

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

**MARY HARMON and
CONNIE CURTS, on behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

**SCHELL & KAMPETER, INC.
d/b/a Diamond Pet Foods and/or Taste of
the Wild,**

Defendant.

Case No. 2016-CV17833

Division 5

FIRST AMENDED CLASS ACTION PETITION

Plaintiffs Mary Harmon and Connie Curts, on behalf of themselves and all other similarly situated Missouri consumers, for their Class Action Petition against Defendant Schell & Kampeter, Inc. d/b/a Diamond Pet Foods and/or Taste of the Wild Pet Foods, state and allege as follows:

Nature of the Action

1. This lawsuit arises out of Defendant's marketing and sale of Taste of the Wild grain-free dog food, which is represented to consumers as a uniquely high-quality, safe and healthy dog food. Defendant's representations of the dog food are false, deceptive, misleading, and unfair because the dog food is associated with increased risk of developing dilated cardiomyopathy. In addition, Defendant has known about this significant risk for years, since at the latest July 12, 2018, and concealed this risk from the public. Defendant's unlawful practices have caused financial injury to all Missouri consumers who have purchased Taste of the Wild grain-free dog food.

2. Defendant's conduct as alleged in this case violates the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010 *et seq.*, which prohibits "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce." Mo. Rev. Stat. § 407.020.1. Here, Defendant has done so to increase its sale of its dangerous Taste of the Wild grain-free dog food to Missouri dog owners.

The Parties

3. Plaintiff Mary Harmon is a Missouri citizen and resident of Kansas City, Missouri. On at least five occasions between 2015 and 2018, she purchased a 30-pound bag of Taste of the Wild grain-free dog food through online retailers Amazon.com and Chewy.com.

4. Plaintiff Connie Curts is a Missouri citizen and resident of Lee's Summit, Missouri. In late 2016 or early 2017, she purchased a bag of Taste of the Wild grain-free dog food from the Richards Gebaur Commissary in Kansas City, Missouri.

5. Defendant Schell & Kampeter, Inc. d/b/a Diamond Pet Foods and/or Taste of the Wild Pet Foods is a Missouri corporation with its principal place of business and headquarters located in Meta, Missouri. Defendant is engaged in the business of marketing and selling pet food products, including the Taste of the Wild brand grain-free dog food at issue in this lawsuit. Defendant advertises its dog food products through various means, including on-product labels, web-based marketing, and print advertisements. Defendant's Taste of the Wild grain-free dog food products are sold in stores and via online retailers to consumers throughout the State of Missouri.

Jurisdiction and Venue

6. Defendant is incorporated in the State of Missouri and registered with the Missouri Secretary of State to transact business in this State. Defendant maintains its principal place of business in the State of Missouri and designates a registered agent for the service of process in this State. This Court has general personal jurisdiction over Defendant.

7. Venue is proper in this Court pursuant to Mo. Rev. Stat. § 407.025.1 because Plaintiffs purchased Taste of the Wild grain-free dog food products in Jackson County, Missouri. Venue also is proper in this Court pursuant to Mo. Rev. Stat. § 508.010.4 because Jackson County, Missouri is the place where Plaintiffs were first injured by Defendant's conduct.

Factual Allegations

8. Defendant manufactures, markets, and sells Taste of the Wild brand grain-free dog food. The standard line of Taste of the Wild grain-free dog food comes in dry varieties including Appalachian Valley, High Prairie, Pacific Stream, Pine Forest, Sierra Mountain, Southwest Canyon, Wetlands, and wet varieties including High Prairie, Pacific Stream, Sierra Mountain, Southwest Canyon and Wetlands. The PREY line of Taste of the Wild grain-free dog food comes in dry varieties including Angus Beef Limited Ingredient, Trout Limited Ingredient, and Turkey Limited Ingredient.

9. Of the twenty-one varieties of dry dog foods collectively known as "Taste of the Wild Dog Food," seventeen are grain-free formulas.

10. Defendant markets Taste of the Wild grain-free dog food as a "high-quality" product with "protein sources that are based on your pet's natural diet." Defendant advertises the dog food as "the balanced diet that nature intended" and claims the dog food will "give domestic dogs . . . the vitality nature intended" because it contains "all the best nutrition available today."

Defendant represents the product line as “premium, complete pet foods based on the protein sources from your pet’s ancestral diet” providing “all the nutrition they need to thrive.”

11. Defendant also represents that the “grain-free formula provides your dog with nutrition for optimal health and vitality,” that the dog food is “processed under strict quality and safety standards,” and that the dog food promotes and supports the “overall good health and well-being” of dogs.

12. Defendant acknowledges that “*healthy dog . . . food* is synonymous with *safe dog . . . food*.” Defendant further claims to put “safety first” by using “scientific and technological advancements” to develop and implement “a comprehensive food safety system that ensures our pet food is always healthy, safe and nutritious.”

13. Defendant’s representations about the quality, safety and healthiness of Taste of the Wild grain-free dog food are false, deceptive and misleading. Contrary to these representations, the dog food is associated with increased risk of developing dilated cardiomyopathy (“DCM”), a potentially fatal condition in which the heart loses its ability to effectively and efficiently pump blood because the left ventricle becomes enlarged and weakened. In addition to misrepresenting the quality, safety and healthiness of Taste of the Wild grain-free dog food, Defendant has also concealed the increased risk of developing DCM.

14. Defendant did not employ a board-certified veterinary nutritionist at any stage during development of its grain-free formulas.

15. Defendant utilizes a higher content of legumes and pulse ingredients in its Taste of the Wild dry dog food than in its grain-inclusive dog foods. These ingredients are less expensive than animal protein ingredients, which lowers Defendant’s cost of manufacturing Taste of the Wild in comparison to dog food that contains grain.

16. In July 2018, the United States Food and Drug Administration (“FDA”) began reporting on its investigation of reported incidents of DCM in dogs that are fed grain-free dog foods (like Taste of the Wild), and noted that these incidents “involve a wide range of dog breeds, ages and weights.” The FDA also noted that cases of DCM are likely underreported, but of the cases reported, FDA data indicated that dogs eating Taste of the Wild grain-free dog food had the third highest prevalence of DCM cases and accounted for more than 12% of the total cases.

17. Since that time, academic and scientific communities have undertaken numerous studies and investigative research demonstrating a contributory or causal connection between consumption of certain grain-free diets and development or exacerbation of DCM in dogs genetically pre-disposed to developing DCM, as well as in dogs not genetically pre-disposed to developing DCM.

18. These studies signal that the high content of plant protein sources used in grain-free diets (legumes and pulses such as peas, lentils, and chickpeas) inhibit, block, or otherwise prevent adequate uptake of certain amino acids important to cardiac health.

19. Substantially similar and equally false, deceptive, and misleading representations about the quality, safety, and healthiness of Taste of the Wild grain-free dog food are made by Defendant across all advertising media used to market the products, including website content, on-product claims, social media marketing, and other similar publications. These communications also omit and conceal the significantly increased risk of dogs developing DCM after consuming Defendant’s Taste of the Wild grain-free dog food.

20. Defendant touts itself as “one of the fastest-growing pet food brands in the world.” It is part of growing industry of so-called “healthy” and “natural” pet foods that appeal to consumer preference for safer, better quality products. Defendant’s false, deceptive and

misleading claims about Taste of the Wild grain-free dog food are designed to drive greater product sales and allow Defendant to charge a premium price for the products because consumers who buy the dog food are willing to pay more for products represented as safe, healthy, and high-quality.

21. All Missouri consumers who purchased Taste of the Wild grain-free dog food have suffered uniform financial injury and ascertainable loss at the point of sale caused by the false, deceptive, and misleading marketing of a product that was different than advertised. In addition, all Missouri consumers who purchased Taste of the Wild grain-free dog food have suffered uniform financial injury and ascertainable loss at the point of sale caused by Defendant's omission and concealment of the fact that its food significantly increased the risk of dogs developing DCM. Defendant's unlawful conduct has deprived all consumers of the benefit of the bargain and caused them ascertainable loss because the dog food they purchased did not have the qualities and characteristics advertised and omitted and concealed material facts about the dog food that, taken together and in isolation, make the products worth less than consumers paid for them.

Class Action Allegations

22. The MMPA authorizes Plaintiffs to bring this suit as a class action because Defendant's alleged unlawful conduct has "caused similar injury to numerous other persons." Mo. Rev. Stat. § 407.025.2.

23. Plaintiffs bring this class action for violation of the MMPA pursuant to Mo. R. Civ. P. 52.08 and Section § 407.025 on behalf of all consumers who have purchased Taste of the Wild grain-free dog food in the State of Missouri for personal, family or household purposes at any time from August 27, 2015 to the present and who were citizens of the State of Missouri on the date this Class Action Petition was filed (the "Class"). Excluded from the Class are

(1) Defendant, its subsidiaries and affiliates, and its directors and officers and members of their immediate families; (2) federal, state, and local governmental entities; and (3) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

24. Members of the Class are so numerous that their individual joinder herein is impracticable.

25. Common questions of law and fact exist for all class members. The MMPA claims of Plaintiffs and the Class arise from a common nucleus of operative facts including questions regarding: (1) the existence of Defendant's uniform representations about the quality, safety, and healthiness of Taste of the Wild grain-free dog food; (2) whether Defendant's representations are false, deceptive, and misleading; and (3) whether consumers have suffered uniform economic harm from the purchase of the falsely, deceptively, and misleadingly marketed Taste of the Wild grain-free dog food. The claims of Plaintiffs and the Class involve common questions of law regarding the legality of Defendant's conduct under the MMPA and the entitlement of class members to damages under that statute. These common questions of law and fact are amenable to class-wide resolution based on common evidence.

26. Plaintiffs' MMPA claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's unlawful conduct. Plaintiffs have no interests that are antagonistic to the interests of other class members. Plaintiffs and all members of the Class have sustained similar economic injury arising out of the alleged unlawful conduct for which Defendant is liable.

27. Plaintiffs are fair and adequate representatives of the Class because their interests do not conflict with the interests of the Class members they seek to represent. Plaintiffs have retained competent and experienced counsel, who are fair and adequate representatives of the proposed Class because they will vigorously prosecute this action and do not have any conflicts

of interest with the Class. The interests of Class members will be fairly and adequately protected in this lawsuit by Plaintiffs and their counsel.

28. Common issues predominate over individual issues in this case because the overriding issues of liability and damages under the MMPA can be determined on a class-wide basis from common evidence regarding Defendant's uniform misconduct and the uniform economic harm to class members who purchased Taste of the Wild grain-free dog food.

29. Class treatment is the superior method of adjudicating the class members' MMPA claims because it avoids the inefficiencies and inconsistencies of piecemeal litigation and ensures that all class members are given their day in Court that would not otherwise be possible for such small value claims. Class treatment also is expressly authorized by the MMPA. *See* Mo. Rev. Stat. § 407.025.2.

Count I
(Violation of the Missouri Merchandising Practices Act)

30. Plaintiffs incorporate by reference the allegations in all paragraphs of this Petition as though fully set forth in this paragraph.

31. Plaintiffs bring this MMPA claim individually and on behalf of the members of the proposed Class, all of whom purchased Taste of the Wild grain-free dog food for personal, family or household purposes.

32. Taste of the Wild grain-free dog food is "merchandise" under the MMPA, which is defined to include "any objects, wares, goods, [or] commodities." Mo Rev. Stat. § 407.010(4).

33. At all times during the class period, Defendant has made false, deceptive and misleading representations about the quality, safety, and healthiness of Taste of the Wild grain-free dog food and has used deceptive means of advertising in selling the dog food to Missouri consumers. Defendant's unlawful marketing of Taste of the Wild grain-free dog food has been,

and continues to be, conducted through a uniform advertising campaign consisting of website content, on-product claims, social media marketing, and other similar publications.

34. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because they are false and have the capacity to mislead prospective purchasers about the quality, safety, and healthiness of the dog food, which is associated with increased risk of developing and exacerbating DCM. *See* Mo. Code Regs. Ann. tit. 15, § 60-7.020(1).

35. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because they omit material facts regarding the increased risk of developing and exacerbating DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-7.030(1).

36. Defendant became aware of the connection between Taste of the Wild grain-free dog food and DCM at least as early as, but likely before, July 12, 2018, when the FDA announced that it had begun investigating reports of canine dilated cardiomyopathy (DCM) in dogs eating certain pet foods.

37. Defendant was aware that consumption of certain diets, such as a Taste of the Wild grain-free diet, may exacerbate DCM in dogs genetically pre-disposed to the disease or dogs diagnosed with DCM at least as early as, but likely before, October 9, 2019.

38. Defendant purposefully omitted and concealed information regarding the association of its Taste of the Wild grain-free dog food and DCM from its advertisements and representations of its product to Missouri consumers.

39. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because Defendant does not have a reasonable basis for making performance claims with respect to the quality, safety, and healthiness of the dog food in light of the increased

risk of developing or exacerbating DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-7.040(1).

40. Defendant's representations of Taste of the Wild grain-free dog food constitute unfair practices under the MMPA because they offend public policy, are unethical and unscrupulous, and present a risk of substantial injury to consumers, including risks associated with the increased risk of developing or exacerbating DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-8.020(1).

41. Defendant's representations of Taste of the Wild grain-free dog food constitute unfair practices under the MMPA because it is unconscionable for Defendant to make false, deceptive, and misleading claims about the quality, safety, and healthiness of the product that is associated with increased risk of developing or exacerbating DCM. *See* Mo. Code Regs. Ann. Tit. 15, § 60-8.080(1).

42. Defendant's representations of Taste of the Wild grain-free dog food are deceptive under the MMPA because they have the tendency or capacity to mislead, deceive, and cheat consumers into believing that the dog food is high-quality, safe, and healthy for dogs to eat. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.020(1).

43. Defendant's representations of Taste of the Wild grain-free dog food are deceptive under the MMPA because they tend to create a false impression of the dog food as high-quality, safe, and healthy for dogs to eat. *See* Mo. Code Regs. Ann. Tit. 15, § 60-9.020(1).

44. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because they employ deceptive format in the overall appearance of product packaging and advertising (including depictions of wild animals in nature) that present the product to be what nature intended and have the tendency or capacity to mislead consumers into

believing that the product is not associated with a potentially fatal heart disease. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.030(1).

45. Defendant's representations of Taste of the Wild grain-free dog food are fraudulent under the MMPA because they use falsehoods, deception, trickery, and breach of trust to cause financial injury to consumers and gain an undue and unconscionable advantage over consumers in the selection and purchase of dog food. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.040(1).

46. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because they use false pretense by means of trickery, deception, and false or fraudulent representation or pretense to defraud consumers in the purchase of the falsely, deceptively, and misleadingly represented dog food. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.050(1).

47. Defendant's representations of Taste of the Wild grain-free dog food constitute unlawful misrepresentations under the MMPA because they make assertions about the quality, safety, and healthiness of the product that are not in accord with the facts indicating that the product is associated with increased risk of developing DCM. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.070(1).

48. Defendant's representations of Taste of the Wild grain-free dog food constitute unlawful misrepresentations under the MMPA because they contain material untruths about the quality, safety, and healthiness of the product, which is associated with increased risk of developing DCM. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.080(1).

49. Defendant's representations of Taste of the Wild grain-free dog food constitute unlawful misrepresentations under the MMPA because they use half-truths to advertise the quality, safety, and healthiness of the product while omitting material facts necessary to make the

representations not misleading, including information regarding the increased risk of developing DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.090(1).

50. Defendant's representations of Taste of the Wild grain-free dog food constitute fraudulent misrepresentations under the MMPA because they make claims about the quality, safety, and healthiness of the product that Defendant knows are not in accord with the facts and/or that Defendant knows do not have a reasonable basis. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(1).

51. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because they conceal material facts from consumers regarding the increased risk of developing DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(1).

52. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because they suppress material facts by curtailing and reducing the ability of consumers to take notice of material facts regarding the increased risk of developing or exacerbating DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(2).

53. Defendant's representations of Taste of the Wild grain-free dog food are unlawful under the MMPA because they omit material facts by failing to disclose to consumers information regarding the increased risk of developing or exacerbating DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(3).

54. As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs and the members of the Class have suffered an ascertainable loss of money under the benefit of the bargain rule by paying more for Taste of the Wild grain-free dog food than the product was worth had it not been falsely, deceptively, misleadingly, and unfairly represented. This

constitutes a uniform, objective measure of damages for each class member, determined at the time of purchase without regard to any individualized consideration of transactional motivation or subsequent use of the product. Damages for each consumer are measured as the portion of the product purchase price reflecting the value of the falsely, deceptively, misleadingly or unfairly advertised product attributes.

55. Plaintiffs and the Class are entitled to punitive damages because Defendant's conduct involves a high degree of moral culpability and was wanton, outrageous, and/or made with reckless disregard to the consequences to Plaintiffs and the members of the Class.

Prayer for Relief

WHEREFORE, Plaintiffs Mary Harmon and Connie Curts pray for judgment in favor of themselves and the class against Defendant Schell & Kampeter, Inc. for actual damages, punitive damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, costs of suit, and any other appropriate relief.

Demand for Jury Trial

Plaintiffs hereby demand a trial by jury on all claims and issues so triable.

Dated: December 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 15, 2023 the foregoing document was filed with the Clerk of the Court using the Missouri e-filing system, which sent notification of such filing to all counsel of record.

/s/ Christopher S. Shank

Counsel for Plaintiffs