UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KATY MANLEY, individually and on behalf of all others similarly situated, Plaintiff, v. THE HAIN CELESTIAL GROUP, INC., Defendant.	Case No. 1:18-cv-7101 The Hon. Jorge L. Alonso

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Plaintiff Katy Manley has literally made a federal case out of common sense instructions for sunscreen. Like most sunscreens, Hain Celestial's Alba Botanica Very Emollient Mineral Spray SPF 35 Sunscreen is in the form of an opaque white creamy substance, signaling to consumers that it should be rubbed into the skin until it is no longer visible. Plaintiff, however, claims that Hain Celestial supposedly mislabeled the sunscreen in two ways: (1) by not highlighting the obvious fact that consumers should rub it into the skin; and (2) by instructing consumers to "shake well before using" without disclosing that the sunscreen should be shaken for ten seconds. Plaintiff's theory of deception defies common sense and reasonable consumer expectations, and this Court should dismiss her lawsuit for several reasons:

First, Plaintiff cannot identify any affirmative misrepresentation on the sunscreen's labeling. Plaintiff does not dispute that the sunscreen provides SPF 35 sun protection if applied properly. Nor can Plaintiff plausibly allege that the statement "shake well before using" is an affirmative misrepresentation. The mere fact that Hain Celestial now directs users on another sunscreen product to "shake vigorously for 10 seconds" before applying does not establish that it is *ineffective* if shaken for less time — let alone that the instruction "shake well before using" is deceptive.

Second, Plaintiff also cannot establish a plausible claim of fraud by omission. Under Illinois law, it is well-established that a merely incomplete representation ordinarily does not give rise to a claim for consumer fraud; rather, a plaintiff must establish that the defendant's omission was deliberately "employed as a device to mislead" consumers. *Pappas v. Pella Corp.*, 944 N.E.2d 995, 998 (Ill. Ct. App. 2006). Here, Plaintiff alleges that Hain Celestial's labeling is misleading because it fails to disclose that the sunscreen is ineffective unless the user shakes it for ten seconds

and blends it into the skin. That is not nearly enough to establish a consumer fraud claim. Indeed, common sense dictates that the sunscreen — which is opaque, thick, and milky white — should be rubbed into the skin before going out into the sun. Absent any allegation that Hain Celestial concealed this information for the purpose of misleading consumers (or that this information was even material to consumers in the first place), Plaintiff's fraud-by-omission theory is implausible.

Third, Plaintiff's remaining claims fail for independent, claim-specific reasons. The breach of express warranty claim fails, as Plaintiff has not identified the exact terms of the alleged warranty and has not plausibly alleged that Hain Celestial breached any such warranty. The breach of implied warranty claims also fail: leaving aside their failure to allege that the sunscreen does not work as advertised, Plaintiff also cannot establish privity with Hain Celestial, as is required to state a breach of implied warranty claim in Illinois. Plaintiff's negligent misrepresentation claim is barred under Illinois law, which prohibits tort recoveries for purely economic losses. And Plaintiff's unjust enrichment claim must be dismissed as duplicative of her remaining claims.

Finally, even if Plaintiff could state a plausible claim against Hain Celestial (which she cannot), she cannot obtain injunctive relief. As Plaintiff concedes in her complaint, Hain Celestial has revised the labeling of the sunscreen to include instructions to "shake vigorously for 10 seconds before use" and to "blend well into skin with hand," which moots Plaintiff's claim for injunctive relief. Furthermore, even if Plaintiff could establish that she was deceived by Hain Celestial's advertising, she lacks standing to seek injunctive relief: now that she knows to shake the sunscreen vigorously for ten seconds and to rub it into her skin, there is no risk that she will be deceived in the future.

ALLEGATIONS OF THE COMPLAINT

Like most sunscreens, Alba Botanica Very Emollient Mineral Spray SPF 35 Sunscreen comes out of the bottle as a white, thick, creamy substance. *See id.* ¶ 29 (quoting reviews of the sunscreen from Amazon.com, which describe the Product as "white face paint" and note its "white thick consistency"). The label of the sunscreen directed the user to "SHAKE WELL before use." *Id.* ¶ 25. As Plaintiff's complaint notes, the new labeling includes slightly different instructions, which direct the user to "SHAKE VIGOROUSLY for 10 seconds before use" and to "blend well into skin with hand." *Id.* ¶ 20.

Plaintiff alleges that she purchased the sunscreen at a TJ Maxx store in May 2018 and attempted to use it later that month. *Id.* ¶¶ 32-33. Because she was allegedly "unaware of the need to shake the product vigorously for at least ten seconds and to blend it well into her skin after applying it," she alleges that the product was mislabeled. *See id.* ¶ 33.

Notably, Plaintiff does not allege that the ingredients in the sunscreen are defective or that it is ineffective if applied on the skin properly. Instead, she alleges that Hain Celestial failed to instruct consumers that they should rub the white creamy substance into their skin. For instance, Plaintiff alleges that the previous labeling "fails to warn the consumer about either the importance of shaking the product vigorously for at least ten seconds and blending the Product well into the skin after spraying it on as one would with traditional, non-spray sunscreen lotion." *Id.* ¶ 25. Plaintiff also alleges that the labeling failed to "advise . . . that [the sunscreen] provided less sun protection than Defendant otherwise advertised if not properly applied." *Id.* ¶ 26.

Plaintiff asserts six claims against Hain Celestial: (1) a claim for violations of the Illinois Consumer Fraud Act (Count I); (2) a claim for breach of express warranty (Count II); (3) a claim for breach of the implied warranty of merchantability (Count III); (4) a claim for breach of the

implied warranty of fitness for a particular purpose (Count IV); (5) a claim for negligent misrepresentation (Count V); and (6) a claim for unjust enrichment (Count VI). *See* Compl. ¶¶ 49-99. Plaintiff seeks a variety of remedies on behalf of the class, including actual damages, treble damages, costs and attorney's fees, pre- and post-judgment interest, disgorgement, and equitable and injunctive relief. *See* Prayer for Relief. Plaintiff seeks to assert these claims on behalf of a nationwide damages class under Rule 23(b)(3) and a nationwide injunctive relief class under Rule 23(b)(2). *See* Compl. ¶¶ 36-48.

ARGUMENT

To survive a motion to dismiss, a complaint "must 'contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Spector v. Mondelēz Int'l, Inc.*, 178 F. Supp. 3d 657, 661 (N.D. Ill. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not show[n]—that the pleader is entitled to relief' under Rule 8." *Martin v. Living Essentials, LLC*, 160 F. Supp. 3d 1042, 1045 (N.D. Ill. 2016) (citations and internal quotation marks omitted), *aff'd*, 653 F. App'x 482 (7th Cir. 2016). Rather, the pleader must "allege more by way of factual content to 'nudg[e]' his claim" of unlawful action "'across the line from conceivable to plausible.'" *Iqbal*, 556 U.S. at 683 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Moreover, "[d]etermining whether a complaint states a plausible claim for relief . . . requires the reviewing court to draw on its judicial experience and *common sense*." *Iqbal*, 556 U.S. at 679 (emphasis added). In light of that guidance from the Supreme Court, courts have regularly dismissed lawsuits where common sense belies the allegations in the complaint. *See, e.g., Stuart v. Cadbury Adams USA, LLC*, 458 F. App'x 689, 690 (9th Cir. 2011) (affirming

dismissal of false advertising lawsuit that "def[ied] common sense"); *Spector*, 178 F. Supp. 3d at 670-71 (applying "common sense" standard to dismiss false advertising lawsuit under Illinois law).

I. Plaintiff Has Not Stated a Plausible Claim Under the ICFA (Count I).

To state a claim for false advertising under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), a plaintiff must allege "(1) a deceptive or unfair act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on the deceptive or unfair practice; and (3) the unfair or deceptive practice occurred during a course of conduct involving trade or commerce." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 574 (7th Cir. 2012) (citation and internal quotation marks omitted). Like virtually all consumer fraud statutes, the ICFA requires a plaintiff to "allege conduct that plausibly could deceive a reasonable consumer." *In re 100% Grated Parmesan Cheese Mktg. & Sales Practices Litig.*, 275 F. Supp. 3d 910, 920 (N.D. Ill. 2017) (collecting cases). "[T]he facts alleged in a complaint attempting to show fraud under the ICFA must show not just the mere possibility of a fraud, but that fraud is a '*necessary or probable inference* from the facts alleged.'" *Spector*, 178 F. Supp. 3d at 672 (quoting *People ex rel. Hartigan v. E & E Hauling, Inc.*, 607 N.E.2d 165, 174 (Ill. 1992)).

Here, Plaintiff's ICFA claim is premised on the allegation that Hain Celestial failed to disclose that the sunscreen is effective only if it is shaken vigorously for ten seconds and blended into the skin. Whether one construes that theory as based on affirmative misrepresentations or deceptive omissions, it is woefully insufficient to state a plausible claim for relief.

A. Plaintiff Does Not Identify Any Deceptive Statement on the Sunscreen.

It is black-letter law that an ICFA claim "requires either an affirmative misrepresentation or an omission of material fact . . . ." *Demaria v. Nissan N. Am., Inc.*, No. 15-3321, 2016 WL 374145, at *9 (N.D. Ill. Feb. 1, 2016). A statement does not constitute an affirmative

misrepresentation simply because it is "potentially confusing"; instead, a plaintiff must establish that the label includes an "indisputably clear material misrepresentation." *Abramov v. Home Depot, Inc.*, No. 17-1860, 2018 WL 1252105, at *3 (N.D. Ill. Mar. 12, 2018).

Here, Plaintiff cannot point to *any* affirmatively false statement on the labeling of the sunscreen. Plaintiff suggests in passing that the sunscreen falsely represents that it is "SPF 35." *See* Compl. ¶ 23; *cf. id.* ¶ 62 (alleging that the sunscreen warrants that it "provides sun protection when used as directed"). But Plaintiff does not allege that the sunscreen is ineffective — *i.e.*, that it fails to provides SPF 35 sun protection — when applied properly. Accordingly, Plaintiff cannot claim that the "SPF 35" statement constitutes an affirmative misrepresentation.

Nor does the phrase "shake well before using" constitute an affirmative misrepresentation. Plaintiff suggests that this phrase is misleading because Hain Celestial later made a slight modification to the instruction in a different sunscreen product — from "shake well" to "shake" for 10 seconds. But it is sheer speculation that the sunscreen is somehow ineffective if shaken for less than ten seconds.

Judge Durkin's opinion in *Spector* aptly illustrates why Plaintiff's claim fails. There, the plaintiff pointed to statements on the defendant's website that the challenged breakfast biscuits provided four hours of sustained energy when consumed with a glass of milk, and she alleged that the labeling falsely suggested that the challenged products provided sustained energy *without* milk. 178 F. Supp. 3d 669-70. Judge Durkin rejected this theory of deception. Because "[t]he actual statements do no more than refer to the fact that milk was consumed with the Products in the cited studies," Judge Durkin held that the plaintiff had not established that the products were ineffective when consumed without milk and therefore had not established that the labeling was false. *Id.* at 670.

Here, even if one construed the instruction to "shake vigorously for 10 seconds" as an affirmative representation that the sunscreen is effective if shaken for ten seconds, that does not establish that the sunscreen is *not* effective if shaken for less time — at least if it is "shaken well." Aside from her generic allegations that "applying sunscreen incorrectly can leave skin vulnerable" and that "[p]roper application of sunscreen plays a vital role in sun protection," (Compl. ¶ 22), Plaintiff does not offer *any* specific allegation demonstrating that the sunscreen is ineffective if "shaken well" for less than ten full seconds. Thus, Plaintiff has not come close to identifying *any* affirmative misrepresentation on the labeling of the sunscreen.

B. Plaintiff Does Not Identify Any Deceptive Omission of Material Fact.

Unable to identify any affirmative misrepresentations on the labeling, Plaintiff attempts to allege that she was deceived by Hain Celestial's "pattern and practice of omitting material facts" from the labeling of the sunscreen. Compl. ¶ 27. She alleges that the labeling of the sunscreen "fails to warn the consumer about either the importance of shaking the [sunscreen] vigorously for at least ten seconds and blending the [sunscreen] into the skin after spraying it on . . . ." *Id.* ¶ 25. This theory of deception fails for at least two separate reasons:

1. Plaintiff Does Not Plausibly Allege That Any Omission Was Deceptive.

"[W]hile an omission of material fact can satisfy the requirements for pleading fraud under the ICFA, Illinois courts are 'always watchful that the [ICFA] not be used to transform nondeceptive and nonfraudulent omissions into actionable affirmations.'" *Spector*, 178 F. Supp. 3d at 672 (quoting *Miller v. William Chevrolet/GEO, Inc.*, 762 N.E.2d 1, 14 (Ill. Ct. App. 2001)). Thus, under Illinois law, "[a]n omission is not actionable as fraud if it gives rise to 'an incomplete' as opposed to an affirmatively 'false impression.'" *Id.* (quoting *Phillips v. DePaul Univ.*, 19

N.E.3d 1019, 1030 (Ill. Ct. App. 2014)). Rather, "[a]n omission is actionable only 'where it is employed as a device to mislead.'" *Id.* (quoting *Pappas*, 844 N.E.2d at 998).

Plaintiff cannot plausibly establish that Hain Celestial's alleged omissions were deceptive. This is not a case where a product manufacturer allegedly concealed a known defect from consumers. Plaintiff does not allege that the formulation of the sunscreen was defective, and she even admits that the sunscreen provides adequate sun protection "if . . . properly applied." Compl. ¶ 26. Instead, her complaint is that Hain Celestial's labeling omits information about how to apply the sunscreen properly. But even if the information on the labeling "could have been more specific," (*Phillips*, 19 N.E.3d at 1030), that is not enough to render the sunscreen's labeling deceptive. In other words, Plaintiff's allegation that the challenged labeling lacks information about proper application suggests, at worst, that the labeling is "incomplete"; it does not establish, by contrast, that the labeling created an "affirmatively false impression" about the sunscreen's effectiveness. *Spector*, 178 F. Supp. 3d at 672.

Plaintiff's theory of fraud-by-omission is particularly implausible because it defies common sense, which the Supreme Court has directed courts to apply in weeding out meritless complaints.[1] *Iqbal*, 556 U.S. at 679 ("Determining whether a complaint states a plausible claim for relief . . . requires the reviewing court to draw on its judicial experience and *common sense*.") (emphasis added). Courts have applied this standard in dismissing claims premised on the

[1] Consistent with the Supreme Court's admonition to apply common sense, numerous judges in this District have applied "common sense" in dismissing implausible claims under the ICFA. *See, e.g.*, *Spector*, 178 F. Supp. 3d at 670-71 (applying "common sense" standard to dismiss false advertising lawsuit under Illinois law); *Galanis v. Starbucks Corp.*, No. 16-4705, 2016 WL 6037962, at *3 (N.D. Ill. Oct. 14, 2016) (applying "common sense" in holding that the plaintiffs had "interpret[ed] Starbucks's menus in an unreasonable fashion"); *Hillen v. Blistex, Inc.*, No. 17-2074, 2017 WL 2868997, at *3 (N.D. Ill. July 5, 2017) (dismissing ICFA claim and holding that the plaintiff's theory of deception "defies common sense").

plaintiff's unrealistic or out-of-context interpretation of the challenged labeling. *See, e.g.*, *Ibarrola v. Kind, LLC*, 83 F. Supp. 3d 751, 758 (N.D. Ill. 2015) ("Reasonable consumers do not believe that they are eating straight sugar cane in Vanilla Blueberry Clusters or any other food product because sugar cane in its natural, unprocessed state is indigestible."); *Ang v. Whitewave Foods Co.*, No. 13-1953, 2013 WL 6492353, at *4 (N.D. Cal. Dec. 10, 2013) (holding that "even the least discerning of consumers" would not be misled into believing that soy milk or almond milk contain dairy milk from a cow); *McKinnis v. Kellogg USA*, No. 07-2611, 2007 WL 4766060, at *4 (C.D. Cal. Sept. 19, 2007) (dismissing claim premised on the plaintiff's allegation that he believed Froot Loops contained real fruit).

Here, Plaintiff's complaint references several Amazon reviews making clear that, like most sunscreens, the sunscreen is a white, thick, and opaque cream.[2] *See* Compl. ¶ 29 (comparing the sunscreen to "white face paint" and noting that it has a "white thick consistency"). Even without reading the directions on the package, virtually anyone who has used sunscreen will be aware that it should be rubbed into the skin until it is no longer visible. The fact that the sunscreen did not expressly direct consumers to do so — or that Plaintiff claims that she was subjectively unaware of the need to rub the sunscreen into the skin — does not mean that Hain Celestial's labeling is likely to deceive a reasonable consumer. *See, e.g.*, *Weinstein v. eBay, Inc.*, 819 F. Supp. 2d 219, 228 (S.D.N.Y. 2011) (applying analogous New York law and holding that "the applicable legal standard is whether a reasonable consumer, not the least sophisticated consumer, would be misled

[2] By quoting these reviews in her complaint, Plaintiff has incorporated their contents by reference, and the Court may consider facts set forth in those complaints — including the fact that the sunscreen is white and creamy — in adjudicating this motion to dismiss. *See Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012) (describing incorporation-by-reference doctrine); *Alamilla v. Hain Celestial Grp., Inc.*, 30 F. Supp. 3d 943, 944 (N.D. Cal. 2014) (dismissing complaint where "[t]he articles the plaintiffs cite . . . contradict the allegation upon which their entire complaint hinges").

by Defendants' actions"); *Hill v. Roll Int'l Corp.*, 195 Cal. App. 4th 1295, 1304 (2011) (applying analogous California law to hold that "the standard is not a least sophisticated consumer," but rather a reasonable one).

In short, Plaintiff's complaint does not establish that Hain Celestial deceptively omitted any information from the sunscreen's labeling. Even if it establishes that the labeling was incomplete, that is not enough to allege deception — especially when the omitted information would have been obvious to any reasonable consumer. Plaintiff therefore cannot state a plausible claim of deception-by-omission under the ICFA.

2. Plaintiff Does Not Plausibly Allege That Any Omission Was Material.

Plaintiff's deception-by-omission theory also fails because she has not alleged that Hain Celestial's alleged omissions were *material*. Under the ICFA, "[a]n omission is 'material' if the plaintiff would have acted differently had [she] been aware of it, or if it concerned the type of information upon which [she] would be expected to rely in making [her] decision to act." *Toulon v. Continental Cas. Co.*, 877 F. 3d 725, 740 (7th Cir. 2017) (citation and internal quotation marks omitted); *Connick v. Suzuki Motor Co.*, 675 N.E.2d 584, 595 (Ill. 1996) (same). Thus, a plaintiff cannot establish that an omission was material unless her complaint includes an "affirmative statement" that the omitted information would have affected her purchasing decision. *Toulon*, 877 F.3d at 740; *see also Galvan v. Northwestern Mem'l Hosp.*, 888 N.E.2d 529, 541 (Ill. Ct. App. 2008) (affirming dismissal of ICFA claim where the plaintiff failed to allege "he would have sought care elsewhere if Northwestern had disclosed [the allegedly omitted] information to him").

Here, Plaintiff alleges that had she "known at the time of purchase that the Product did not provide adequate sun protection even when used as directed, she would not have purchased it." Compl. ¶ 35. But that conclusory allegation of materiality is insufficient. Instead, Plaintiff must

allege that she would not have purchased the sunscreen had the labeling disclosed that it was effective only when shaken vigorously for ten seconds and blended into the skin. Plaintiff has alleged no facts suggesting that this disclosure would have dissuaded her from purchasing the sunscreen or that it would have affected the amount she was willing to pay. Thus, Plaintiff has not alleged that any omission on the labeling of the sunscreen was material. *See Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 735 (7th Cir. 2014) (holding that the plaintiff's allegations that he "would not have purchased" the products or "could have shopped around to obtain a better price elsewhere" were deficient when he "provided no factual support for these assertions").

II. Plaintiff's Remaining Claims (Counts II-VI) Fail for Other, Independent Reasons.

In addition to her ICFA claim, Plaintiff also asserts claims for breach of express and implied warranty (Counts II-IV), negligent misrepresentation (Count V), and unjust enrichment (Count VI). These claims suffer from numerous defects that require their dismissal.

Breach of Express Warranty. To state a claim for breach of express warranty, Plaintiff must plausibly "set out the terms of a single specific 'affirmation of fact or promise'" that Hain Celestial made about the sunscreen. *Baldwin v. Star Sci., Inc.*, 78 F. Supp. 3d 724, 740 (N.D. Ill. 2015). Although Plaintiff alleges that Hain Celestial expressly warranted that the sunscreen "provides sun protection when used as directed," (Compl. ¶ 62), she does not identify any specific statement on the labeling that constitutes such an express warranty. Her express warranty claim accordingly fails, as a plaintiff cannot state a claim by "recounting vague, nonspecific statements" about the challenged product's "supposed benefits." *Baldwin*, 78 F. Supp. 3d at 737. And even if Plaintiff were correct that Hain Celestial expressly warranted adequate sun protection, she has not alleged any facts demonstrating that the sunscreen does not provide adequate sun protection when applied properly. *See infra* § I.A.

Plaintiff's breach of express warranty claim also fails for lack of privity. "[U]nder Illinois law, [a plaintiff] must prove privity of contract before he can recover economic damages for breaches of express and implied warranty claims." *Baldwin*, 78 F. Supp. 3d at 740 (citing *N. Ins. Co. of N.Y. v. Silverton Marine Corp.*, No. 10-345, 2010 WL 2574225, at *2-3 (N.D. Ill. June 23, 2010)). Because Plaintiff alleges that she purchased the sunscreen at a TJ Maxx store, (Compl. ¶ 32), she cannot establish privity with Hain Celestial.

Breach of Implied Warranty. Like her breach of express warranty claim, Plaintiff's breach of implied warranty claims are premised on the allegation that Hain Celestial warranted that the sunscreen provided adequate sun protection. *See* Compl. ¶¶ 73, 80. Plaintiff's implied warranty claims are similarly flawed, as she does not plausibly allege that the sunscreen does not provide adequate sun protection if applied properly and cannot plausibly allege privity with Hain Celestial.

Negligent Misrepresentation. In Illinois, "[t]he economic loss rule generally prohibits recovery in tort for solely economic loss." *In re Rust-Oleum Restore Mktg., Sales Practices & Prods. Liab. Litig.*, 155 F. Supp. 3d 772, 824 (N.D. Ill. 2016) (citing *Moorman Mfg. Co. v. Nat'l Tank Co.*, 435 N.E.2d 443, 450 (Ill. 1982)). Here, Plaintiff's alleged losses consist of the money she and other putative class members spent on the sunscreen. *See* Compl. ¶ 91 ("Plaintiff and the Class would not have purchased the Product, or would not have paid the price they did, if the true facts had been known."). Accordingly, even if Plaintiff were correct that Hain Celestial breached its warranties to Plaintiff and other consumers, she can only recover in contract — not in tort. *See Moorman*, 435 N.E.2d at 450 ("The remedy for economic loss, loss relating to a purchaser's disappointed expectations . . . lies in contract.").

Unjust Enrichment. Finally, Plaintiff asserts a claim for unjust enrichment, which expressly incorporates by reference the allegations underlying her ICFA claim. *See* Compl. ¶¶ 93-

99. As the Seventh Circuit has made clear, any such claim "will stand or fall" with Plaintiff's substantive claim for consumer fraud. *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 517 (7th Cir. 2011); *see also Ass'n Ben. Servs., Inc. v. Caremark RX, Inc.*, 493 F.3d 841, 855 (7th Cir. 2007) ("[W]here the plaintiff's claim of unjust enrichment is predicated on the same allegations of fraudulent conduct that support an independent *claim* of fraud, resolution of the fraud claim against the plaintiff is dispositive of the unjust enrichment claim as well."). Because Plaintiff cannot state a claim under the ICFA, this Court should also dismiss her claim for unjust enrichment.

III. This Court Should Dismiss Plaintiff's Request for Injunctive Relief.

Finally, even if this Court declines to dismiss Plaintiff's complaint in its entirety, her request for injunctive relief suffers from two fatal flaws that require its dismissal:

First, Plaintiff's request for injunctive relief is moot, as "there is no reasonable expectation that the wrong will be repeated." *Milwaukee Police Ass'n v. Jones*, 192 F.3d 742, 747 (7th Cir. 1999) (citation and internal quotation marks omitted). Plaintiff admits in her complaint that, prior to the initiation of this lawsuit, Hain Celestial began to sell the sunscreen in "new packaging." Compl. ¶ 19. The new labeling has "an updated 'Directions' label that states to 'SHAKE VIGOROUSLY for 10 seconds before use,' and specifically instructs to 'blend well into skin with hand.'" *Id.* ¶ 19-20. In other words, the sunscreen now provides the information Plaintiff alleges Hain Celestial omitted from the labeling, and her claim for injunctive relief is therefore moot. *See Jones*, 192 F.3d at 747; *Lipton v. Chattem*, 289 F.R.D. 456, 461 (N.D. Ill. 2013) (holding that the plaintiff's claim for injunctive relief was moot when manufacturer had eliminated challenged ingredient from the product's formulation).

Second, Plaintiff also lacks standing to seek injunctive relief. Even if Plaintiff were correct that Hain Celestial's labeling was deceptive (which she is not), "[t]he general rule is that consumer

plaintiffs cannot seek injunctive relief once they are aware of a deceptive practice." *Forth v. Walgreen Co.*, No. 17-2246, 2018 WL 1235015, at *14 (N.D. Ill. Mar. 9, 2018) (citing *Camasta*, 761 F.3d at 740-41); *see also Mednick v. Precor, Inc.*, No. 14-3624, 2016 WL 5390955, at *8 (N.D. Ill. Sept. 27, 2016) (collecting cases). Here, Plaintiff expressly alleges that, had she known of Hain Celestial's purported deception, she would not have purchased the sunscreen. *See* Compl. ¶ 35. But since Plaintiff "is now aware of [Hain Celestial's] sales practices, [she] is not likely to be harmed by the practices in the future." *Camasta*, 761 F.3d at 741. Because there is no plausible risk that Plaintiff will be injured by Hain Celestial's representations in the future, this Court should dismiss her claim for injunctive relief.

CONCLUSION

For the foregoing reasons, this Court should grant Hain Celestial's motion to dismiss.

Dated: December 12, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed on December 12, 2018 with the Clerk of the Court by using the CM/ECF system which will effect electronic service on all parties and attorneys registered to receive notifications via the CM/ECF system.

Dated: December 12, 2018

By: */s/ Dean N. Panos*
Dean N. Panos