

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

JOSE SEGARRA, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

THE CLOROX COMPANY,
a Delaware corporation,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Jose Segarra (“Plaintiff”), hereby sues for himself and all others similarly situated, the Defendant The Clorox Company (“CLOROX”), a Delaware corporation, and alleges as follows:

INTRODUCTION

1. This is a consumer class action lawsuit brought on behalf of Plaintiff, individually, and on behalf of persons within the state of Florida who purchased for personal use and not resale, Defendant’s Fresh Step Cat Litter (“Fresh Step”). At all material times CLOROX, through a standardized advertising, promotional, and marketing campaign hatched, incubated, facilitated, and consummated by CLOROX in a uniform manner, has engaged in unfair and deceptive marketing by purposefully misrepresenting that Fresh Step is more effective at eliminating odors than other cat litters. It is not. CLOROX uniformly promotes this core yet false message through the Fresh Step packaging, as well as on its website and other promotional material.

2. CLOROX's actions constitute violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"). § 501.201-501.213, Fla. Stats. Further, CLOROX has been unjustly enriched as a result of its conduct.

3. As a result of this unfair and deceptive practice, CLOROX has sold millions of dollars of Fresh Step which it would not have otherwise sold had it made accurate disclosures.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff Segarra is a resident of Miami-Dade County, a citizen of the State of Florida, and is otherwise *sui juris*. During the proposed class period, Plaintiff purchased Fresh Step for personal use within the State of Florida.

5. CLOROX is a Delaware corporation with its principal place of business in California. CLOROX manufactures consumer products. CLOROX advertises, distributes and sells its products throughout the United States, including in Florida.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than the Defendant and the amount in controversy exceeds the sum or value of \$5,000,000. *See* 28 U.S.C. § 1332(d)(2).

7. This Court has jurisdiction over CLOROX because a substantial portion of the wrongdoing alleged in this Complaint took place in Florida, CLOROX is authorized to do business here, CLOROX has sufficient minimum contacts with Florida and/or otherwise intentionally avails itself of the markets in Florida. CLOROX sells products or services within the state of Florida and in Miami-Dade County, rendering the exercise of jurisdiction by Florida courts permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this district because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this district and/or CLOROX is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

9. CLOROX manufactures "Fresh Step" cat litter products, which uses a carbon based odor-fighting ingredient.

10. CLOROX markets its Fresh Step cat litter as being superior to other cat litters based upon its carbon-based odor-fighting ingredient. CLOROX markets its carbon based claims on the packaging as well as in various media.

11. CLOROX's advertisements were in commercials depicting cats "choosing" litter boxes filled with Fresh Step over litter boxes filled with other brands. While this was occurring, the voiceover explained that "cats like boxes with Fresh Step litter inside because Fresh Step's scoopable litter with carbon is better at eliminating odors than Arm & Hammer."

12. In January and February of 2011, CLOROX began airing still another commercial that displayed cats as being "smart enough" to choose the litter with less odor.

13. CLOROX's entire marketing campaign is to market Fresh Step as a superior odor-fighting product without any reliable scientific evidence supporting this claim. CLOROX's representations are false, misleading and deceptive.

14. The objective of CLOROX's overarching marketing campaign was to present Fresh Step as more effective at eliminating odors than other cat litters.

15. Recently, the Honorable Jed S. Rakoff, United States District Court Judge for the Southern District of New York found that CLOROX's testing "cannot reasonably

support the necessary implication that Clorox's litter outperforms C & D's products in eliminating odor in cat litters." See Opinion and Order (Jan. 3, 2012) (attached as Ex. 1).

16. Judge Rakoff concluded that "that the results of [CLOROX's tests] are 'not sufficiently reliable to permit one to conclude with reasonable certainty that they established the proposition for which they were cited' in Clorox's commercial. In short, because the Jar Test on which Clorox based its claims is unreliable and, even if it were reliable, could not possibly support Clorox's implied claims about the relative merits of carbon and baking soda in cat litter, **the Court finds Clorox's claims are literally false.**" *Id.* at 11 [emphasis added].

17. CLOROX did not and does not have competent and reliable scientific evidence to support its superiority claims. CLOROX's representations are false and misleading and reasonably likely to deceive the reasonable consumer.

18. Plaintiff and the class have been damaged by CLOROX's deceptive and unfair conduct.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this case as a class action pursuant to FDUTPA. §§501.201-501.213, Fla. Stats. Plaintiff seeks certification of the following class: All individuals who purchased Fresh Step for personal use and not resale in the state of Florida after January 31, 2007 up to and including the present. Excluded from this Class are employees, officers, and directors of CLOROX. Plaintiff Segarra is a member of the class in that he purchased Fresh Step for his personal consumption within the class period.

20. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. The proposed class is so numerous that individual joinder of all members is impracticable. While the exact number and identities of the class members are

unknown to Plaintiff at this time, Plaintiff is informed and believes that the class numbers in the thousands, and likely tens of thousands.

21. Questions of law and fact arise from Defendant's conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members. The myriad questions of law and fact common to the Class include:

- a. whether Fresh Step actually is more effective at eliminating odors than other cat litters;
- b. whether CLOROX markets and misrepresents Fresh Step as more effective at eliminating odors than other cat litters;
- c. whether CLOROX failed to disclose to consumers that there is no competent and reliable scientific evidence that Fresh Step is more effective at eliminating odors than other cat litters;
- d. whether CLOROX engaged in a marketing practice intended to deceive consumers regarding the benefits of Fresh Step;
- e. whether CLOROX's marketing practices violate FDUTPA;
- f. whether CLOROX has been unjustly enriched at the expense of Plaintiff and the class members by its misconduct;
- g. whether CLOROX must disgorge any and all profits it has made as a result of its misconduct; and

h. whether CLOROX should be barred from marketing Fresh Step in a deceptive and uniform manner.

21. Plaintiff will fairly and adequately represent and pursue the interests of class members. Plaintiff's counsel has vast experience in consumer class action cases. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

**COUNT I- VIOLATION OF FLORIDA'S
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

22. Plaintiff realleges and incorporates herein by reference paragraphs 1-21 herein and further alleges as follows:

23. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act. §§ 501.201-501.213, Fla. Stats.

24. FDUTPA provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. § 501.204, Fla. Stats. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." § 501.203(8), Fla. Stats.

25. Plaintiff and the class members are consumers as defined and construed under the FDUTPA. § 501.203(7), Fla. Stats.

26. The practices employed by Defendant, whereby Defendant advertises, promotes, and markets that Fresh Step is more effective at eliminating odors than other cat litters are unfair, deceptive and misleading.

27. Plaintiff and the class members suffered actual damages as a result of CLOROX's deceptive and unfair trade acts. Specifically, as a result of CLOROX's deceptive and unfair trade acts and practices, Plaintiff and the class members suffered monetary losses associated with

the purchase of Fresh Step which itself is unfit for its advertised purpose, *i.e.*, the purchase price of the product.

28. Further, CLOROX should be enjoined from marketing Fresh Step in the deceptive and unfair fashion described above pursuant to section 501.211(1), Florida Statutes.

WHEREFORE, Plaintiff and the class members demand an award against CLOROX for actual and/or compensatory damages, in addition to the costs of this proceeding and attorney's fees, as provided by section 501.2105, Florida Statutes, injunctive relief, and such other relief as this Court deems just and proper.

COUNT II- UNJUST ENRICHMENT

29. Plaintiff repeats and realleges the allegations contained in paragraphs 1-21 herein and further alleges as follows:

30. CLOROX received certain monies in response to its uniform deceptive marketing of Fresh Step which are excessive and unreasonable.

31. As a result, Plaintiff and the Class have conferred a benefit on CLOROX, and CLOROX has knowledge of this benefit and has voluntarily accepted and retained the benefit conferred on it.

32. CLOROX will be unjustly enriched if it is allowed to retain such funds, and each class member is entitled to an amount equal to the amount each class member enriched CLOROX and for which CLOROX has been unjustly enriched.

WHEREFORE, Plaintiff and class members demand an award against CLOROX for the amounts equal to the amount each class member enriched CLOROX and for which CLOROX has been unjustly enriched, and such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

33. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: February 7, 2012

Respectfully submitted,

s/ Lance A. Harke

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