

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Case Type: Class Action Consumer Fraud

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MICHAEL OLSON and  
JOHN WYLDE, on their own behalf  
and on behalf of a class of all  
others similarly situated,

Case No: C9-07-1834

Plaintiffs,

**AMENDED  
CLASS ACTION COMPLAINT**

v.

SUPERVALU INC., a corporation,

Defendant.

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Plaintiffs MICHAEL OLSON ("Olson") and JOHN WYLDE ("Wylde"), on behalf of themselves and on behalf of a class of all others similarly situated (collectively, "the Plaintiff Class" as defined more particularly below), sue Defendant SUPERVALU INC. ("SUPERVALU") and allege as follows:

#### **OVERVIEW**

1. This lawsuit involves SUPERVALU's labeling, advertising, marketing, promoting, and selling falsely labeled beef in the State of Minnesota, through SUPERVALU's grocery store chain, CUB FOODS.

2. SUPERVALU has regularly and continuously labeled, advertised, marketed, promoted and sold in its Minnesota CUB FOODS stores beef that is labeled "Black Angus" when, in fact, the beef is not actually Black Angus beef; based upon Plaintiffs' investigation and information, it is believed that tons of

falsely labeled "Black Angus" beef were sold each year by CUB FOODS in Minnesota.

3. Because Black Angus beef is perceived by the beef-consuming public to be of superior quality to other beef, it commands a higher price and is in greater demand.

4. SUPERVALU has regularly and continuously sold non-Black Angus beef as "Black Angus", resulting in damage to Olson, Wylde, and the Plaintiff Class.

5. SUPERVALU's practices violate a number of Minnesota laws, as set forth more fully in the individual counts below.

#### **THE PARTIES**

6. Olson is an adult citizen residing in Ham Lake, Anoka County, Minnesota.

7. Wylde is an adult citizen residing in Coon Rapids, Anoka County, Minnesota.

8. The Class which Olson and Wylde seek to represent is defined as:

All Minnesota residents who purchased beef marketed, promoted or sold as "Black Angus" at any Minnesota CUB FOODS store, beginning six years prior to the filing of this lawsuit, and extending through the resolution of this dispute.

9. Olson, Wylde, and the other class members defined above, have purchased beef labeled as "Black Angus" at CUB FOODS stores, including CUB FOODS stores located in Anoka County, Minnesota since at least June, 2004.

10. SUPERVALU is a Delaware corporation which, according to its web site, [www.supervalu.com](http://www.supervalu.com), maintains corporate headquarters at two separate addresses: Eden Prairie, Minnesota and Chanhassen, Minnesota.

11. SUPERVALU is the corporate parent company of approximately fifteen different grocery retail chain stores which operate as divisions of SUPERVALU and one of those divisions is CUB FOODS, which SUPERVALU acquired in or about 1980. CUB FOODS, like its parent company SUPERVALU, maintains its corporate headquarters in Minnesota

12. SUPERVALU, as of the filing of this Complaint, and according to the web site it maintains for its subsidiary, [www.cub-foods.com](http://www.cub-foods.com), owns more than 110 CUB FOODS stores located in 9 Midwest states, including Minnesota. Approximately three-quarters of those CUB FOODS stores are located in Minnesota, including the CUB FOODS stores located in Anoka County, Minnesota.

13. SUPERVALU, CUB FOODS' parent, according to [www.cub-foods.com](http://www.cub-foods.com) (which web site reflects a 2002 copyright by SUPERVALU) ranks number 2 among Minnesota's Top 10 public companies SUPERVALU is a Fortune 100 company, and it is also one of the country's largest food retailers and distributors.

14. SUPERVALU makes and implements decisions, policies and practices for its operating divisions, including CUB FOODS; these decisions, policies and practices include advertising campaigns which emanate from SUPERVALU's Minnesota headquarters.

## JURISDICTION AND VENUE

15. This lawsuit arises out of consumer transactions occurring throughout the State of Minnesota, including Anoka County, Minnesota, and this Court has jurisdiction over the subject matter and over the parties.

16. The class which Olson and Wylde seek to represent is comprised solely of Minnesota residents who made purchases of beef marketed, promoted and sold as "Black Angus," at the CUB FOODS stores located in Minnesota. The Plaintiff Class definition is provided in paragraph 8 of this Complaint.

17. The damages sought exceed \$50,000.

18. These parties are not diverse because SuperValu is a citizen of Minnesota, and this lawsuit asserts only causes of action arising under Minnesota state law.

## ALLEGATIONS COMMON TO ALL COUNTS

19. Black Angus, a type of cattle, originated in Scotland. The breed has certain recognized characteristics which make beef obtained from Black Angus cattle of superior quality to other types of beef, and thus allowing Black Angus beef to command a premium price.

20. In an attempt to promote the consumption of Black Angus beef, and to promote the higher quality of Black Angus beef, a trade association known as the American Angus Association ([www.angus.org](http://www.angus.org)) created a "Certified Angus Beef®" brand logo in 1978.

21. The United States Department of Agriculture ("USDA") recognizes and provides specifications and classification for Black Angus beef through a variety of bulletins, schedules, and other mechanisms.

22. According to the American Angus Association's nonprofit subsidiary Certified Angus Beef LLC ([www.certifiedangusbeef.com](http://www.certifiedangusbeef.com)), the USDA monitors approximately 46 Angus branded beef products.

23. As a result of the efforts and activities of the American Angus Association, and acceptance of the Angus breed by the USDA, Black Angus is a recognized type of beef which sells at a premium price as compared to regular beef cuts of a like description.

24. In recognition of the greater value and consumer demand for Black Angus beef, in or about 2004 SUPERVALU registered its own Black Angus brand and label under the name "Ranchers Choice Preferred Black Angus Beef"; all of the falsely labeled beef described herein was sold under this "Ranchers Preferred" label, or otherwise used a label containing the words "Black Angus."

25. SUPERVALU purchases wholesale bulk beef for all of its grocery store chains, including CUB FOODS, from outside meat suppliers such as Swift & Co.

26. The wholesale purchases of beef are delivered to SUPERVALU's distribution centers. SUPERVALU then ships beef to its Minnesota CUB stores in volumes necessary to support the demand and sales at each CUB store.

27. Much of the wholesale beef purchased by SUPERVALU and distributed to CUB FOODS is regular (non-Black Angus) USDA choice beef, but

it is believed and alleged that most of that regular choice (non-Black Angus) USDA choice beef, when sold to consumers by CUB FOODS, was is falsely labeled as "Black Angus."

28. SUPERVALU has regularly and repeatedly, since approximately June 2004, taken the regular USDA choice beef purchased from suppliers, and labeled, promoted, marketed and sold that same beef to CUB customers as "Black Angus" beef, even though it is not in fact real Black Angus beef.

29. The practice of falsely labeling and selling regular beef as "Black Angus" has occurred with coordinated advertising, promotion, purchasing, delivery and supervision, all from the CUB (SUPERVALU) corporate offices in Minnesota.

30. The practice complained of, upon information and belief, continues as of the filing of the original Complaint.

31. Prior to the filing of this Complaint, one or more employees of CUB FOODS brought the practice of improperly labeling and selling non-Black Angus Beef as genuine Black Angus beef to CUB FOODS and or SUPERVALU executives, who have ignored those employees' concerns, and have continued the practices described in this Complaint.

### **CLASS ACTION ALLEGATIONS**

#### **Class Action Prerequisites (Minn.R.Civ.P. 23.01)**

32. The Plaintiff Class is so numerous that joinder of all members is impracticable, thereby satisfying the requirements of Minn.R.Civ.P. Rule 23.01(a).

33. While the exact number of the Plaintiff Class is not currently known and will be the subject of discovery, it is believed that CUB FOODS customers who purchased beef that was falsely promoted, marketed and sold by SUPERVALU and CUB FOODS as Black Angus since at least June, 2004 number in the thousands, if not the tens of thousands, given the time period involved and the large number of CUB FOODS stores doing business throughout the State of Minnesota.

34. There are numerous questions of law or fact common to the Plaintiff class, thereby satisfying the requirements of Minn.R.Civ.P. Rule 23.01(b). Those common legal and factual questions include, but are not necessarily limited to:

- whether SUPERVALU marketed, promoted and sold Black Angus beef in its Minnesota CUB FOODS stores when, in fact, the beef in question was not actually Black Angus beef;
- whether SUPERVALU's practices violated Minnesota laws, including the Deceptive and Unfair Trade Practices Act; the Prevention of Consumer Fraud Act; the Unlawful Trade Practices Act; Minnesota's false advertising laws, and the common law; and
- the amount and extent of the Plaintiff Class' damages.

35. The claims of class representatives Olson and Wylde are typical of the claims of the remainder of the Plaintiff Class, satisfying the requirements of Minn.R.Civ.P. Rule 23.01(c).

36. Olson and Wylde and their chosen counsel will also fairly and adequately protect the interests of the rest of the Plaintiff Class, satisfying the requirements of Minn.R.Civ.P. Rule 23.01(d).

### Class Certification (Minn.R.Civ.P. 23.02)

37. The Plaintiff Class has satisfied the prerequisite elements of Minn.R.Civ.P. Rule 23.01, as set forth above.

38. This action should be certified as a class action under Minn.R.Civ.P. Rule 23.01(a), because the prosecution of separate actions by individual members of the Plaintiff Class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for SUPERVALU.

39. In the alternative, this action should be certified as a class action under Minn.R.Civ.P. Rule 23.01(b), because SUPERVALU has acted or refused to act on grounds generally applicable to the Plaintiff Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Plaintiff Class as a whole.

40. In the alternative, this action should be certified as a class action under Minn.R.Civ.P. Rule 23.01(c), because questions of law or fact common to the members of the Plaintiff Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

41. While this class may be certified under either the provisions of Minn.R.Civ.P. 23.01(a), 23.01(b), or 23.01(c), the Plaintiff Class requests certification under either §§23.01(a) or 23.01(c), which would provide for damages, insofar as injunctive relief, alone, would be insufficient to compensate the Plaintiff Class for damages suffered.

42. Olson and Wylde have retained counsel on their own behalf and on behalf of the proposed Plaintiff Class, and those attorneys are entitled to be paid a reasonable fee for their services, and have their costs and expenses reimbursed.

43. All conditions precedent to this lawsuit have occurred, or been satisfied or waived.

**COUNT I – VIOLATION OF MINNESOTA’S UNIFORM DECEPTIVE  
TRADE PRACTICES ACT – MINN. STAT. §§ 325D.43-48**

44. All allegations made prior to Count I are realleged and are incorporated herein by reference.

45. SUPERVALU has engaged in deceptive trade practices prohibited by the Uniform Deceptive Trade Practices Act (“UDTPA”), by causing confusion or misunderstanding as to the beef it has sold as Black Angus by representing certain beef to be Black Angus when, in fact, it was not, and by otherwise engaging in conduct which created a likelihood of confusion or misunderstanding in the Plaintiff Class: namely, customers who purchased Black Angus beef from SUPERVALU’s CUB FOODS stores.

46. The acts or omissions described above violated Minn. Stat. § 325D.44, creating a cause of action.

47. Under UDTPA, §325D.44(13) subd. 2, the Plaintiff Class does not need to prove actual confusion or misunderstanding.

48. The Plaintiff class is entitled under Minn. Stat. § 325D.45 to injunctive relief against SUPERVALU and costs and attorneys’ fees, without

having to prove monetary damages or any intent to deceive. Those statutory remedies are cumulative to all other common law and statutory remedies available to the Plaintiff Class.

WHEREFORE, the Plaintiff Class requests the following relief against SUPERVALU: certification of this case as a class action with Olson and Wylde as named plaintiffs and their attorneys as class counsel; damages as allowable by law; injunctive relief; attorneys' fees and the costs of this action; prejudgment interest; and such other and further relief this Court deems just and equitable.

**COUNT II – VIOLATION OF MINNESOTA'S UNLAWFUL TRADE PRACTICES, CONSUMER FRAUD, AND FALSE ADVERTISING STATUTES**

49. All allegations prior to Count I are realleged and are incorporated herein by reference.

50. SUPERVALU has violated Minn. Stat. § 325D.13, part of Minnesota's Unlawful Trade Practices Act, by knowingly misrepresenting the true quality or origin of the beef it marketed, promoted and sold through its CUB FOODS stores as Black Angus.

51. SUPERVALU has violated Minn. Stat. § 325F.67, which prohibits false statement in advertising, by promulgating advertisements relating to Black Angus beef which were untrue, deceptive, or misleading.

52. SUPERVALU has violated Minn. Stat. § 325F.69, part of Minnesota's Prevention of Consumer Fraud Act, by engaging in misleading statements or deceptive practices regarding the sale of Black Angus beef at its CUB FOODS stores.

53. The State of Minnesota has created a private remedy for those statutory violations through the promulgation of Minn. Stat. §8.31, subd. 3a., expressly allowing for a civil action, and an award to the Plaintiff Class of damages, costs and disbursements, including the costs of investigation and reasonable attorneys' fees, together with any other equitable relief to be determined by this Court.

54. Individual consumer reliance is not an element of any of the statutory remedies set forth above.

55. WHEREFORE, the Plaintiff Class requests the following relief against SUPERVALU: certification of this case as a class action with Olson and Wylde as named plaintiffs and their attorneys as class counsel; damages as allowable by law; injunctive relief; attorneys' fees and the costs of this action; prejudgment interest; and such other and further relief this Court deems just and equitable.

**COUNT III – NEGLIGENT AND/OR INTENTIONAL  
MISREPRESENTATIONS BY OMISSION**

56. All allegations prior to Count I are realleged and are incorporated herein by reference.

57. SUPERVALU, either through negligence or intent, withheld from and omitted to tell the Plaintiff Class the following material fact that beef marketed, promoted and sold as Black Angus at SUPERVALU's CUB FOODS stores was not, in fact, Black Angus beef.

58. SUPERVALU knew, or should have known, that the sale of Black Angus beef described more particularly above was untrue, in that the beef was not actually Black Angus beef.

59. SUPERVALU, either by intent or through negligence, caused beef to be incorrectly marketed, promoted and sold as Black Angus; and the Plaintiff Class did in fact purchase mislabeled beef at Minnesota CUB stores.

60. The Plaintiff Class has suffered damages through SUPERVALU's material omissions.

61. The Plaintiff Class' negligent or intentional misrepresentation by omission claim is amendable to class-wide treatment because SUPERVALU has engaged in a common course of wrongdoing based on the same omissions, and individual reliance by the Plaintiff Class members is not required in such circumstances.

WHEREFORE, the Plaintiff Class requests the following relief against SUPERVALU: certification of this case as a class action with Olson and Wyld as named plaintiffs and their attorneys as class counsel; damages as allowable by law; injunctive relief; attorneys' fees and the costs of this action; prejudgment interest; and such other and further relief this Court deems just and equitable.

#### **COUNT IV – UNJUST ENRICHMENT**

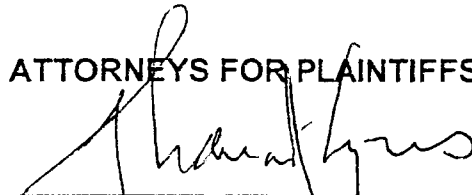
62. All allegations prior to Count I are realleged and are incorporated herein by reference.

63. SUPERVALU, through its CUB FOODS stores, has been unjustly enriched by selling regular choice beef as Black Angus because of the higher wholesale cost of real Black Angus beef.

WHEREFORE, the Plaintiff Class requests the following relief against SUPERVALU: certification of this case as a class action with Olson and Wyde as named plaintiffs and their attorneys as class counsel; damages as allowable by law; injunctive relief; attorneys' fees and the costs of this action; prejudgment interest; and such other and further relief this Court deems just and equitable.

Dated this 13<sup>th</sup> ~~July~~ <sup>August</sup> day of ~~July~~, 2007.

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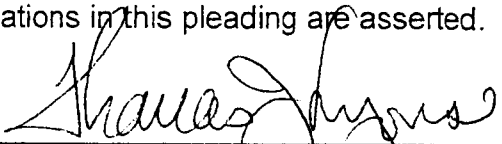
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**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211 (1997), to the party against whom the allegations in this pleading are asserted.

  
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THOMAS J. LYONS SR.