

A class action lawsuit alleges Kellogg's brand marketing for its Strawberry Pop-Tarts is "misleading because it gives people the impression the fruit filling contains a greater relative and absolute amount of strawberries than it does."

The complaint alleges that strawberries come in behind cheaper dried pears and apples in the list of ingredients. Among consumer law and breach of warranty claims are allegations of negligence and fraud.

The plaintiff said she wanted more than "a strawberry taste, which she failed to receive, due to the relatively greater amount of pears and apples" in the filling, according to Reuters.

The plaintiff cited the Illinois Consumer Fraud and Deceptive Business Practices Act, stating that Kellogg's "false and deceptive representations and omissions" are likely to influence customer purchasing decisions.

Kellogg argues in court papers that "reasonable consumers do not buy Frosted Strawberry Pop-Tarts because they believe they are high in antioxidants or vitamin C."

The plaintiff's lawyer, Spencer Sheehan of Sheehan & Associates was reported as saying "it is the most basic, simplest, fairest thing to do, to tell people what they're getting".

Sheehan told Reuters that he is not expecting to find a fresh strawberry inside a Pop-Tart, but if the product is called "Strawberry Pop-Tart" then strawberries should be the number one fruit in the filling.

"The product's common or usual name of 'Whole Grain Frosted Strawberry Toaster Pastries,' is false, deceptive, and misleading, because it contains mostly non-strawberry fruit ingredients," he wrote in the complaint filed in Manhattan federal court.

He wrote the pastries are "unable to confer any of the health-related benefits of strawberries because the amount of strawberries is insufficient to provide the benefits of this fruit."

A Kellogg spokesperson was reported as saying, "While we don't comment on pending litigation, we can tell you the ingredients in and labeling of all of our Pop-Tart products fully comply with all legal requirements."

Represented by Jenner & Block's Dean Panos, Kellogg hit back with a motion to dismiss that's currently pending before U.S. District Judge Andrew Carter.

Panos argues that “the labeling does not state, or even imply, that the product contains a specific amount of strawberries” and that strawberries are in fact the predominant fruit ingredient.

"No reasonable consumer equates a Pop-Tart to a bushel of strawberries," Panos was reported as saying.