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19 *and Alexander Panvini*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**

18
19 **MATIN SHALIKAR and ALEXANDER**
20 **PANVINI, individually and on behalf of all**
21 **others similarly situated,**

21 **Plaintiffs,**

22 **v.**

23 **ASAHI BEER U.S.A., INC.,**

24 **Defendant.**

CONFORMED COPY
ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

APR 16 2018

Sharon L. Smith, Executive Officer/Clerk
By: Marlon Gomez, Deputy

CASE NO.

BC702360

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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CLASS ACTION COMPLAINT

1 Plaintiffs Matin Shalikar and Alexander Panvini (“Plaintiffs”) by and through their counsel,
2 bring this Class Action Complaint against Asahi Beer U.S.A, Inc. (“Defendant”), on behalf of
3 themselves and all others similarly situated, and allege upon personal knowledge as to their own
4 actions, and upon information and belief as to counsel’s investigations and all other matters, as
5 follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiffs bring this consumer protection and false advertising class action lawsuit
8 against Defendant, based on Defendant’s misleading business practices with respect to the sale of
9 Asahi Super Dry beer not brewed in Japan (the “Product”).

10 2. At all relevant times, Defendant has marketed and sold the Product with labeling,
11 packaging, and advertising that makes references to Japan, Japanese words, and Japanese characters.
12 The Product’s labeling, packaging, and marketing led Plaintiffs and other consumers to reasonably
13 believe that they were purchasing beer that is brewed in Japan.

14 3. In reality, the Product is not brewed in Japan, but instead is brewed in Canada by
15 Molson.¹

16 4. Plaintiffs and other consumers have reasonably relied on Defendant’s deceptive
17 advertising in purchasing the Product, believing that the Product was brewed in Japan. A recent
18 national survey conducted among a demographically representative U.S. sample of over 1,000 adults
19 demonstrated that 86% of respondents believed that based on the packaging of the Product, the
20 Product is brewed in Japan.

21 5. Had Plaintiffs and other consumers known that the Product was not brewed in Japan,
22 they would not have purchased the Product or would have paid significantly less for the Product.
23 Therefore, Plaintiffs and other consumers have suffered injury in fact as a result of Defendant’s
24 deceptive practices.

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26 _____
27 ¹ “We also have an agreement with Asahi to brew and package Asahi Super Dry and Asahi Select to
28 the U.S. market... ” Molson Coors Brewing Company, Form 10-K, p. 10 (February 14, 2017)
(hereinafter “Molson Coors 2016 Form 10-K”); *see also*, Asahi Breweries, Ltd., Worldwide,
<http://www.asahibeer.com/worldwide/> (last visited April 10, 2017).

1 significantly less for the Product had he known that the Product was not brewed in Japan. Mr. Shalika
2 therefore suffered injury in fact and lost money as a result of Defendant's misleading, false, unfair,
3 and fraudulent practices, as described herein. Despite being misled, Mr. Shalika would likely
4 purchase the Product in the future if the Product was in fact brewed in Japan.

5 12. Plaintiff Alexander Panvini has resided in Seattle, Washington during the relevant time
6 period. During the relevant time period, Plaintiff purchased Asahi Super Dry at multiple locations in
7 California during or around June through August of 2015. He purchased Asahi Super Dry from retail
8 stores in Concord, Lafayette and Walnut Creek, California. Plaintiff purchased Asahi Super Dry
9 bottles in six packs. Plaintiff purchased Asahi Super Dry in reliance on Defendant's representations
10 contained on the front of the packaging and bottle that the beer was imported from Japan.
11 Specifically, Mr. Panvini saw and relied on the the Product name "Asahi" and the Japanese words
12 and characters on the front of the packaging and the bottle of the Product. Plaintiff has since learned
13 that Asahi Dry is not imported from Japan, but rather made in North America. Plaintiff would not
14 have purchased Asahi Super Dry had he known the Defendant's representations were false. Because
15 of Defendant's misrepresentations and deceptive conduct, Plaintiff purchased beer that had less value
16 than what Plaintiff paid, and Plaintiff has accordingly suffered legally cognizable damages
17 proximately caused by Defendant's misconduct. After learning the truth about Defendant's
18 mislabeling of Asahi Super Dry, Plaintiff decided to stop purchasing it. If Asahi Super Dry were
19 accurately labeled, Plaintiff would continue purchasing them.

20 13. Defendant Asahi Beer U.S.A., Inc. is a Delaware corporation with its principal place
21 of business at 3625 Del Amo Blvd., Torrance, California 90503. Defendant is a wholly owned
22 subsidiary of Asahi Breweries, Ltd., which in turn is a wholly owned subsidiary of Asahi Group
23 Holdings, Ltd. Defendant is responsible for the marketing, distribution, and sale of the Product in the
24 United States, including in this County.

1 **FACTUAL ALLEGATIONS**

2 **A. Background**

3 14. In March 1987, Asahi Breweries, Ltd. launched Asahi Super Dry beer in Japan.²

4 15. In April 1998, Asahi Beer U.S.A, Inc. was established to market, distribute, and sell
5 the Product in the United States.³

6 16. Since as early as 2004, Asahi Breweries, Ltd. contracted with Molson, whereby the
7 two companies agreed that Molson would brew the Product in Canada for Asahi Breweries, Ltd., for
8 distribution and sale in the United States by Defendant.⁴

9 17. At all relevant times, the Product was brewed by Molson in Canada, and then
10 marketed, distributed, and sold in the United States by Defendant.⁵

11 18. Further, Molson is currently finalizing negotiations with Asahi Breweries, Ltd. for an
12 extension of this contract through early 2020.⁶

13 19. At all relevant times, the Product was sold across California and the United States at
14 grocery chains, convenience stores, liquor stores, and other retailers including, but not limited to,
15 Bristol Farms, BevMo!, and Total Wine & More.

16 20. The Product is manufactured in a variety of sizes as depicted below:
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25 ² http://www.asahigroup-holdings.com/en/ir/pdf/2016_yend_factbook.pdf#zoom=100 (last visited
26 on April 10, 2017).

³ *Id.*

⁴ Molson Coors Brewing Company, Form 10-K, p. 85 (March 10, 2006).

⁵ Molson Coors 2016 Form 10-K at 6, 9, 10.

⁶ *Id.* at 10.

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21. The Product is sold at a price premium above other domestically brewed beers. For example, a 6-pack of the Product is currently sold at Bristol Farms for \$9.99 while a 6-pack of Budweiser beer is currently sold at Bristol Farms for \$6.99. The Product also garners a price premium over Canadian brewed beer. For example, a 6-pack of Labatt Blue, a Canadian brewed beer, is currently sold at Bristol Farms for \$6.99.

1 22. Water makes up more than 90 percent of beer, and the type of water used greatly
2 influences the taste and quality of the beer, just as climate and terroir greatly influence the taste and
3 quality of wine.⁷

4 23. The Asahi beer distributed and sold in Japan contains water from the site of the
5 brewery in which it is produced. For example, Asahi Breweries, Ltd.’s original brewery, the Suita
6 Brewery, uses water from the water springs in Suita city in the Osaka Prefecture of Japan.⁸ The Osaka
7 Prefecture is known for its good quality spring water, which is influential in the taste and quality of
8 the beer.⁹

9 24. Defendant, through its agreement with Molson, does not use water from Japan in the
10 Product. Rather, the water Molson uses to brew the Product comes from local sources near Molson’s
11 breweries in Canada. According to the Molson Coors 2016 Form 10-K, “[w]ater used in the brewing
12 process is from local sources in the communities where our breweries operate.”¹⁰

13 **B. The Product’s Labeling, Packaging, and Marketing are Misleading to Reasonable**
14 **Consumers**

15 25. The Product’s labeling, packaging, and marketing are misleading to reasonable
16 consumers, including Plaintiffs and other Class members, and only serves the profit maximizing
17 interests of Defendant.

18 26. Defendant deceptively labeled and packaged the Product to target consumers who are
19 interested in purchasing Japanese-made products.

20 27. The overall brand image of Asahi beer, including its name¹¹, is centered around Japan.
21 Defendant uses references to Japan, Japanese words, and Japanese characters/script on the Product
22 label and its packaging, creating the impression that the Product is brewed in Japan.

23 28. The following, taken in isolation and as a whole, create a misleading perception that

24 _____
25 ⁷ <https://beerandbrewing.com/VUKd4igAABcrKdWe/article/brewing-water> (last visited on April
26 10, 2017).

27 ⁸ <http://www.pref.osaka.lg.jp/en/attraction/culture/aquapolis/aquapolis4.html> (last visited on April
28 10, 2017).

⁹ *Id.*

¹⁰ Molson Coors 2016 Form 10-K at 9.

¹¹ “Asahi” means morning sun in Japanese.

1 the Product is brewed in Japan:

- 2 a. The “Asahi” product name spelled in English;
- 3 b. アサヒ ビール- Japanese Katakana script which means “Asahi beer;”
- 4 c. スーパードライ- Japanese Katakana script which means “Super Dry”
- 5 d. 辛口- Japanese Kanji characters which mean “Karakuchi”, the Japanese word for dry
- 6 taste.

7 29. Defendant knows, knew or should have known that Plaintiffs and other consumers did
8 and would rely on the labeling, packaging, and advertising of the Product in purchasing the Product,
9 and would reasonably believe that the Product was brewed in Japan.

10 30. A recent national survey conducted among a demographically representative U.S.
11 sample of over 1,000 adults (the “Asahi Survey”) demonstrated that based on the packaging of the
12 Product, 86% of respondents believed that the Product is brewed in Japan. Further, Asahi Survey
13 found that based on the bottle of the Product, 87% of respondents believed the Product is brewed in
14 Japan.

15 31. In reasonable reliance on the representations listed in Paragraphs 27-28, and
16 reasonably believing that the Product was brewed in Japan, Plaintiffs and other members of the
17 Classes purchased the Product.

18 32. Consumer research has demonstrated that representations regarding geographic origin
19 of a product have a direct effect on product evaluations by consumers, especially regarding the quality
20 of the product.

21 33. Plaintiffs and members of the Classes did not know, and had no reason to know, that
22 the Product is not brewed in Japan because of how the Product is deceptively labeled, packaged, and
23 advertised to create the impression that it is brewed in Japan.

24 34. Because the Product is not brewed in Japan as reasonably expected by Plaintiffs and
25 other consumers, Defendant’s marketing of the Product was and continues to be misleading and
26 deceptive.

27 35. Each consumer has been exposed to the same or substantially similar deceptive
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1 practices because: 1) each Product contains identical or substantially similar representations centered
2 around Japan; and 2) each Product is not brewed in Japan.

3 36. Plaintiffs and other consumers have paid an unlawful premium for the Product.
4 Plaintiffs and other consumers would have paid significantly less for the Product had they known that
5 the Product was not brewed in Japan. In the alternative, Plaintiffs and other consumers would not
6 have purchased the Product at all had they known that the Product was not brewed in Japan. Therefore,
7 Plaintiffs and other consumers purchasing the Product suffered injury in fact and lost money as a
8 result of Defendant's false, unfair, and fraudulent practices, as described herein.

9 37. As a result of its misleading business practices, and the harm caused to Plaintiffs and
10 other consumers, Defendant should be enjoined from deceptively representing that the Product is
11 brewed in Japan. Furthermore, Defendant should be required to pay for all damages caused to misled
12 consumers, including Plaintiffs.

13 38. Despite being misled by Defendant, Plaintiff Shalika would likely purchase the
14 Product in the future if the Product was in fact brewed in Japan.

15 **CLASS ACTION ALLEGATIONS**

16 39. Plaintiffs bring this case as a class action that may be properly maintained under
17 California Code of Civil Procedure section 382 on behalf of themselves and all persons in the United
18 States who purchased the Product from April 5, 2013 to the present ("Nationwide Class").

19 40. Pursuant to California Code of Civil Procedure section 382 and California Civil Code
20 section 1781, Plaintiffs also seek to represent a subclass defined as all persons, who are California
21 residents who purchased the Product, or who purchased the Product within the State of California, for
22 personal, family, or household purposes from April 5, 2013 to the present ("California Consumer
23 Subclass").

24 41. Excluded from the Classes are Defendant, the officers and directors of Defendant at
25 all relevant times, members of their immediate families and their legal representatives, heirs,
26 successors or assigns and any entity in which Defendant has or had a controlling interest. Any judge
27 and/or magistrate judge to whom this action is assigned and any members of such judges' staffs and
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1 immediate families are also excluded from the Classes. Also excluded from the Classes are persons
2 or entities that purchased the Product for sole purposes of resale.

3 42. Plaintiffs hereby reserve the right to amend or modify the class definitions with greater
4 specificity or division after having had an opportunity to conduct discovery.

5 43. Plaintiffs are members of all Classes.

6 44. Numerosity: Defendant has sold thousands of units of the Product. The Product is
7 sold at grocery chains, convenience stores, liquor stores, and other retailers including, but not limited
8 to, Bristol Farms, BevMo!, and Total Wine & More. Accordingly, members of the Classes are so
9 numerous that their individual joinder herein is impractical. While the precise number of Class
10 members and their identities are unknown to Plaintiffs at this time, the number may be determined
11 through discovery.

12 45. Common Questions Predominate: Common questions of law and fact exist as to all
13 members of the Classes and predominate over questions affecting only individual Class members.
14 Common legal and factual questions include, but are not limited to, the following: whether the
15 Product's labeling, packaging, and marketing is misleading to a reasonable consumer, and therefore
16 violates various consumer protection statutes and common laws.

17 46. Typicality: Plaintiffs' claims are typical of the claims of the Classes they seek to
18 represent in that Plaintiffs and members of the Classes were exposed to Defendant's misleading
19 labeling, packaging, and marketing, and purchased the Product reasonably relying on the misleading
20 labeling, packaging, and marketing, and suffered losses as a result of such purchases.

21 47. Adequacy: Plaintiffs are adequate representatives of the Classes because their
22 interests do not conflict with the interests of the members of the Classes they seek to represent, they
23 have retained competent counsel experienced in prosecuting class actions, and they intend to
24 prosecute this action vigorously. The interests of the members of the Classes will be fairly and
25 adequately protected by Plaintiffs and their counsel.

26 48. Superiority: A class action is superior to other available means for the fair and efficient
27 adjudication of the claims of the members of the Classes. The size of each claim is too small to pursue
28

1 individually and each individual Class member will lack the resources to undergo the burden and
2 expense of individual prosecution of the complex and extensive litigation necessary to establish
3 Defendant’s liability. Individualized litigation increases the delay and expense to all parties and
4 multiplies the burden on the judicial system presented by the complex legal and factual issues of this
5 case. Individualized litigation also presents a potential for inconsistent or contradictory judgments.
6 The class action mechanism is designed to remedy harms like this one that are too small in value,
7 although not insignificant, to file individual lawsuits for.

8
9 **FIRST CLAIM FOR RELIEF**
10 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
11 **California Civil Code §§ 1750, et seq.**
12 ***(for the California Consumer Subclass)***

11 49. Plaintiffs repeat the allegations contained in paragraphs 1-48 above as if fully set forth
12 herein.

13 50. Plaintiffs bring this claim individually and on behalf of the members of the proposed
14 California Consumer Subclass against Defendant.

15 51. The Product is a “good” within the meaning of Cal. Civ. Code § 1761(a), and the
16 purchases of such products by Plaintiff and members of the California Consumer Subclass constitute
17 “transactions” within the meaning of Cal. Civ. Code § 1761(e).

18 52. Cal. Civ. Code § 1770(a)(2) prohibits “misrepresenting the source, sponsorship,
19 approval, or certification of goods or services.” By marketing the Product with its current labels,
20 packaging, and advertisements, Defendant has represented and continues to represent that the source of
21 the Product is Japan, when it is not. Therefore, Defendant has violated section 1770(a)(2) of the CLRA.

22 53. Cal. Civ. Code § 1770(a)(4) prohibits “using deceptive representations or designations
23 of geographical origin in connection with goods or services.” By marketing the Product with its current
24 labels, packaging, and advertisements, Defendant has used deceptive representations and designations of
25 the Product’s geographical origin (Japan). Therefore, Defendant has violated section 1770(a)(4) of the
26 CLRA.

27 54. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
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1 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have . .
2 . .” By marketing the Product with its current labels, packaging, and advertisements, Defendant has
3 represented and continues to represent that the Product has characteristics (that it is brewed in Japan) when
4 it does not have such characteristics. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

5 55. Cal. Civ. Code § 1770(a)(7) prohibits “[r]espresenting that goods or services are of a
6 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
7 another.” By marketing the Product with its current labels, packaging, and advertisements, Defendant has
8 represented and continues to represent that the Product is of a particular style (that it is brewed in Japan)
9 when it is of another (brewed in Canada). Therefore, Defendant has violated section 1770(a)(7) of the
10 CLRA.

11 56. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
12 to sell them as advertised.” By labeling, packaging, and marketing the Product with references to Japan,
13 Japanese words, and Japanese characters so that a reasonable consumer would believe that the Product
14 was brewed in Japan, and then intentionally not selling the Product as brewed in Japan, Defendant has
15 violated section 1770(a)(9) of the CLRA.

16 57. At all relevant times, Defendant has known or reasonably should have known that the
17 Product was not brewed in Japan, and that Plaintiffs and other members of the California Consumer
18 Subclass would reasonably and justifiably rely on the labeling, packaging, and other advertisements
19 in purchasing the Product.

20 58. Plaintiffs and members of the California Consumer Subclass have reasonably and
21 justifiably relied on Defendant’s misleading, and fraudulent conduct when purchasing the Product.
22 Moreover, based on the very materiality of Defendant’s fraudulent and misleading conduct, reliance
23 on such conduct as a material reason for the decision to purchase the Product may be presumed or
24 inferred for Plaintiffs and members of California Consumer Subclass.

25 59. Plaintiffs and members of the California Consumer Subclass have suffered and
26 continue to suffer injuries caused by Defendant because they would not have purchased the Product
27 or would have paid significantly less for the Product had they known that Defendant’s conduct was
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1 representations and have not received all of the benefits promised by Defendant. Plaintiffs and
2 members of the Nationwide Class therefore have been induced by Defendant's misleading and false
3 representations about the Product, and paid for them when they would and/or should not have or paid
4 more money to Defendant for the Product than they otherwise would and/or should have paid.

5 67. Plaintiffs and members of the Nationwide Class have conferred a benefit upon
6 Defendant as Defendant has retained monies paid to them by Plaintiffs and members of the
7 Nationwide Class .

8 68. The monies received were obtained under circumstances that were at the expense of
9 Plaintiffs and members of the Nationwide Class – i.e., Plaintiffs and members of the Nationwide
10 Class did not receive the full value of the benefit conferred upon Defendant.

11 69. Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or
12 compensation conferred upon it without paying Plaintiffs and the members of the Nationwide Class
13 back for the difference of the full value of the benefits compared to the value actually received.

14 70. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs and
15 members of the Nationwide Class are entitled to restitution, disgorgement, and/or the imposition of a
16 constructive trust upon all profits, benefits, and other compensation obtained by Defendant from its
17 deceptive, misleading, and unlawful conduct as alleged herein.

18 **PRAYER FOR RELIEF**

19
20 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek
21 judgment against Defendant, as follows:

22 a) For an order certifying the Nationwide Class and the California Consumer Subclass
23 under section 382 of the California Code of Civil Procedure; naming Plaintiffs as representatives
24 of the Classes; and naming Plaintiffs' attorneys as Co-Lead Class Counsel to represent all Classes.

25 b) For an order declaring that Defendant's conduct violates the statutes and laws
26 referenced herein;

27 c) For an order finding in favor of Plaintiffs, and all Classes, on all claims asserted
28

1 herein;

2 d) For an order awarding damages in amounts to be determined by the Court and/or
3 jury;

4 e) For prejudgment interest on all amounts awarded;

5 f) For interest on the amount of any and all economic losses, at the prevailing legal
6 rate;

7 g) For an order of restitution and all other forms of equitable monetary relief;

8 h) For injunctive relief as pleaded or as the Court may deem proper;

9 i) For an order awarding Plaintiffs and all Classes their reasonable attorneys' fees,
10 expenses and costs of suit, including, but not limited to, those as provided by statute such as under
11 California Code of Civil Procedure section 1021.5; and

12 j) For any other such relief as the Court deems just and proper.

13 **DEMAND FOR TRIAL BY JURY**

14 Plaintiffs demand a trial by jury on all issues so triable.

15 Dated: April 16, 2018

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