

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

CHILDREN’S HEALTH DEFENSE, 1227 N Peachtree Parkway, Peachtree City, GA 30269, Plaintiff, v. BEECH-NUT NUTRITION COMPANY, One Nutritious Place, Amsterdam, NY 12010, Defendant.	Case No. _____ <u>COMPLAINT</u> <u>DEMAND FOR JURY TRIAL</u>
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On behalf of itself and the general public, Plaintiff Children’s Health Defense brings this action against Beech-Nut Nutrition Company (“Beech-Nut”), concerning the representation of Beech-Nut Naturals-brand baby food as “100% natural,” when in fact the baby food contains residues of the synthetic pesticides including glyphosate, acetamiprid, and captan. Plaintiff alleges the following based upon information, belief, and the investigation of its counsel.

INTRODUCTION

1. Due to concerns about food safety and nutrition, parents are increasingly considering how commercially produced baby foods are grown, processed, and prepared.
2. Per capita sales of baby food have dropped dramatically in the United States over the past 10 to 15 years, in part because parents are choosing to make baby food at home.
3. In 2014, “hoping to reverse [this] trend,” Beech-Nut introduced its Beech-Nut Naturals (“Naturals”) line of baby foods.¹ According to Beech-Nut, the Naturals line “is the result of research that showed that moms are leaving the baby food aisle because their needs aren’t being

¹ Stephanie Strom, *As Parents Make Their Own Baby Food, Industry Tries to Adapt*, N.Y. Times (Apr. 25, 2014), <https://www.nytimes.com/2014/04/26/business/as-parents-make-their-own-industry-tries-to-adapt.html>.

met. Instead, many moms are increasingly making baby food at home, where they feel more confident that the ingredients are simple, wholesome and real.”²

4. The Naturals product line includes the following varieties of baby food, which are the products at issue in this case (collectively, the “Products”):

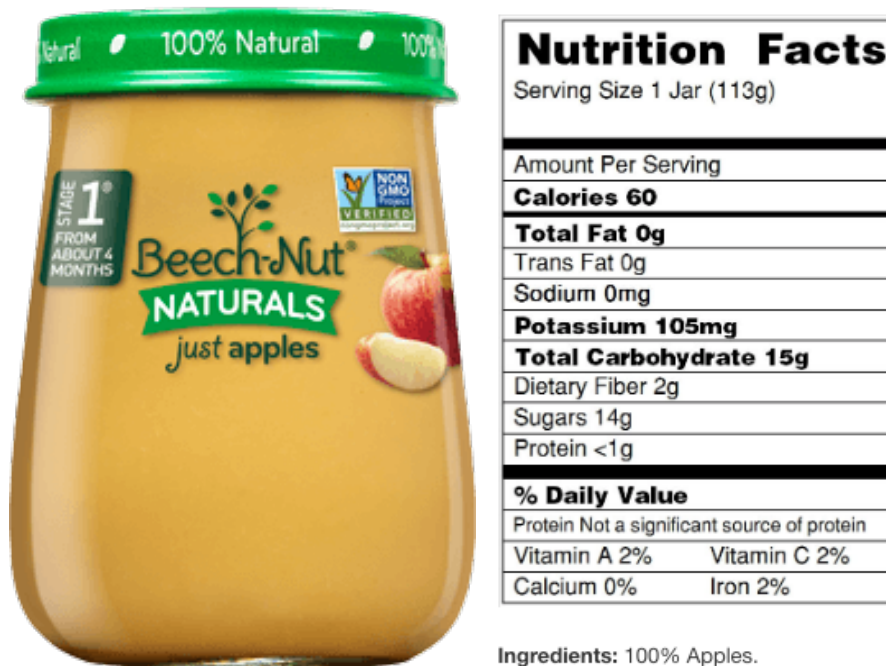
- i. Just Apples;
- ii. Bananas;
- iii. Just Butternut Squash;
- iv. Just Carrots;
- v. Just Green Beans;
- vi. Just Pears;
- vii. Just Sweet Potatoes;
- viii. Prunes;
- ix. Apple & Pumpkin;
- x. Apple, Cinnamon & Granola;
- xi. Banana, Orange & Pineapple;
- xii. Banana, Blueberry & Green Beans;
- xiii. Beets, Pear & Pomegranate;
- xiv. Just Apple & Blackberry;
- xv. Just Apple & Kale;
- xvi. Just Carrot, Corn & Pumpkin;
- xvii. Just Guava, Pear & Strawberry;

² Beech-Nut Nutrition Co., *Beech-Nut Launches New Baby Food Line Completely Inspired by Homemade*, Bus. Wire (Apr. 1, 2014, 9:00 AM), <https://www.businesswire.com/news/home/20140401005485/en/Beech-Nut-Launches-New-Baby-Food-Line-Completely>.

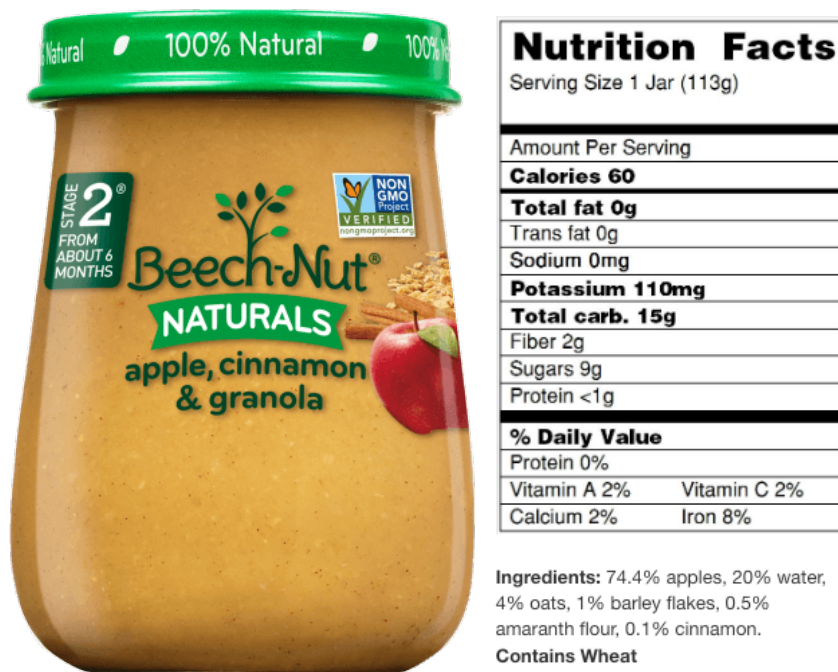
- xviii. Just Mango;
- xix. Just Mango, Apple & Avocado;
- xx. Just Pear & Blueberry;
- xxi. Just Peas, Green Beans & Asparagus;
- xxii. Just Pineapple, Pear & Avocado;
- xxiii. Just Spinach, Zucchini & Peas; and
- xxiv. Just Sweet Corn & Green Beans.

5. Beech-Nut markets the Products using representations such as “we make it like you make it. Just gently-cooked, real ingredients go into our jars” and “Just the stuff is all you need. Nothing extra or unnecessary.”³

6. Beech-Nut labels the Products as “100% natural” and purports to list on its website the exact percentage of each ingredient contained in Naturals products.



³ *Our Story*, Beech-Nut Nutrition Co., <https://www.beechnut.com/our-story/> (last visited Apr. 5, 2019).



7. Contrary to Beech-Nut’s representations that the products are “100% natural,” the Products contain residues of multiple synthetic pesticides including glyphosate, acetamiprid, and captan.

8. A reasonable parent encountering Beech-Nut’s representations that the Products are “100% natural” would not expect the baby foods to contain residues of multiple artificial pesticides like glyphosate, acetamiprid, and captan.

9. Beech-Nut therefore misrepresents the nature, source, characteristics, and/or ingredients of the Products by labeling them “100% natural.” Given the affirmative representations that it makes, Beech-Nut also fails to state and/or misrepresents material facts in a way that tends to mislead.

10. Beech-Nut’s material misrepresentations and omissions violate the District of Columbia Consumer Protection Procedures Act (“DC CPPA”), D.C. Code §§ 28-3901, *et seq.*

11. Because Beech-Nut’s labeling and marketing of the Products deceives parents who seek to be mindful of what is contained in the baby foods they provide to their infants, Plaintiff

Children's Health Defense brings this unlawful trade practices case on behalf of itself, its members, and the general public, seeking relief including an injunction to stop the deceptive marketing and sale of the Products.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over the parties in this case.

13. This Court has personal jurisdiction over Beech-Nut pursuant to D.C. Code § 13-423. Bay Brewing has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Beech-Nut is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Products in this District.

14. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

15. Venue is proper in this District under 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of misleading information regarding the nature and characteristics of the Products, occurred within this District. The Products are available for purchase at retail stores in the District of Columbia.

PARTIES

16. Plaintiff Children's Health Defense is a 501(c)(3) non-profit organization headquartered in the Peachtree, Georgia, that works to end the proliferation of chronic health conditions in children due to environmental toxin exposure.

17. Children's Health Defense seeks to educate the public about exposure to environmental toxins and potential toxins, expose misinformation about their prevalence and sources, and advocate for policies that help to prevent the use of such substances in products.

18. Among the substances that Children's Health Defense focuses on are pesticides.

19. By commencing this action, Plaintiff Children's Health Defense is acting for the benefit of the general public as private attorneys general pursuant to D.C. Code § 28-3905(k)(1). Plaintiff Children's Health Defense is a non-profit organization pursuant to D.C. Code § 28-3901(a)(14) and a public-interest organization pursuant to D.C. Code § 28-3901(a)(15).

20. Plaintiff Children's Health Defense purchased the following varieties of the Products within the District of Columbia in order to test or evaluate their qualities:

- i. Plaintiff purchased the Just Apples; Apple & Pumpkin; and Just Mango, Apple & Avocado varieties of the Products on April 29, 2019, at the Safeway located at 6500 Piney Branch Road NW, Washington, D.C. 20012;
- ii. Plaintiff purchased the Just Apples; Apples, Cinnamon & Granola; and Just Mango, Apple & Avocado varieties of the Products on April 29, 2019, at the Safeway located at Safeway located 33830 Georgia Avenue NW, Washington, D.C. 20011; and
- iii. Plaintiff purchased the Apples, Cinnamon & Granola; Apple & Pumpkin; and Just Mango, Apple & Avocado varieties of the Products on April 29, 2019 at the Walmart located 5929 Georgia Avenue NW, Washington, D.C. 20001.

21. Defendant Beech-Nut is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Amsterdam, New York.

22. Defendant Beech-Nut is, and at all relevant times has been, engaged in commercial transactions throughout the District of Columbia.

23. Defendant Beech-Nut produces and/or causes the production of the Products and markets and distributes the Products in retail stores in the District of Columbia and throughout the United States.

24. Upon information and belief, Defendant Beech-Nut has caused harm to the general public of the District of Columbia.

FACTUAL ALLEGATIONS

A. Beech-Nut Labels and Markets the Products as “100% Natural.”

25. In marketing the Products to consumers, Beech-Nut relies heavily on representations that the Products are “100% natural” and contain only the substances that Beech-Nut specifies.

26. The lids of the product jars are labeled with “100% natural” around the brim.

27. Many Naturals product varieties include the word “just” as a descriptor on their label, stylized for emphasis (E.g., “*just* apples,” “*just* carrot, corn & pumpkin”).

28. Beech-Nut distributes promotional videos such as “Ask a Baby: Food So Simple a Baby Can Tell You™.” In “Ask a Baby,” babies are shown on a farm in Sodus, New York, which Beech-Nut indicates is where it sources its apples from, or is among the places from which it sources apples. Babies are depicted putting their mouths on freshly picked apples which have not been washed, giving the unmistakable impression that pesticides are not used on the apples sourced by Beech-Nut.⁴

⁴ Beech-Nut Nutrition Co., *Ask a Baby: Food So Simple a Baby Can Tell You™*, YouTube (Nov. 6, 2018), https://www.youtube.com/watch?v=_Ga-VmiKsQA.

29. Beech-Nut also purports to identify on its website the exact percentage of each ingredient contained in Naturals products.⁵ For example, the ingredients in the Just Apples variety of the Products is listed as “100% apples”⁶ and the ingredients of the Apples, Cinnamon & Granola variety are listed as “74.4% apples, 20% water, 4% oats, 1% barley flakes, 0.5% amaranth flour, 0.1% cinnamon.”⁷

30. Beech-Nut advertises in television commercials that its baby food is “jarred baby food with nothing artificial,”⁸ while the Beech-Nut website contains statements such as “Real food. Nothing else”;⁹ “we make it like you make it. Just gently-cooked, real ingredients go into our jars”;¹⁰ “Just the stuff is all you need. Nothing extra or unnecessary.”¹¹

31. The Beech-Nut website also features a “frequently asked questions” section, which provides the following answer to the question “What does ‘100% natural’ mean?”: “At Beech-Nut we make foods for babies using simple, all-natural ingredients from places that nurture their fruits and vegetables and care about their quality. We never use artificial preservatives—nobody really needs modified starch, salt or harsh spices, especially babies. ... We’re not fans of pesticides; our internal standards are significantly stricter than federal requirements.”¹²

B. Representations That Baby Food Is “100% Natural” Are Material to Parents.

⁵ Elizabeth Crawford, *Allegations of Misleading Baby Food Labels Spurs Changes in Market*, FoodNavigator (last updated June 3, 2015), <https://www.foodnavigator-usa.com/Article/2015/06/03/Allegations-of-misleading-baby-food-labels-spurs-changes-in-market>.

⁶ *Naturals Just Apples Jar*, Beech-Nut Nutrition Co., <https://www.beechnut.com/product/naturals-just-apples-jar/> (last visited Apr. 5, 2019).

⁷ *Naturals Apple, Cinnamon & Granola Jar*, Beech-Nut Nutrition Co., <https://www.beechnut.com/product/naturals-apple-cinnamon-granola-jar/> (last visited Apr. 5, 2019).

⁸ *Turn the Labels Around* (Beech-Nut Nutrition Co. 2017), available at <https://www.ispot.tv/ad/A9Om/beechnut-turn-the-labels-around#>.

⁹ Beech-Nut Nutrition Co., <https://www.beechnut.com> (last visited Apr. 5, 2019).

¹⁰ Beech-Nut Nutrition Co., *Our Story*, *supra* note 3.

¹¹ *Id.*

¹² *Frequently Asked Questions*, Beech-Nut Nutrition Co., <https://www.beechnut.com/frequently-asked-questions/> (last visited Apr. 5, 2019).

32. Per capita sales of baby food have dropped precipitously in the United States over the past 15 years.

33. According to Defendant Beech-Nut, “If you look at the per-baby amount of ounces consumed from the aisle, in 2005, a baby would consume on average 1,700 ounces. In 2012, that number was just less than 1,200 ounces.”¹³

34. Beech-Nut’s representations about the naturalness and transparency of the Products constitute a highly deliberate attempt to increase Beech-Nut’s sales, based on evidence that consumers increasingly value such attributes.

35. Beech-Nut conducted qualitative and quantitative consumer studies of over 2,000 moms, concluding that “moms seek ‘real food’ with ‘clean’ ingredient labels. They want to know what’s in the jar and where it comes from.”¹⁴ According to Beech-Nut’s research, the drop in sales of baby food has occurred because “many moms are increasingly making baby food at home, where they feel more confident that the ingredients are simple, wholesome and real.”¹⁵

36. These trends among parents are consistent with consumers at large, who increasingly seek out natural foods. A recent Consumer Reports survey of 1,004 adult U.S. residents found, for example, that 59% of consumers now check to see if their food is natural when shopping for food.¹⁶ A similar survey conducted by Nielsen revealed that nearly 30% of North

¹³ Anne Marie Mohan, *Beech-Nut Becomes a Disruptive Force in Baby Food*, Packaging World (June 2, 2014), <https://www.packworld.com/article/food/baby/beechnut-becomes-disruptive-force-baby-food>.

¹⁴ Rick Lingle, *Beech-Nut Transforms Baby Food, Packaging and Itself*, Packaging Digest (Dec. 22, 2014), <https://www.packagingdigest.com/jars/beechnut-transforms-baby-food-packaging-and-itself-141222>.

¹⁵ Beech-Nut Nutrition Co., *Beech-Nut Launches New Baby Food Line Completely Inspired by Homemade*, *supra* note 2.

¹⁶ National Research Center, Consumer Reports, *Food Labels Survey 2* (2014), <http://www.panna.org/sites/default/files/ConsumerReportsFoodLabelingSurveyJune2014.pdf>.

American consumers consider whether a food product has all-natural ingredients to be a “very important” attribute in making purchase decisions.¹⁷

37. Consumers are also willing to pay more for foods that are natural than those that are not. In one recent study, researchers found that U.S. consumers are willing to pay 20% more on average for “natural” grocery products.¹⁸ Similarly, another recent survey indicated that 73% of U.S. consumers are willing to pay a premium for natural food at least “some of the time,” with 22% willing to pay this premium “all of the time.”¹⁹

38. In response, Beech-Nut has sought to rebrand itself as a purveyor of natural baby food that is “like what moms make in their own kitchens,”²⁰ with the hope of reversing the “silent, pernicious trend” of parents making their own baby food at home,²¹ by launching its Naturals line and marketing the Products aggressively.

C. The Products Contain Acetamiprid, Captan, and Glyphosate.

39. Tests conducted by independent laboratories using liquid chromatography mass spectrometry have revealed that the Products purchased by CHD contain residues of multiple synthetic pesticides.

40. The Just Apples variety contains:

- i. between .039 and .040 parts-per-million (ppm) of acetamiprid; and

¹⁷ The Nielson Company, *We Are What We Eat: Healthy Eating Trends Around the World* (2015), <https://www.nielsen.com/content/dam/nielsen-global/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-%20January%202015.pdf>.

¹⁸ Julianna M. Butler & Christian A. Vossler, *What Is an Unregulated and Potentially Misleading Label Worth? The Case of “Natural”-labelled Groceries*, 70 *Envtl. and Res. Econ.* 545, 545 (2017).

¹⁹ Maria Steingoltz et al., *Consumer Health Claims 3.0: The Next Generation of Mindful Food Consumption*, Executive Insights (L.E.K. Consulting, Chicago, I.L.), Oct. 15, 2018, at 5, <https://www.lek.com/sites/default/files/insights/pdf-attachments/2051-Healthy-Food-Claims.pdf>.

²⁰ Beech-Nut Nutrition Co., *Beech-Nut Launches New Baby Food Line Completely Inspired by Homemade*, *supra* note 2.

²¹ Strom, *supra* note 1.

- ii. between .306 and .360 ppm of captan.
- 41. The Apples, Cinnamon & Granola variety contains:
 - i. between .103 and .151 ppm of captan; and
 - ii. up to .013 ppm of glyphosate.
- 42. The Apple & Pumpkin variety contains:
 - i. up to .012 ppm of acetamiprid; and
 - ii. between .177 and .233 ppm of captan.
- 43. The Just Mango, Apple & Avocado variety contains:
 - i. up to .012 ppm of acetamiprid; and
 - ii. up to .414 ppm of captan.
- 44. Acetamiprid is a neonicotinoid insecticide. Neonicotinoids are a class of synthetic insecticides chemically related to nicotine. Neonicotinoids were developed in the 1990s in response to the increasing resistance of insects to traditional pesticides.
- 45. Acetamiprid is created by substituting the amino hydrogens of the carboxamidine acetamidine with a (6-chloropyridin-3-yl) methyl and methyl group and the hydrogen attached to the imino nitrogen of acetamidine with a cyano group.
- 46. Acetamiprid is not a natural substance.
- 47. Captan is a synthetic chloroalkyl thio fungicide introduced in 1949 by the Standard Oil Development Company.
- 48. Captan is formed by reacting tetrahydrophtalimide, synthesized from maleic anhydride butadiene and ammonia, with perchloromethylmercaptan.
- 49. Captan is not a natural substance.

50. Glyphosate is a synthetic biocide invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trademark Roundup.

51. Glyphosate is derived from the amino acid glycine. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group.

52. Glyphosate is not a natural substance.

D. Reasonable Consumers Understand “Natural” Foods to Be Free from Pesticides.

53. Surveys show that reasonable consumers expect “natural” foods to be free from pesticides.

54. A 2014 Consumer Reports survey, for example, found that 66% of Americans believe that a “natural” label on food means that no pesticides were used in the production of that food.²²

55. Similarly, nearly 40% of respondents in a recent survey conducted by an agricultural economist indicated that they understand “natural” food to mean food that contains no pesticide residues.²³

56. Reasonable consumers would not expect that the Products contain residues of acetamiprid, captan, and glyphosate, when the Products are labeled “100% natural” and are promoted as containing “Real food. Nothing else.”

57. Reasonable consumers also would not expect that the Products contain such residues, when many of the baby foods are labeled and advertised as containing “*just*” specific fruits and vegetables.

²² National Research Center, *supra* note 16, at 8.

²³ Jayson L. Lusk, *Consumer Perceptions of Healthy and Natural Food Labels* 21 (Jan. 15, 2019), https://static1.squarespace.com/static/502c267524aca01df475f9ec/t/5c4df49440ec9a53af435ab4/1548612761167/report_revised.pdf.

CAUSE OF ACTION

58. Plaintiff incorporates by reference all the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

59. Plaintiff brings this claim on behalf of itself and the general public against Defendant Beech-Nut pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), for violations of the District of Columbia Consumer Protection Procedures Act (DC CPPA), D.C. Code § 28-3901, *et seq.*

60. Defendant Beech-Nut labels, markets, and advertises its Naturals baby foods as “100% natural,” even though the baby foods contain residues of multiple synthetic pesticides.

61. Defendant Beech-Nut labels, markets, and advertises many of the Products as containing “*just*” specific fruits and vegetables, even though those baby foods also contain residues of multiple artificial pesticides.

62. Many consumers actively seek out natural foods. They prefer natural foods to those that are not natural, and a significant portion are willing to pay more for foods that are natural than for foods that are not.

63. According to Beech-Nut’s own research, parents “seek ‘real food’ with ‘clean’ ingredient labels [because they] want to know what’s in the jar and where it comes from.”²⁴

64. Reasonable consumers understand food labels and advertisements containing representations that a food product is “natural” to mean that the food is free from pesticide residues.

65. Reasonable consumers also understand food labels and advertisements containing representations that a food product contains “*just*” specific fruits and vegetables to mean that the food does not also contain the residues of multiple synthetic pesticides.

²⁴ Lingle, *supra* note 14.

66. Defendant Beech-Nut is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a merchant under § 28-3901(a)(3), and provides “goods” within the meaning of § 28-3901(a)(7).

67. In labeling, marketing, and advertising its Products as “100% natural” and as containing just specific fruits and vegetables, Defendant Beech-Nut has represented that a good has a source, certification, characteristics, ingredients, and/or benefits that it does not have, and has represented that a good is of a particular standard, quality, or grade when in fact it is of another. Defendant Beech-Nut has therefore engaged in deceptive or unfair trade practices in violation of D.C. Code §§ 28-3904(a), (d).

68. Furthermore, because whether a food product is natural is a material fact to consumers, and because reasonable consumers do not expect “100% natural” foods to contain pesticide residues, Defendant Beech-Nut has misrepresented a material fact that has a tendency to mislead, and has used ambiguity as to a material fact that has a tendency to mislead. Defendant Beech-Nut has therefore engaged in deceptive or unfair trade practices in violation of D.C. Code §§ 28-3904(e), (f-1).

69. Additionally, because whether a baby food product transparently discloses its contents is material to parents, and because a reasonable parent would not expect a baby food labeled as containing “*just*” specific fruits and vegetables to also contain residues of multiple artificial pesticides, Defendant Beech-Nut has misrepresented a material fact that has a tendency to mislead, and has used ambiguity as to a material fact that has a tendency to mislead. Defendant Beech-Nut has therefore engaged in deceptive or unfair trade practices in violation of D.C. Code §§ 28-3904(e), (f-1).

70. By failing to state that its Products contain acetamiprid, captan, and/or glyphosate, when those products are represented as “100% natural” and/or containing “*just*” specific fruits and vegetables, Defendant Beech-Nut has also failed to state a material fact where such failure has a tendency to mislead. Defendant Beech-Nut has therefore engaged in a deceptive or unfair trade practice in violation of D.C. Code § 28-3904(f).

71. The DC CPPA makes such conduct unlawful trade practices “whether or not any consumer is in fact misled, deceived, or damaged thereby.” D.C. Code § 28-3904.

72. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

73. Plaintiff is a nonprofit organization pursuant to D.C. Code § 28-3905(k)(1)(C) that on April 29, 2019, purchased the Products in order to test or evaluate their qualities.

74. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

75. Plaintiff is a public-interest organization pursuant to D.C. Code § 28-3905(k)(1)(D) and brings this action on behalf of consumers who could bring the action under D.C. Code § 28-3905(k)(1)(A).

76. Through §§ 28-3905(k)(1)(C) and (k)(1)(D)(i), the DC CPPA allows for non-profit organizational standing and public interest organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of Constitutional standing under Article III.

77. Plaintiff Children’s Health Defense is a “person” within the meaning of D.C. Code § 28-3901(a)(1), a “non-profit organization” within the meaning of § 28-3901(a)(14), and a “public interest organization” within the meaning of § 28-3901(a)(15).

78. Plaintiff Children’s Health Defense brings this claim against Defendant Beech-Nut for Defendant Beech-Nut’s violation of the DC CPPA, D.C. Code § 28-3901 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Children’s Health Defense prays for judgment against Defendant Beech-Nut and requests the following relief:

- A. a declaration that Defendant Beech-Nut’s conduct is in violation of the DC CPPA;
- B. an order enjoining Defendant Beech-Nut’s conduct found to be in violation of the DC CPPA, and requiring corrective advertising;
- C. an order granting Plaintiff Children’s Health Defense costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- D. such further relief, including equitable relief, as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff Children’s Health Defense hereby demands a trial by jury.

DATED: *Draft*

DRAFT

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