to eat the chicken, whatever it took.”

7. In order to redress these injuries, Plaintiff Ready, on behalf of herself and a nationwide class, brings suit for breach of contract and, on behalf of herself and a subclass of people resident in or injured in Michigan, for violations of the Michigan Consumer Protection Act (“the Act”).

8. On behalf of subclass defined below, Plaintiff seeks an injunction requiring Defendant KFC to cease its unlawful conduct, disgorge its profits from the promotion, destroy all personal identifying information about class members, honor all coupons lawfully obtained, and clearly and conspicuously identify the additional animal ingredients in its product, as well as an

award of actual damages and incidental and consequential damages to the class members, together with costs and reasonable attorneys' fees.

PARTIES

9. Plaintiff Ready is a resident of the City of Trenton, County of Wayne, State of Michigan.

10. Defendant KFC is a Delaware Corporation with its principal place of business in Louisville, Kentucky. KFC is a subsidiary of Yum! Brands, Inc., a North Carolina Corporation with its principal place of business in Louisville, Kentucky.

VENUE

11. Venue is proper in Wayne County, Michigan because Defendant KFC conducts business in Wayne County, Michigan and because a significant portion of the events that give rise to this suit occurred in Wayne County, Michigan.

CONDUCT COMPLAINED OF

12. KFC introduced "Kentucky Grilled Chicken" on April 14, 2009 and shortly thereafter began a promotion to greatly increase brand recognition of its new product.

13. In an effort to increase public recognition of its new product and to improve its reputation for healthiness, KFC initiated a campaign called "UNThink KFC," a campaign which attempted to re-brand KFC as a healthy fast-food alternative. KFC embarked on a comprehensive marketing campaign that sought, in its marketer's words, to "change consumers' perceptions of what they think they know about KFC through print, digital, mobile, TV and out-of-home executions." At no point did any of the marketing materials in the campaign disclose the fact that KFC's new "Kentucky Grilled Chicken" product contains beef.

14. As part of its UNThink KFC campaign, KFC developed a television advertising campaign based around a “Kentucky Grilled Chicken” giveaway. After months of effort, KFC convinced Oprah Winfrey, one of the most well-respected figures in America and the host of a popular eponymously-titled television talk show, to promote KFC’s new product on her television show on or about Tuesday, May 5, 2009.

15. On that show, Ms. Winfrey announced KFC’s offer: that any person could download a coupon from her web site, or from KFC’s website unthinkfc.com, for a free two-piece “Kentucky Grilled Chicken” meal, with two sides and a biscuit. The coupons were to be redeemable at participating KFC stores until May 19, 2009, with the exception of May 10 (Mother’s Day).

16. The retail price of the two-piece “Kentucky Grilled Chicken” meal that KFC promised to give away was \$3.99, plus applicable taxes.

17. KFC’s promotion, due in large part to the audience delivered by Ms. Winfrey and her personal involvement in the promotion, was very successful, and consumers throughout the United States downloaded the coupons made available on Ms. Winfrey’s and KFC’s websites.

18. Despite its promise to honor the coupons, KFC, faced with a large number of consumers seeking to avail themselves of its promotion, began almost immediately to refuse to honor the coupons, turning people away in large numbers at its restaurants across the country. On information and belief, KFC corporate management instructed franchises to stop honoring the coupons.

19. On information and belief, KFC redeemed fewer than half of the coupons downloaded in connection with its promotion.

20. On information and belief, many of the KFC locations that refused to redeem the coupons had ample supplies of Kentucky Grilled Chicken on hand, and continued to make those supplies available for purchase – they simply refused to honor the coupons.

21. Instead of honoring its coupons, KFC devised a plan to drastically limit its availability: it told consumers that they instead had to apply for a “rain check” for the promotion and relinquish their coupons to KFC so that KFC could verify the coupons’ validity.

22. Unlike the coupon, which did not require consumers to provide identifying personal information, the “rain check” application required a consumer to attach her coupon to a form, which the consumer was required to fill out with her name and address, then mail it to KFC or give the form to a KFC team member. The “rain check” application indicated that KFC would mail to the consumer a coupon for a free meal at a later date, plus a Pepsi product.

FACTS RELATING TO NAMED PLAINTIFF

23. Plaintiff Kay Ready is a resident of the City of Trenton, County of Wayne, State of Michigan.

24. Plaintiff Ready downloaded a “Kentucky Grilled Chicken” coupon from oprah.com on or about May 5, 2009.

25. Shortly thereafter, Plaintiff Ready drove to a nearby KFC restaurant in the City of Woodhaven, County of Wayne, State of Michigan to redeem her coupon.

26. KFC refused to honor the coupon when Plaintiff Ready presented it. Upon entering the restaurant, Plaintiff Ready was informed that KFC was not honoring the coupons anymore.

27. Nobody at the KFC restaurant indicated that the restaurant was out of supplies of the “Kentucky Grilled Chicken,” only that they would not honor the coupon.

28. Plaintiff Ready called KFC corporate headquarters to complain and ask about the coupon. KFC management stated that they were no longer honoring the coupons. Instead of redeeming the coupon, KFC management told Plaintiff Ready that she could go back to a KFC Restaurant and get a “rain check” application, which she could send in and wait for a rain check in the mail. KFC management did not offer her any other alternative.

29. KFC has not honored or redeemed Plaintiff Ready’s coupon.

30. Had KFC not misrepresented: (a) its willingness to honor its coupons; (b) the limited availability of the free “Kentucky Grilled Chicken” promotion; and (c) its after-the-fact requirement that consumers mail in their coupons to KFC to avail themselves of the offer, Plaintiff Ready would not have taken the time to download the coupon and drive, at her own expense, to KFC to redeem it.

AMOUNT IN CONTROVERSY

31. The amount in controversy exceeds the sum of Twenty-Five Thousand (\$25,000.00) Dollars in the aggregate.

CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action on behalf of herself and a proposed class and subclass, defined as follows:

- a. A class consisting of all persons nationwide who obtained coupons from unthinkfc.com or oprah.com on May 5-6, 2009 for a free two-piece “Kentucky Grilled Chicken” meal, and were denied the redemption of such coupons by KFC; provided, however, that Defendant KFC and any employee of Defendant KFC are excluded from the Classes; and

- b. A subclass of all persons who obtained coupons from unthinkkfc.com or oprah.com on May 5-6, 2009 for a free two-piece "Kentucky Grilled Chicken" meal, and were denied the redemption of such coupons by KFC at a KFC restaurant in Michigan or while the person was a resident of Michigan; provided, however, that Defendant KFC and any employee of Defendant KFC are excluded from the Classes

33. Plaintiff's claims are typical of the claims of all of the other members of the class and the subclass, and the class and subclass are so numerous that joinder of all members is impracticable.

34. Plaintiff will fairly and adequately represent and protect the interests of the other members of the class and the subclass. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the other members of the class and the subclass, and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

35. Absent a class action, most members of the class and the subclass would find the cost of litigating their claims to be prohibitive and, therefore, will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

36. Defendant has acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the class and the subclass, requiring the Court's imposition of

uniform relief to ensure compatible standards of conduct toward the members of the class and the subclass.

37. The factual and legal bases of Defendants' liability to Plaintiff and to the other members of the class and the subclass are the same, resulting in injury to the Plaintiff and to all of the other members of the class and the subclass. Plaintiff and the other members of the class and the subclass have all suffered harm and damages as a result of Defendants' unlawful and wrongful conduct.

38. There are many questions of law and fact common to the claims of Plaintiff and the other members of the class and the subclass, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

- (a) Did the Defendant's refusal to accept the "Kentucky Grilled Chicken" coupons constitute a breach of contract with each of the consumers who downloaded such coupons and went to KFC restaurants to redeem them?
- (b) Was the Defendant's refusal to honor its coupons part of a bait-and-switch plan to lure consumers to KFC restaurants under the false pretense that the coupons would be honored?
- (c) Is Defendant's conduct governed by the Michigan Consumer Protection Act ("the Act")
- (d) Was the Defendant's refusal to honor its coupons violative of the Act?
- (e) Was the Defendant's failure to inform consumers that the "Kentucky Grilled Chicken" product actually contained beef violative of the Act?

- (f) Were the Defendant's actions in connection with its "rain check" offer violative of the Act.

COUNT I

Breach of Contract on behalf of the Class and the Subclass

39. Plaintiff Ready incorporates by reference the foregoing allegations as if fully set forth herein.

40. KFC's offer of a free two-piece "Kentucky Grilled Chicken" meal to consumers constituted a valid offer.

41. Plaintiff and the Class members each accepted that offer by: (a) accessing KFC's website unthinkkfc.com and/or Ms. Winfrey's website oprah.com; (b) downloading a coupon from such website; (c) travelling to a participating KFC restaurant; and (d) presenting, or attempting to present, such coupon to KFC.

42. KFC breached its contract with Plaintiff and the Class members by: (a) refusing to provide a two-piece "Kentucky Grilled Chicken" meal upon presentment of the coupon; and (b) demanding that the Plaintiff and the Class members relinquish their coupons to KFC as a condition of any future performance by KFC under the contract.

43. Plaintiff and the classes have been damaged in an amount to be proven at trial, and seek as an award of actual damages and incidental and consequential damages to the Class members, together with costs and reasonable attorneys' fees.

COUNT II

Violation of the Michigan Consumer Protection Act on behalf of the Subclass

44. Plaintiff Ready incorporates by reference the foregoing allegations as if fully set forth herein.

45. Section 3 of the Michigan Consumer Protection Act, Mich. Comp. Laws §445.903 (2008) (“the Act”) prohibits the following activities:

- (c) “Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.”
- (e) “Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”
- (g) “Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.”
- (h) “Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services.”
- (q) “Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.”
- (r) “Representing that a consumer will receive goods or services “free” or “without charge”, or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.”
- (s) “Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.”

46. KFC violated, and continues to violate, these proscriptions through its conduct as set forth above.

47. The acts alleged above are unlawful, unfair or fraudulent business acts or practices, and constitute unfair, unconscionable or deceptive methods, acts or practices in the conduct of trade or commerce under Section 3 of the Act.

48. Such conduct is ongoing and continues to this date. Plaintiff Ready and the subclass members are therefore entitled to the relief described herein. On behalf of herself and the subclass, Plaintiff Ready seeks an injunction requiring Defendant KFC to cease its unlawful conduct, disgorge its profits from the promotion, destroy all personal identifying information about class members, honor all coupons lawfully obtained, and clearly and conspicuously identify the additional animal ingredients in its product, as well as an award of actual damages and incidental and consequential damages to the class members, together with costs and reasonable attorneys' fees.

WHEREFORE, Plaintiff, on behalf of herself and the Classes, prays for the following relief:

1. An order certifying the Class as defined above;
2. An award of actual damages, and incidental and consequential damages in excess of Twenty-Five Thousand (\$25,000.00) Dollars to be determined by a trier of fact;
3. Disgorgement of KFC's profits from its promotion;
4. An injunction requiring KFC to cease its unlawful conduct, destroy all personal identifying information about class members, honor all coupons lawfully obtained, and clearly and conspicuously identify the additional animal ingredients in its product;
5. An award of reasonable attorneys' fees, interest and costs; and
6. Such other and further relief as the Court deems equitable and just.

DEMAND FOR TRIAL BY JURY

Plaintiff request trial by jury of all claims that can be so tried.

Respectfully submitted,

LAW OFFICES OF FREEDMAN & FREEDMAN, PLC

BY: _____

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Dated: July 2, 2009