

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

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CIRCUIT COURT OF COOK
COUNTY ILLINOIS
CHANCERY DIV.

DEPT. OF CLERK

No. **01CH13803**

Karryn Boland, and)
Jamie Kirsch, individually and on behalf)
of all others similarly situated)
)
Plaintiffs,)
)
v.)
)
Simon Marketing, Inc.,)
and McDonald's Corporation)
)
Defendants.)

CLASS ACTION COMPLAINT

NOW COME PLAINTIFFS, individually and on behalf of all others similarly situated, by and through their attorneys, the Law Office of Aron D. Robinson and the Law Office of Neal C.

Zazove & Associates and as their Complaint against Defendants states as follows:

1. Plaintiffs are residents of the State of Illinois, County of Lake.
2. Defendant Simon Marketing, Inc. (Simon) is a foreign corporation headquartered in Los Angeles California and doing business in the State of Illinois, County of Cook.
3. McDonald's Corporation (McDonalds) is a Delaware corporation which is principally involved in the business of fast food franchising and promotion. McDonalds is headquartered in Illinois does business in the State of Illinois, County of Cook.
4. This Court has jurisdiction over this action as the claims involved herein occurred in part in the State of Illinois.
5. This Court is an appropriate venue for this action because the Defendants are present and do business in Cook County, Illinois. McDonalds is headquartered in Oak Brook

Illinois.

FACTS

6. Plaintiffs are and at all relevant times were as a resident of Illinois.
7. Defendant Simon, at all relevant times operated and ran contest style promotions for McDonalds including but not limited to McDonalds Monopoly, Who Wants To Be A Millionaire, When the USA Wins You Win and Disney's Masterpiece Collection Trivia Challenge. These promotions will be referred to as the subject contests.
8. McDonalds hired Simon to run these promotions for it and, inter alia to be responsible for the seeding of winning game pieces randomly amongst the game pieces to be distributed to the public.
9. Contest promotions are a substantial part of McDonalds marketing strategy. They produce a substantial incremental revenue to McDonalds over and above the normal revenue stream because the customers desire the opportunity to win the promoted prizes. Additionally, games such as the Monopoly contest require multiple visits to accumulate winning game pieces.
10. McDonalds places the bulk of its game pieces on food packaging inducing plaintiffs and customers to purchase food products to play the subject contests.
11. McDonalds oversees and is responsible for the marketing and promotion of the subject promotions and runs advertisements in print and on television and radio promoting these games.
12. Plaintiffs enjoy McDonalds promotions and make extra trips to McDonalds franchises to purchase food products so that they may play the contests during the promotional period.
13. McDonalds places information in the store and on its promotions explaining the relative odds of winning any particular prize or class of prizes.
14. McDonalds selected Simon to run its contest promotions and was assured by Simon and

assured itself that adequate security measures were in place to insure the random placement of winning game pieces into the public domain so that McDonalds customers would have a chance to win all of the promoted prizes.

15. McDonalds had the right to inspect and assure itself that the integrity of the promotions was not compromised.

16. While McDonalds delegated the responsibility of the running and management of the subject promotions to Simon, it remained responsible for the ultimate integrity of the promotions.

17. Commencing in around 1995 individuals at Simon began a plan to remove the winning game pieces from the random seeding process for the subject promotions of McDonalds.

18. Simon employees began a process, promotion after promotion, of pulling out large prize winning game pieces from random insertion into the public domain.

19. Simon employees then misdirected these winning game pieces to friends who claimed the prizes and split the winnings with the Simon employees.

20. On information and belief, certain Simon employees are and were bonded for actions related to the handling of the winning game pieces.

21. The removal of the winning game pieces from random public distribution resulted in reduced or non-existent odds to the plaintiffs of winning a substantial prize.

22. This practice by Simon employees continued through August 2001.

23. At some time at least as early as June 2001 and before at least two McDonalds promotions, the FBI based upon informants and investigation notified McDonalds that there were problems with the random seeding of winning game pieces involving McDonalds contests.

24. McDonalds continued to run these promotions and reap substantial incremental sales and benefits from the plaintiffs and public without telling the public that its odds of winning

substantial prizes were not as represented and that McDonalds could not vouch for the integrity of the contests.

25. McDonalds continued to run advertisements promoting the contests.

26. Simon knew or should have known that its safeguards insuring the integrity of its work for McDonalds was inadequate.

27. Simon knew that the removal of the winning game pieces would alter the odds of a random member of the public winning a substantial prize and make the promotion deceptive.

28. Simon failed to take reasonable steps to insure the integrity of the promotions it was running for McDonalds.

29. After McDonalds notified the public of the problems with its contests it apologized to its customers and announced a new \$10,000,000.00 giveaway promotion.

30. This promotion will result in only 55 major prizes and further result in substantial incremental sales to the benefit of McDonalds.

CLASS ALLEGATIONS

31. Plaintiff brings this action individually and on behalf of all others similarly situated pursuant to §2-801 of the Illinois Code of Civil Procedure.

32. Plaintiff's class is so large that joinder of all members is impracticable. On information and belief Plaintiff's class consists of hundreds of thousands of McDonalds customers who paid for food in order to obtain a game ticket.

33. This action is appropriately brought as a class action in that it involves common questions of fact or law for all class members and as a practical matter resolution of those issues for Plaintiff will resolve those questions for all class members.

34. Plaintiff is an adequate representative of the class in that he is familiar with the

facts and circumstances giving rise to his claims and is willing to prosecute this action as a representative plaintiff. Plaintiff's counsel are able and experienced in the prosecution of class action litigation in Illinois and throughout the United States.

35. The class Plaintiff seeks to represent is as follows:

All customers of the McDonalds who paid money for McDonalds food products in order to receive a subject contest game piece for subject contest promotions between 1995 and the present.

COUNT I
CONSUMER FRAUD

36. Plaintiff adopts and realleges paragraphs 1 through 35 of this Complaint as paragraphs 1 through 35 of this Count II

37. There exists in Illinois and all other states statutory provisions or common law prohibiting deceptive acts or practices in connection with the marketing of consumer goods. Credit card services and airline mileage travel certificates are consumers goods within the meaning of the applicable statutes and common law provisions.

38. The Illinois Consumer Fraud Act provides:

815 ILCS 505/2.

Sec. 2. Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965 [815 ILCS 510/2], in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act

39. 815 ILCS 505/2P provides in relevant part:

Sec. 2P. Offers of free prizes, gifts, or gratuities; disclosure of conditions. It is an unlawful practice for any person to promote or advertise any business, product, ..., or interest in property, by means of offering free prizes, gifts, or gratuities to any consumer, unless all material terms and conditions relating to the offer are clearly and conspicuously disclosed at the outset of the offer so as to leave no reasonable probability that the offering might be misunderstood.

40. Plaintiff and putative class members are consumers within the meaning of aforesaid statutes and laws.
41. The conduct referenced herein is deceptive under the provisions of the act.
42. The deceptive conduct and omissions of material terms were material to Plaintiff and the putative class plaintiffs in connection with their decision to purchase McDonalds food products and they would not have purchased said products if they knew that the integrity of the contests was compromised and they had no chance of winning a substantial prize.
43. Defendants' have violated aforesaid laws and statutes in that they have promoted the subject contests as being fair with stated odds, when in fact the subject contests were not fair and the odds of winning were incorrect.
44. As a direct and proximate result of Defendants' deceptive conduct Plaintiffs and putative class plaintiffs have been damaged in that they have paid for food products they would not have otherwise purchased in order to obtain a game piece.

WHEREFORE PLAINTIFF respectfully requests this Court enter an Order:

- A. Certifying this action as a Class Action with Plaintiffs as class representatives and Plaintiff's counsel as class counsel;
- B. Award Plaintiffs and Plaintiff's class damages in connection with the violations stated herein;

- C. Award Plaintiff's attorneys fees and costs as a result of this action;
- D. Any other relief this Court deems equitable and just.

**COUNT II
UNJUST ENRICHMENT**

1- 35 Plaintiff adopts and realleges paragraphs 1-35, of this complaint as paragraphs 1-35 of this Count II.

45. Defendants have reaped substantial profits and revenue from the marketing and promotion of the subject contests based upon substantial incremental sales during the periods when the subject promotions were run.

46. Defendants did not randomly seed the winning game pieces into the distribution chain so that they could be purchased or obtained by the Plaintiffs and public.

47. McDonalds, at least as to some subject promotions, knew that he integrity of the contests were compromised.

48. McDonalds has obtained large sums of money from plaintiffs and plaintiffs class where the plaintiffs and class did not have a fair opportunity to win the prizes they purchased the food to have an opportunity to win.

49. Simon improperly removed substantial winning game pieces from random distribution reducing or eliminating the odds for Plaintiffs of winning a substantial prize.

50. It would be inequitable and unjust to allow Defendants to retain the incremental revenue or profits from the sales of food products during the subject contests because the integrity of the promotions was compromised and the odds of winning were reduced or non-existent.

51. Defendants have retained the benefits and monies collected by them from Plaintiffs and

the putative class for the purchase of the food products while failing to provide a reasonable chance of winning to them.

52. It would be contrary to principles of justice, equity, and good conscience to allow Defendants to keep the funds collected by them regarding the subject contests.

Wherefore Plaintiff respectfully requests this Court enter an Order:

- A Certifying Plaintiffs as Class Representatives and Plaintiff's counsel as Class Counsel;
- B Finding that Defendants have been unjustly enriched by the collection and retention of monies for incremental sales when no reasonable chance to win a substantial prize existed;
- C Ordering Defendants to Account for all incremental revenues from the subject contests;
- C Refunding the amounts collected by Defendants from Plaintiff and the Plaintiff Class or Awarding damages to Plaintiff and plaintiff's class in an amount to be determined by this Court;
- D Awarding attorney's fees and costs as a result of bringing this action;
- E Any other relief this Court deems equitable and just.

Respectfully submitted:



One of the attorneys for the Plaintiff

Aron D. Robinson, Esq.
The Law Office of Aron D. Robinson
19 South LaSalle Street
Suite 1300
Chicago, IL 60603
312/857-9050
Firm I.D.: 35546

Neal Zazove
Neal C. Zazove and Associates, P.C.
180 N. Wacker Drive
Suite 003
Chicago, IL 60606
312 641-5444