

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

2017 AUG -9 AM 9:24

KELLY TARRANT, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 7-ELEVEN, INC., a Texas corporation, )  
 )  
 Defendant. )

No. )  
 )  
 )  
 )  
 )  
 )  
 Jury Trial Demanded

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.  
  
DOROTHY BROWN CLERK  
2017CH10875  
CALENDAR/ROOM 06  
TIME 00:00  
Class Action

**CLASS ACTION COMPLAINT**

NOW COMES Plaintiff KELLY TARRANT (“Plaintiff”), by and through counsel at ZIMMERMAN LAW OFFICES, P.C., and complains of Defendant 7-ELEVEN, INC., a Texas corporation (“7-Eleven” or “Defendant”), as follows:

**Nature of the Case**

1. This is a class action brought on behalf of the class of persons defined herein (the “Class”), who were improperly charged the Cook County sweetened beverage tax by 7-Eleven stores on their retail purchases of unsweetened beverages in Cook County, Illinois.
2. The Cook County Sweetened Beverage Tax Ordinance imposes a tax at the rate of \$0.01 per ounce on the retail sale of all sweetened beverages in Cook County, Illinois.
3. Notwithstanding the requirements in the Cook County Sweetened Beverage Tax Ordinance, Defendant charged Plaintiff a sweetened beverage tax on her unsweetened beverage purchased in a Super Big Gulp cup, resulting in an unlawful tax charge. On information and belief, under the direction of Defendant, 7-Eleven retail stores are automatically and uniformly charging the sweetened beverage tax on all purchases in a Gulp cup, Big Gulp cup, Super Big Gulp cup, or Double Big Gulp cup (collectively “Gulp cups”) regardless of whether the consumer is purchasing a sweetened beverage in the cup.

4. Defendant's acts and omissions alleged herein violate the Illinois Consumer Fraud and Deceptive Trade Practices Act.

### **The Parties**

5. Plaintiff Kelly Tarrant is a natural person residing in Chicago, Illinois. Plaintiff purchased an unsweetened coffee beverage in a Super Big Gulp cup at a 7-Eleven store located at 343 S. Dearborn Street, Chicago, Cook County, Illinois.

6. Defendant 7-Eleven, Inc. is a corporation organized under the laws of Texas and has its corporate headquarters in Irving, Texas. Defendant is the franchisor for all 7-Eleven retail stores.

### **Jurisdiction and Venue**

7. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), section 2-209(a)(7) (the making or performance of any contract or promise substantially connected with this State), section 2-209(b)(4) (corporation doing business within this State), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States). 735 ILCS 5/2-209(a)(1), (a)(7), (b)(4), and (c).

8. Venue is proper in this County, pursuant to 735 ILCS 5/2-101, because this is the county of residence of Plaintiff and where the complained-of transaction occurred. Defendant is a private corporation and is doing business in this County. 735 ILCS 5/2-102(a).

### **Cook County Sweetened Beverage Tax Ordinance**

9. On November 10, 2016, the Cook County Board of Commissioners passed the Cook County Sweetened Beverage Tax Ordinance ("Ordinance").

10. The tax was adopted by the Cook County Board of Commissioners to decrease the consumption of sweetened beverages and encourage the adoption of healthy beverage options due to the link between such beverages and obesity, diabetes and other health conditions.

11. The Ordinance imposes a tax at the rate of \$0.01 per ounce on the retail sale of all sweetened beverages in Cook County, Illinois.

12. The Ordinance was challenged by a lawsuit in the Circuit Court of Cook County, Illinois. On July 28, 2017, the Court granted the County's motion to dismiss the complaint without prejudice and dissolved the Temporary Restraining Order entered on June 30, 2017. Thus, the Ordinance and related regulations went into effect and the Cook County Department of Revenue set the first date of collection of the sweetened beverage tax as August 2, 2017.

13. The Ordinance defines "purchaser" as any person who purchases in a retail sale. Sec. 74-851. Plaintiff and other consumers who purchased beverages at 7-Eleven stores in Cook County are "purchasers" under the Ordinance.

14. The Ordinance defines "retailer" as any person engaged in the business of selling sweetened beverages at retail in the County of Cook. Sec. 74-851. Because 7-Eleven stores sell sweetened beverages to purchasers in the County of Cook, they are "retailers" under the Ordinance.

15. The Ordinance defines "sweetened beverage" as any non-alcoholic beverage, carbonated or non-carbonated, which is intended for human consumption and contains any caloric sweetener or non-caloric sweetener, and is available for sale in a bottle or produced for sale through the use of syrup and/or powder. Sec. 74-851. Sweetened beverage *does not include* (1) beverages consisting of 100% natural fruit or vegetable juice; (2) beverages in which milk, or soy, rice, or similar milk substitute, makes up more than 50% of the beverage or is the first listed ingredient on the label of the beverage; (3) beverages to which a purchaser can add, or can request that a retailer add, caloric sweetener or non-caloric sweetener; (4) infant formula; (5) beverages for medical use; (6) any liquid sold as a therapeutic nutritional meal replacement or for use for weight reduction as a meal replacement; or (7) any syrup or powder that the purchaser himself or herself combines with other ingredients to create a beverage. *Id.*

### **Defendant's Implementation of the Sweetened Beverage Tax**

16. As the franchisor of all 7-Eleven retail stores, Defendant controls the retail payment systems of all 7-Eleven retail stores in Cook County, Illinois.

17. The 7-Eleven Individual Store Franchise Agreement requires all 7-Eleven retail stores to use the "7-Eleven Store Information System" in connection with the franchisee's operation of the store in accordance with Defendant's requirements.

18. The "7-Eleven Store Information System" is the proprietary electronic store operations system that provides for scanning, ordering and completing other 7-Eleven Store operations related tasks. The 7-Eleven Store Information System includes POS scanners, computers and any other hardware that Defendant uses and all software associated with it, including any replacement or modified computer or other electronic system used in connection with 7-Eleven Store operations.

19. Unsweetened beverages can be purchased in Gulp cups at 7-Eleven retail stores. For example, a consumer can add ice and fresh-brewed coffee to a Gulp cup and then the consumer can add, or can request that a retailer add, caloric sweetener or non-caloric sweetener to the beverage. Such drinks are excluded from the sweetened beverage tax under the Ordinance. *See* Sec. 74-851 (definition of "sweetened beverage").

20. On information and belief, at the point-of-sale the 7-Eleven Store Information System automatically calculates and adds the sweetened beverage tax to retail purchases of beverages in Gulp cups regardless of whether a sweetened beverage is being purchased in the cup.

21. Because the 7-Eleven retail stores must use the 7-Eleven Store Information System as a contractual term of being a franchisee, the sweetened beverage tax is improperly and uniformly charged to, and paid by, consumers who purchase unsweetened beverages in Gulp cups at 7-Eleven stores in Cook County, Illinois.

22. The local 7-Eleven retail stores cannot re-program their POS systems to correct the improper taxation, as the 7-Eleven Store Information System is programmed by Defendant and all product codes and taxation calculations are uniform for all 7-Eleven retail stores in Cook County.

**Defendant's Advertisements For Iced Coffee in Big Gulp Cups**

23. Defendant has been actively promoting customizable drinks using its Gulp cups.

24. Convenience Store News reports that 7-Eleven's summer focus program seeks to boost summertime sales of its freshly brewed hot coffee by encouraging consumers to fill a Gulp cup with ice and add coffee and condiments from the hot coffee bar. *See* Convenience Store News, "Fresh-Brewed Iced Coffee is 7-Eleven's Summer Focus," attached hereto as Exhibit 1. Defendant's summertime campaign allows customers to customize their coffee beverage; customers can choose to add, or not add, caloric or non-caloric sweetener to these beverages.

25. Defendant also provides its franchisees with "in-store signage, including clings, floor stands and translite signs" encouraging shoppers to purchase their freshly-brewed coffee on ice in a Gulp cup. *See* Exhibit 1.

26. The home page of the 7-Eleven website also prominently promotes its freshly brewed ice coffee telling customers they can make it their way with creamers and syrups. *See* <https://www.7-eleven.com/home> printout attached hereto as Exhibit 2. The home page depicts the iced coffee in a Big Gulp cup. *Id.*

27. A floor stand and sign at the 7-Eleven store where Plaintiff purchased her iced coffee promote Defendant's iced coffee and instruct customers to grab your Big Gulp cup, fill it with ice, add coffee, and customize it at the coffee bar. *See* in-store advertisement, attached hereto as Exhibit 3, and in-store floor stand, attached hereto as Exhibit 4.

### **Facts Relating to Plaintiff**

28. On August 7, 2017, Plaintiff used a Super Big Gulp cup and filled it with ice and fresh-brewed coffee at the aforementioned 7-Eleven store in Chicago. The coffee did not contain any caloric sweetener or non-caloric sweetener, as it was fresh-brewed coffee. As such, Plaintiff's fresh-brewed coffee purchase does not qualify as a sweetened beverage under the Ordinance.

29. The purchase price of Plaintiff's above-described coffee drink before tax was \$0.99.

30. In addition to the sales tax of \$0.10, the 7-Eleven store charged Plaintiff a \$0.28 sweetened beverage tax on her above-described coffee drink.

31. Plaintiff paid the \$0.28 sweetened beverage tax as a condition of the sale and receipt of the product. The salesperson at the point of sale, an employee of the 7-Eleven retail store, acting within the course and scope of employment, informed Plaintiff that she owed the sweetened beverage tax, and Plaintiff, relying upon that representation, paid that amount to the store. Defendant's uniform policies required the salesperson to inform customers, like Plaintiff and Class members, of the amount of money that they owed for their purchases, and not to sell the items unless the customers paid the total purchase price.

32. Thereafter, Plaintiff reviewed her receipt and called the 7-Eleven retail store manager to protest the charge to her of the sweetened beverage tax. The manager told Plaintiff that the tax is programmed in the 7-Eleven Store Information System and that the system automatically charges the sweetened beverage tax to all beverages purchased in Gulp cups, regardless of whether the beverage is subject to the sweetened beverage tax.

33. The local 7-Eleven retail stores cannot control whether the sweetened beverage tax is charged on unsweetened beverages sold in their stores, as the 7-Eleven Store Information System is programmed by Defendant and the sweetened beverage tax is automatically applied by that uniform system to certain product codes in all 7-Eleven retail stores in Cook County.

34. The manager did not provide Plaintiff with a refund of the sweetened beverage tax that she paid, despite her protest and refund request.

### **Class Action Allegations**

35. This action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801 *et seq.*, as set forth below.

36. *Class Definition.* Plaintiff brings this action individually and on behalf of the following class of similarly situated persons (the “Class”), of which Plaintiff is a member:

All persons who purchased an unsweetened beverage from a 7-Eleven store in Cook County, Illinois, and were charged and paid a sweetened beverage tax.

Excluded from the Class are: (1) Defendant, Defendant’s agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person. Plaintiff hereby reserves her right to amend the above class definition based on discovery and the proofs at trial.

37. *Numerosity.* The Class is so numerous that joinder of all members is impracticable. Plaintiff believes that there are many thousands of people in the Class. This is based on the fact that there are seventy-four (74) 7-Eleven retail stores in Chicago alone,<sup>1</sup> and Defendant advertises that it serves over 1.1 million cups of fresh-brewed coffee every day.<sup>2</sup> The exact number and identity of Class members is unknown to Plaintiff at this time and can only be ascertained from Defendant’s books and records.

38. *Commonality.* There are questions of fact or law common to the Class, which common questions predominate over any questions affecting only individual members including,

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<sup>1</sup> See *7-Eleven Locations in Cook County, Illinois*, CITY-DATA, <http://www.city-data.com/locations/7Eleven/Cook-County-IL-6.html> (last accessed August 8, 2017).

<sup>2</sup> See *Fun Facts*, 7-ELEVEN CORPORATE, <http://corp.7-eleven.com/corp-BAK/fun-facts> (last accessed August 8, 2017).

*inter alia*, the following:

- a. whether Defendant's acts and omissions alleged herein constitute a violation of Chapter 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*;
- b. whether Defendant misrepresented that a sweetened beverage tax was owed on an unsweetened beverage purchased from a 7-Eleven store in Cook County, Illinois;
- c. whether Plaintiff and the members of the Class have sustained damages and, if so, what is the proper measure of their damages; and
- d. whether Plaintiff and the members of the Class are entitled to the relief sought, including attorney's fees.

39. *Adequacy.* The representative Plaintiff will fairly and adequately protect the interest of the Class. Plaintiff has retained the undersigned class counsel, who are competent and experienced in the prosecution of complex and class action litigation. The interests of Plaintiff are aligned with, and not antagonistic to, those of the Class.

40. *Appropriateness.* A class action is an appropriate method for the fair and efficient adjudication of this controversy. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class. Also, the likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary relief at issue for individual Class members.

### **COUNT I**

#### **(Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act)**

41. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 40 with the same force and effect as though fully set forth herein.

42. At all times relevant hereto, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* ("ICFA").



43. Chapter 2 of the ICFA prohibits unfair or deceptive acts or practices used or employed in the conduct of any trade or commerce. See, 815 ILCS 505/2.

44. Defendant's practice of charging Plaintiff and the Class a sweetened beverage tax on the purchase of unsweetened beverages, as alleged in detail *supra*, is an unfair and deceptive act or practice prohibited by Chapter 2 of the ICFA. See, 815 ILCS 505/2.

45. Defendant's conduct described herein created a likelihood of confusion or misunderstanding for Plaintiff and the Class by misrepresenting the amount of tax owed on the purchase of unsweetened beverages as described herein, and therefore constitutes a deceptive act or practice under the ICFA.

46. Defendant's conduct described herein also constitutes a deceptive act or practice under the ICFA because it offends public policy; it is immoral, unethical, oppressive, and unscrupulous; and it causes substantial injury to consumers.

47. Defendant intended to deceive Plaintiff and the Class, and intended to be unfair to Plaintiff and the Class, by unlawfully charging a sweetened beverage tax on unsweetened beverages, as described herein.

48. Defendant intended that Plaintiff and the Class rely on (a) Defendant's misrepresentation that a sweetened beverage tax was owed when purchasing an unsweetened beverage, and (b) Defendant's failing to disclose or notify Plaintiff and the Class that no tax was due on the unsweetened beverage.

49. Plaintiff and the Class relied on the misrepresentations and omissions to their detriment by paying the sweetened beverage tax on an unsweetened beverage.

50. The above-described deceptive and unfair acts and practices were used or employed in the conduct of trade or commerce—namely, the sale of goods to Plaintiff and the Class.

51. As a direct and proximate result of the foregoing, Plaintiff and the Class have been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class, and against Defendant;
- D. Awarding Plaintiff and Class members their actual damages, attorney's fees and costs, including interest thereon, as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff KELLY TARRANT,

By: 

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Matthew C. De Re

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