

09CV3039

JUDGE DER-YEGHIAYAN

MAGISTRATE JUDGE DENLOW

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SARA LEE CORPORATION,)
)
Plaintiff,)
)
v.)
)
KRAFT FOODS INC., and)
KRAFT FOODS GLOBAL, INC.,)
)
Defendants.)

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

COMPLAINT

Sara Lee Corporation (“Sara Lee”) brings this action against Kraft Foods Inc. (“Kraft Foods”) and Kraft Foods Global, Inc. (“Kraft Global”) (collectively “Defendants” or “Kraft”) to obtain remedies for violations of federal and state law. The violations are in the form of willful, false, misleading, deceptive, defamatory, and unfair commercial advertising and promotion of Oscar Mayer hot dogs by Kraft Foods and/or Kraft Global.¹

PARTIES

1. Plaintiff Sara Lee is incorporated under the laws of the State of Maryland and has its principal place of business at 3500 Lacey Road, Downers Grove, Illinois 60515.

2. On information and belief, Defendant Kraft Foods is incorporated under the laws of the Commonwealth of Virginia and has its principal place of business at Three Lakes Drive, Northfield, Illinois 60093. On information and belief, Defendant, Kraft Global, is incorporated under the laws of the State of Delaware with its headquarters in the State of Illinois. On

¹ Unless the context of this Complaint states otherwise, use of “Oscar Mayer” in relation to a product means an Oscar Mayer-branded and produced Kraft product and use of “Oscar Mayer” in relation to an act, failure to act, or other omission means a Kraft act, failure to act, or other omission committed by and through Kraft’s Oscar Mayer division.

information and belief, Oscar Mayer, which has offices at 910 Mayer Avenue, Madison, Wisconsin 53704, is an unincorporated division of Kraft Foods that has business relationships with Kraft Global.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over Sara Lee's Lanham Act claim because it arises under federal statute. 15 U.S.C. § 1125(a); 28 U.S.C. §§ 1331, 1338(b). This Court has supplemental jurisdiction over Sara Lee's state law claims pursuant to 28 U.S.C. § 1367.

4. Kraft is subject to personal jurisdiction in this judicial district because it does and/or transacts business within this State and District, and has made and established contacts sufficient to permit the Court's exercise of personal jurisdiction under 735 Ill. Comp. Stat. 5/2-209.

5. Venue for this action is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c).

FACTUAL BACKGROUND

6. Sara Lee's Ball Park® brand and Kraft's Oscar Mayer® brand hot dogs are the major competitors for sales of those products in the United States. Hot dogs are a food also known by the name of "frankfurters," "franks," "wieners," and other names. They are sold in a variety of meat, poultry, non-meat, and non-poultry forms.

7. Sara Lee is a leading, and by some measurements apparently *the* leading, manufacturer of hot dogs sold in interstate commerce to consumers in the United States; the company is the unquestioned leader in sales of beef hot dogs. Sara Lee's principal line of hot dogs is sold under the Ball Park® brand. The following varieties of hot dogs, among others, are

sold under the Ball Park brand in a number of sizes and quantities: Beef; Angus Beef; Meat (beef with pork and/or with turkey, combined); Cheese; Turkey; Grillmaster (hearty versions in various forms), and Better For You Franks (fat-free, “lite,” etc.).

8. Oscar Mayer competes with Sara Lee by, among other means, manufacturing and marketing in interstate commerce a line of hot dogs to consumers under the Oscar Mayer® brand. The following varieties of hot dogs, among others, are sold under the Oscar Mayer brand in a number of sizes and quantities: Beef (“Regular” and “Jumbo”); Wieners (in a number of sub-varieties); Premium (beef and cheddar, jalapeno and cheddar); Cheese; Smokies; Fast Franks, and Mini Hot Dogs.

9. “Oscar Mayer Jumbo Beef Franks” are sold in one-pound packages of eight hot dogs that are of approximately two ounces in weight (57 grams) each. On information and belief, one of the reasons that the two-ounce Oscar Mayer product is named “Jumbo” is that the “Regular” Oscar Mayer Beef Franks only are approximately 1.6 ounces in weight (45 grams) each. Nonetheless, Oscar Mayer Jumbo Beef Franks do not contain appreciably more or less beef than competitive hot dogs that they are positioned against by Oscar Mayer marketers.

10. Oscar Mayer Jumbo Beef Franks are not widely available to consumers compared to the two-ounce, five-inch long Sara Lee Ball Park Beef Franks against which Oscar Mayer positions its Jumbo product in marketing. The commonly-accepted measure of the availability of a product to consumers is the All-Commodity Volume Weighted Distribution (“ACV” or “ACV weighted distribution”), which is the quotient (answer) derived from dividing the number of stores offering the product during a time period by the number of all applicable stores for the same period. Recent average weekly ACV weighted distribution showed that Oscar Mayer Jumbo Beef Franks were available in less than 50 percent of such stores, while the above-

mentioned variety of Ball Park Beef Franks were available in more than 90 percent of such stores.

11. In addition to beef, Oscar Mayer Jumbo Beef Franks contain the following, according to the ingredient statements on the package and on the Oscar Mayer website: water, salt, corn syrup, dextrose, sodium lactate, sodium phosphates, sodium diacetate, ascorbic acid, extracts of paprika, dried garlic, spice, and sodium nitrite. On information and belief, more than 20 percent of Oscar Mayer Jumbo Beef Franks consists of these non-beef ingredients, with most of that being water.

12. Oscar Mayer commercially advertises and promotes its Oscar Mayer Jumbo Beef Franks in interstate commerce as “the 100% pure beef dog.” *See, e.g.*, Complaint Exhibits 1 (website ad) and 2 (print ad). The product is neither “100%” beef nor “pure” beef. This willful, literally false attempt to distinguish Oscar Mayer Jumbo Beef Franks from the competition is done by Oscar Mayer despite its being well aware of the chemical and other non-beef contents of this product. Oscar Mayer also is well aware that competing Sara Lee Ball Park products are of comparable beef composition and are not promoted with such a false claim; Sara Lee’s requests that Oscar Mayer discontinue those false advertisements have been rejected. Such a facially-false claim, especially in light of Sara Lee’s refusal to compete by joining in the falsity about beef hot dogs, is material because Oscar Mayer’s advertising likely will, and does, motivate a significant proportion of consumers to purchase Oscar Mayer Jumbo Beef Franks and divert potential purchasers from purchasing the competing Sara Lee Ball Park hot dogs.

13. Oscar Mayer also commercially advertises and promotes its Oscar Mayer Jumbo Beef Franks in interstate commerce through a series of ads and promotions claiming that the product was found, in a national taste test, to be better tasting than other hot dogs (collectively,

these claims are referred to as “Oscar Mayer Taste Claims”). *See, e.g.*, Complaint Exhibit 3 (print ad that is identical in all relevant respects to an Oscar Mayer website ad). The common features in most of these taste superiority advertisements are photographs of a package of Oscar Mayer Jumbo Beef Franks and the following types of claims:

a. The first common element in the ads is a headline that makes a representation about superiority, for example:

- 1) “The best tasting beef hot dog* has a name. It’s O-S-C-A-R.”
- 2) “It was a good race, but in the end, our dog won.”
- 3) “Try the taste that knocked the others out of the park.”
- 4) “These days, it’s Ball Park® and Hebrew National® who are wishing they were an *Oscar Mayer* wiener.”
- 5) “Today only, taste the beef dog that beat Ball Park® and Hebrew National® -- for free.*”

b. The second common element in the ads is a sub-headline or copy that more specifically asserts superiority expressly against named entire brands of competitive products, for example the following appeared under the above-quoted headlines in the order indicated (italics in claims are in original versions):

- 1) “Taste the dog that beat Ball Park® and Hebrew National® in a national taste test.”²
- 2) “*Oscar Mayer* Jumbo Beef Franks beat Ball Park® and Hebrew National® in a national taste test.*”
- 3) “*Oscar Mayer* Jumbo Beef Franks beat *Ball Park*® and *Hebrew National*® in a national taste test.*”

² The website version of this superiority claim differs in only one way from the print version; it specifies the referenced Oscar Mayer “dog” as a “beef dog” and is written as follows: “Taste the beef dog that beat Ball Park® and Hebrew National® in a national taste test.”

- 4) “Actually, they’re wishing they were an *Oscar Mayer* Jumbo Beef Frank. The 100% pure beef dog that beat both in a national taste test.*”
- 5) “Why are we giving away up to \$1million worth of our *Oscar Mayer* Jumbo Beef Franks? Because they beat the others in a national taste test. We’re confident once you taste them, you’ll come back for more.”

c. The final common feature of most of the Oscar Mayer Taste Claims is an unclear and inconspicuous disclaimer located at a footnote, which is written in very small type. This disclaimer necessarily and falsely implies that more than one variety of Ball Park beef franks and more than one variety of Hebrew National beef franks was tested and “beaten” by Oscar Mayer Jumbo Beef Franks, yet the footnote deceptively fails to identify what products actually were tested. This Oscar Mayer disclaimer reads as follows: “*As compared to the leading beef franks of Ball Park and Hebrew National Brands.”

d. On information and belief, these claims and/or similar claims have appeared, are appearing, and/or are scheduled to appear on the Oscar Mayer website, in print media, and in special promotions such as signs on Oscar Mayer’s “Wienermobile,” a hot dog-shaped vehicle that promotes Oscar Mayer and its products in interstate commerce.

14. The Oscar Mayer Taste Claims are so-called “establishment claims,” in that they assert expressly and/or implicitly that the truth of the claims is established by a reliable, properly performed, and properly analyzed scientifically-based sensory test.

15. On information and belief, the alleged testing relied upon for the Oscar Mayer Taste Claims merely tested two competitive products versus Oscar Mayer Jumbo Beef Franks. One of these two products was a single Sara Lee Ball Park Beef Franks stock-keeping unit (a five-inch beef variety) and the other one was a Hebrew National stock-keeping unit, the identity of which will be sought in discovery during this proceeding.

16. The Oscar Mayer Taste Claims are literally false because, among other reasons and on information and belief, the alleged underlying taste test in support thereof is unreliable, improperly performed, and not properly analyzed. Furthermore, on information and belief, Oscar Mayer decided to publish and maintain the Oscar Mayer Taste Claims knowing that they were literally false.

17. The Oscar Mayer Taste Claims are false by necessary implication because they necessarily and falsely imply that taste testing has proved that Oscar Mayer Jumbo Beef Franks are better tasting compared to more hot dog products than the mere two products that were subject to that cited testing. Indeed, the claims necessarily imply taste superiority for Oscar Mayer Jumbo Beef Franks compared not only to the entire line of Ball Park beef hot dogs, but also to Ball Park's entire line of hot dogs. Furthermore, on information and belief, Oscar Mayer decided to publish and maintain the Oscar Mayer Taste Claims knowing that they were false by necessary implication.

18. In addition to their being literally false due to the unreliability of the cited testing and being false by necessary implication due to the overstatement of the number of products for which taste superiority is claimed, the Oscar Mayer Taste Claims are misleading, deceptive, and unfair for two similar reasons, among others. First, the Oscar Mayer Taste Claims imply to a substantial portion of their audience that taste testing has proved that Oscar Mayer Jumbo Beef Franks are better tasting compared to more hot dog products than merely the single Ball Park product and single Hebrew National product that were subject to that alleged cited testing. Second, to facilitate the deception, most of the Oscar Mayer Taste Claims employ an ambiguously-deceptive disclaimer to obscure the fact that only one Ball Park and one Hebrew National product were tested and to enhance the impression that the Oscar Mayer product was

superior to entire lines of Sara Lee and Hebrew National products. The willfulness and intended scope of the deception is exemplified by Oscar Mayer Taste Claims in the form of promotions that are devoid of even the hard-to-read disclaimer; they make facially false taste superiority claims for Oscar Mayer Jumbo Beef Franks compared to the entire Ball Park and Hebrew National product lines. *See, e.g.*, Complaint Exhibit 5.

19. On information and belief, Oscar Mayer decided to publish and maintain the Oscar Mayer Taste Claims knowing that they were misleading, deceptive, and unfair and that they would be interpreted as taste superiority claims for all Oscar Mayer hot dogs, not just Oscar Mayer Jumbo Beef Franks. In that regard, it is instructive to review another false and misleading Oscar Mayer promotion, attached hereto as Complaint Exhibit 4. This is a free-standing insert (“FSI”) of the type often found in Sunday newspapers, with a “Save \$1.00 on 2” coupon. The claims in the FSI are false and misleading product line claims comparing Oscar Mayer Jumbo Beef Franks with entire lines of Ball Park and Hebrew National hot dogs, while at the same time emphasizing “Oscar Mayer,” “Ball Park,” and “Hebrew National,” the names for those entire branded lines: “Try the taste that knocked the others out of the park. *Oscar Mayer* Jumbo Beef Franks beat *Ball Park*® and *Hebrew National*® in a national taste test.*” (Italics in original claims.) Those claims mentioned the Oscar Mayer Jumbo Beef Franks variety only once (and not in the headline), and the coupon was for “any OSCAR MAYER Hot Dogs” (underscoring added; capitalization in original). The FSI included the standard, hard-to-read, and misleading Oscar Mayer disclaimer, which contradicts the overly-broad claims: “*As compared to the leading beef franks of Ball Park and Hebrew National brands.” Significantly, and on information and belief, this FSI and its coupon for any Oscar Mayer hot dog product was distributed

nationally, or at least in large regions, even though Oscar Mayer Jumbo Beef Franks are in limited distribution compared to the Sara Lee Ball Park product that the claim targeted.

20. At all relevant times, Oscar Mayer knew that its “100% Pure Beef” and Oscar Mayer Taste Claims were literally false and misleading representations of fact and such knowing use demonstrates that Oscar Mayer has been acting willfully, maliciously, and otherwise in bad faith. Sara Lee expressed concern about the beef content claim in 2008 and about both claims recently in 2009. Nonetheless, Oscar Mayer caused the publication of a three-quarter-page advertisement that contained both the false “100% Pure Beef” and Oscar Mayer Taste Claims in the May 17, 2009, edition of *Parade* Magazine and a press release on May 20, 2009. That ad is attached as Complaint Exhibit 2; the press release is Complaint Exhibit 6. Oscar Mayer also caused the publication in the May 20, 2009, edition of *USA Today* of a full-page version of the Oscar Mayer Taste Claims without the “100% Pure Beef” claim, but with an offer of coupons, available on the Oscar Mayer website, for free products that makes the claims facially material. That website offer also repeats the false and misleading claims. In addition, Oscar Mayer has been hosting public events built around the false and misleading Oscar Mayer Taste Claims. *See, e.g.*, Complaint Exhibit 6 (Oscar Mayer false and misleading press release). Such willful falsity and deception may be taken into consideration in determining, pursuant to the violated federal and state laws, whether Oscar Mayer should be ordered to issue corrective advertising and whether Sara Lee should receive injunctive relief, actual damages, punitive damages, enhanced damages of up to three times actual damages, the disgorged profits unlawfully reaped by Oscar Mayer, and associated legal fees and costs incurred by Sara Lee.

21. As a result of Oscar Mayer’s willful publication and continued use of the unlawful “100% Pure Beef” and Oscar Mayer Taste Claims, Sara Lee has suffered and is

continuing to suffer substantial irreparable and monetary harm, including damage to Sara Lee's sales, profits, business relationships, reputation, and goodwill. In addition, consumers are being harmed by their reliance on the falsities and deceptions within those claims. Such harms are likely to continue until the "100% Pure Beef" and Oscar Mayer Taste Claims are discontinued and corrective advertising is issued to dispel the lingering false impressions created by those Claims.

COUNT ONE: VIOLATIONS OF THE LANHAM ACT

22. Sara Lee incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

23. Oscar Mayer has violated and continues to violate Section 43(a)(1)(B) of the Federal Lanham Act, 15 U.S.C. § 1125(a)(1)(B), for the reasons stated in this Count.

24. Sara Lee has been damaged and likely will continue to be damaged by the Oscar Mayer "100% Pure Beef" and Oscar Mayer Taste Claims, which are willfully false and misleading representations of fact in interstate commerce. These claims have a tendency to deceive, and actually do deceive, a substantial part of their audience. Such harm and deception is caused by the willfully false and misleading misrepresentations in these claims of the nature, characteristics, inherent qualities, and commercial activities of Oscar Mayer's goods and of Sara Lee so as to likely and actually cause the purchase of Oscar Mayer goods in lieu of those of Sara Lee.

25. The "100% Pure Beef" claim and Oscar Mayer Taste Claims have deceived, and likely will continue to deceive, a substantial portion of their intended audience who relied on such claims, including purchasing and non-purchasing consumers of beef and other hot dogs. Moreover, the literal falsity of the Oscar Mayer "100% Pure Beef" and of the Oscar Mayer Taste

Claims independently establishes the materiality of those claims, as do the misrepresentations in those claims of the inherent quality of Oscar Mayer hot dogs compared to the inherent quality of Sara Lee hot dogs.

26. The false and misleading Oscar Mayer Taste Claims expressly identify Sara Lee's Ball Park brand of hot dogs by name as being inferior in taste to Oscar Mayer Jumbo Beef Franks, thereby creating a presumption of irreparable harm to Sara Lee due to the necessary diminishment of the value of Sara Lee's Ball Park Frank products. Moreover, Sara Lee has in fact suffered such harm as to which there is no adequate remedy at law.

27. On information and belief, Oscar Mayer's literally false and misleading representations of fact have caused, are causing, and are likely to continue to cause substantial and irreparable injury to Sara Lee, including damage to Sara Lee's Ball Park hot dog sales, profits, business relationships, reputation, and goodwill. On information and belief, due to Oscar Mayer's false and misleading representations, Sara Lee has incurred actual damages in amounts to be determined at trial from lost sales and profits, devoting substantial additional resources toward safeguarding its affected customer relationships, attempting to convince Oscar Mayer to cease the misrepresentations, and the costs necessarily incurred in related legal proceedings.

28. On information and belief, the Oscar Mayer "100% Pure Beef" claim and Oscar Mayer Taste Claims have created independent lingering false and misleading impressions among consumers that must be dispelled by corrective advertising by Oscar Mayer.

**COUNT TWO: VIOLATIONS OF THE ILLINOIS
CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**

29. Sara Lee incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

30. Oscar Mayer has violated and continues to violate the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, *et seq.*, for the reasons stated in this Count.

31. Oscar Mayer's false and deceptive "100% Pure Beef" claim and false and deceptive Oscar Mayer Taste Claims have been published on the Internet by Kraft and/or Oscar Mayer and published elsewhere to transmit them to the general public, including consumers in Illinois. Such publications of the false and deceptive claims have been willful and otherwise in bad faith, thereby constituting consumer fraud as well as unfair and otherwise unlawful trade practices for which Sara Lee may be awarded punitive damages, an injunction, and reasonable attorneys' fees and costs.

32. Such Oscar Mayer commercial practices are material in that they are likely to influence the purchasing decisions of consumers, including potential and actual Sara Lee customers. Thus, such practices generate and involve a consumer protection concern within the purview of this statute.

33. Such Oscar Mayer practices also have injured, and threaten to continue to injure, the business, reputation, good will, and property of Sara Lee, thereby causing continuing damages to Sara Lee of a type and in an amount to be determined at trial. These actions also have caused irreparable injury to Sara Lee for which there is no adequate remedy at law. Unless and until these continuing practices by Oscar Mayer are enjoined by this Court, Sara Lee will continue to suffer irreparable injury from them without an adequate remedy at law.

**COUNT THREE: VIOLATIONS OF THE ILLINOIS
UNIFORM DECEPTIVE TRADE PRACTICES ACT**

34. Sara Lee incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

35. Oscar Mayer has violated and continues to violate the Illinois Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/1, *et seq.*, for the reasons stated in this Count.

36. Oscar Mayer has engaged in deceptive trade practices during the course of its business by disparaging the goods, services, and business of Sara Lee by making, displaying and disseminating false, deceptive, confusing and/or misleading representations of fact regarding Sara Lee's products and hence its reputation.

37. Oscar Mayer has knowingly and willfully engaged in such unlawful practices with knowledge of their false and/or misleading nature. Oscar Mayer has continued to engage in such unlawful practices even after the false and misleading nature of its statements was called to its attention and legal action was threatened.

38. Such unlawful practices are material in that they are likely to influence, and have influenced, purchasing decisions by potential and actual Sara Lee customers and others.

39. Sara Lee has been damaged monetarily and is likely to continue to be so damaged by such Oscar Mayer unlawful practices in an amount to be determined at trial. Moreover, such practices have caused and are continuing to cause Sara Lee irreparable damage for which there is no adequate remedy at law.

40. Such unlawful commercial conduct on the part of Oscar Mayer constitutes willful deceptive trade practices under the statute for which Sara Lee is entitled to damages, injunctive relief, legal costs and reasonable attorneys' fees.

**COUNT FOUR: VIOLATIONS OF ILLINOIS
COMMON LAW ON UNJUST ENRICHMENT**

41. Sara Lee incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

42. Kraft and/or Oscar Mayer violated and continue(s) to violate the Illinois common law on unjust enrichment for the reasons stated in this Count.

43. To the detriment of Sara Lee, Kraft and/or Oscar Mayer have been, and continue to be, unjustly enriched as a result of Oscar Mayer's dissemination of the literally false, misleading, and deceptive statements alleged above.

44. On information and belief, Kraft and/or Oscar Mayer benefitted from the unlawful and/or wrongful conduct alleged herein in the form of sales of their products and profits from those sales that they otherwise would not have obtained, as well as from decreasing the good will and reputation associated with Sara Lee products.

45. As between the parties, it would be unjust and inequitable for Kraft and/or Oscar Mayer to retain the benefits attained by their unlawful actions. Accordingly, Sara Lee seeks full restitution and disgorgement to it of Kraft's and/or Oscar Mayer's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT FIVE: VIOLATIONS OF ILLINOIS
COMMON LAW ON COMMERCIAL DISPARAGEMENT**

46. Sara Lee incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

47. Oscar Mayer has violated and continues to violate the Illinois common law on commercial disparagement for the reasons stated in this Count.

48. Oscar Mayer has made, and is making, statements about Sara Lee's products to potential purchasers and consumers that are literally false and false by necessary implication. Those statements directly attack and harm the essential components of Sara Lee's business reputation, specifically the nature and quality of Sara Lee's products.

49. Oscar Mayer intended such statements to cause harm to Sara Lee's pecuniary interests and knew or should have known that such statements would cause such harm.

50. Oscar Mayer knew that such statements were false and false by necessary implication, or Oscar Mayer made the statements in reckless disregard for their truth or falsity.

51. Sara Lee has suffered actual damage as a proximate result of such statements.

**COUNT SIX: VIOLATIONS OF ILLINOIS
COMMON LAW ON TRADE DISPARAGEMENT**

52. Sara Lee incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

53. Oscar Mayer has violated and continues to violate the Illinois common law on trade disparagement for the reasons stated in this Count.

54. Oscar Mayer's false, deceptive, and/or misleading statements of fact have impugned goods owned and offered by Sara Lee.

55. Such Oscar Mayer statements constitute commercial conduct that is defamatory *per se* and have disparaged Sara Lee's business reputation, goods, and services.

56. Such commercial conduct on the part of Oscar Mayer amounts to willful trade disparagement under Illinois common law and for which Sara Lee is entitled to damages and injunctive relief.

57. Such commercial conduct has caused, and continues to cause, damages to Sara Lee, in an amount to be determined at trial, as well as irreparable injury to Sara Lee. Unless and until Oscar Mayer's continuing actions and misrepresentations are enjoined by this Court, Sara Lee will continue to suffer such irreparable injury, since Sara Lee has no adequate remedy at law.

**COUNT SEVEN: VIOLATIONS OF ILLINOIS
COMMON LAW ON UNFAIR COMPETITION**

58. Sara Lee incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

59. Oscar Mayer has violated and continues to violate the Illinois common law on unfair competition for the reasons stated in this Count.

60. Oscar Mayer has falsely, misleadingly, and deceptively misrepresented in commerce, through commercial communications to others, the nature, characteristics, properties and qualities of Sara Lee's goods and reputation.

61. Such Oscar Mayer commercial conduct regarding Sara Lee's reputation and goods are material and are likely to influence the purchasing decisions of potential and actual Sara Lee customers and others. Such commercial conduct constitutes unfair competition under the Illinois common law.

62. Such commercial conduct has caused, and continues to cause, damages to Sara Lee, in an amount to be determined at trial, as well as causing irreparable injury to Sara Lee for which it has no adequate remedy at law. Unless and until the aforementioned continuing Oscar Mayer commercial misconduct is enjoined by this Court, Sara Lee will continue to suffer such harm.

REQUESTS FOR RELIEF

Wherefore, Plaintiff Sara Lee respectfully requests that this Court enter a judgment that:

A. Preliminarily and permanently enjoins Kraft and its predecessors, successors, divisions, subsidiaries, or joint ventures thereof, together with any and all parent or affiliated companies or corporations, and all officers, directors, employees, agents, attorneys,

representatives, those acting in privity or concert with them, or on their behalf, from further dissemination of:

- (1) The “100% Pure Beef” claim;
- (2) The Oscar Mayer Taste Claims; and
- (3) Any other false, misleading, deceptive, defamatory, or unfair statements about Sara Lee and/or its products;

B. Orders Kraft to issue corrective advertising sufficient to dispel the lingering harmful effects of the “100% Pure Beef” claim and the Oscar Mayer Taste Claims;

C. Orders Kraft to pay Sara Lee’s actual damages caused by Kraft’s wrongful actions, in an amount to be determined at trial;

D. Orders Kraft to pay Sara Lee enhanced damages in the amount of treble Sara Lee’s actual damages;

E. Orders Kraft to disgorge to Sara Lee the profits Kraft and/or Oscar Mayer made as a result of the aforesaid unlawful actions;

F. Orders Kraft to pay Sara Lee punitive damages in an amount to be determined at trial;

G. Orders Kraft to pay Sara Lee’s actual legal costs and reasonable attorneys’ fees associated with this action; and

H. Provides Sara Lee such other relief as the Court, in its discretion, finds to be just.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Sara Lee demands a trial by jury of all issues triable of right by a jury.

DATED: May 20, 2009

Respectfully Submitted,

By: /s/ Michael T. Roche
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*Motion for admittance *pro hac vice* to be filed

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