

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

MARIO BURNS, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

EMERGY INC.,

Defendant.

Class Action Complaint

Jury Trial Demanded

Mario Burns (“Plaintiff”), through Counsel, alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. The past ten years have seen an increase in demand for plant-based proteins.



2. Reasons include increased awareness of animal rights, environmental harms caused by meat production, and avoidance of saturated fat.

3. One of the most significant “plants” to fill this role is the mushroom, technically a fungi.



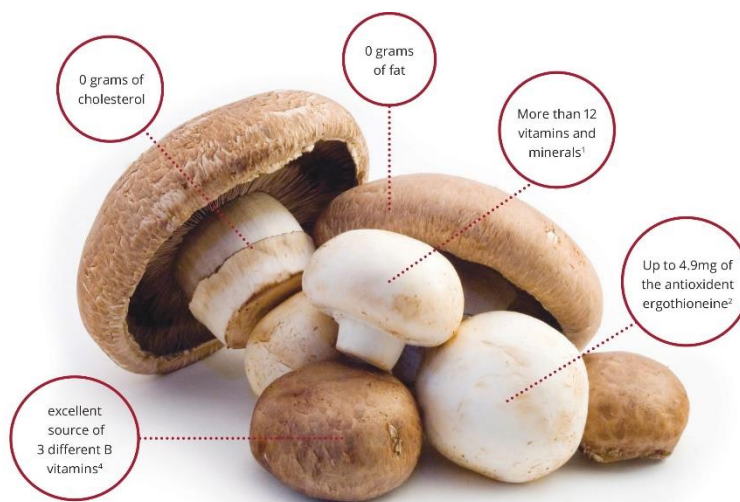
4. Mushroom growing require relatively few resource inputs, and can be grown under a range of conditions, in open fields and forests.



5. Vegetarian restaurateur Nicole Marquis described mushrooms as “an ideal substitute for meat because they’re chewy and have a meaty texture and flavor.”



6. Marquis makes sure to use all parts of the mushroom, like the petals, caps, stems, and/or bulbs, to capitalize on their nutrient density.



7. Studies continue to find that micronutrients in mushrooms improve immune systems, microbiome, reduce inflammation, and lower cholesterol.

8. The Mushroom Council has reported that demand for this “superfood” has increased significantly over the past ten years, with its use as a meat substitute a significant factor in this growth.

9. To meet the demand for all things mushroom, and/or plant-based meat

alternatives, Emery Inc. (“Defendant”) manufactures, labels, markets, packages, distributes, and/or sells, meat analogues, including “Classic Cutlets,” and “Classic Steaks,” described as “Made From Mushroom Root,” identified as “Mushroom Root Classic Cutlets,” and “Mushroom Root Classic Steaks,” purporting to consist of “95% [of] Mushroom Root Protein,” under the Eat Meati brand (“Products”).



10. Unfortunately for purchasers, the Products are “adulterated,” because the

“valuable constituent [of mushrooms] has been in whole or in part omitted or abstracted,” based on the fine print ingredients, on the back, disclosing that the most predominant ingredient is “mycelium,” in parentheses, after the term, “Mushroom Root.” AGM § 200(7); 21 U.S.C. § 342(b)(1); 21 C.F.R. § 101.4(a); 21 U.S.C. § 301 *et seq.*¹ AGM § 3.²

Ingredients: Mushroom Root (mycelium), Less Than 2% Of: Salt, Natural Flavor, Acacia Gum, Oat Fiber, Chickpea Flour.

delicious as it is nourishing, and made from mushroom root. Chef-tested, Mother Nature-approved, and grown to make you feel good about the food you are choosing to eat. Now that's Good Energy™.

Nutrition Facts

2 servings per container
Serving size **one cutlet (105g)**

	Per serving		Per container	
	110		220	
	% Daily Value*		% Daily Value*	
Calories				
Total Fat	1.5g	2%	3g	4%
Saturated Fat	0g	0%	0g	0%
Trans Fat	0g	0%	0g	0%
Cholesterol	0mg	0%	0mg	0%
Sodium	240mg	10%	480mg	21%
Total Carbohydrate	8g	3%	17g	6%
Dietary Fiber	5g	21%	13g	46%
Total Sugars	0g	0%	0g	0%
Includes Added Sugars	0g	0%	0g	0%
Protein	17g	32%	33g	66%
Vitamin D	0mcg	0%	0mcg	0%
Calcium	23mg	2%	46mg	4%
Iron	1.5mg	8%	3mg	15%
Potassium	200mg	4%	400mg	8%
Riboflavin	1.17mg	90%	2.34mg	180%
Niacin	6mg	56%	16mg	100%
Folate	145mcg DFE	35%	290mcg DFE	70%
Pantothenic Acid	1.8mg	35%	3.6mg	70%
Magnesium	30mg	8%	61mg	15%
Zinc	5mg	45%	10mg	90%
Copper	0.3mg	35%	0.6mg	70%
Choline	85mg	15%	170mg	30%

*% Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Ingredients: Mushroom Root (mycelium), Less Than 2% Of Salt, Natural Flavor, Acacia Gum, Oat Fiber, Chickpea Flour.

Avoid if sensitive to Fungus such as Mushroom, Mold, or Yeast.

Manufactured & distributed by Emergy Inc. DBA Meati Foods, Boulder, CO 80301. Contact us at yourfeedback@meati.com
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No gluten, soy or wheat ingredients, artificial flavors, or colors.

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servings/suggestion: veggie & cheese not included

How To Cook

- Season with salt, pepper and a thin coating of oil.
- Pre-heat a non-stick skillet or grill to medium heat with 1 tbsp oil.
- Cook 10-12 minutes if frozen, 6-8 minutes if thawed.
- Flip every 2 minutes until outside is golden and internal temperature is 165°F.
- Remove, let rest for several minutes, and enjoy!

Keep refrigerated and use within 2 days of opening. Cook thoroughly before serving. If purchased frozen, thaw in refrigerator before cooking. Consume within 15 days of thawing. Do not refreeze once thawed or cooked.

Scan for recipes or to learn more about meati™



¹ “Misbranded” is the statutory term for labeling that is false and/or misleading, while “adulterated” means to “render (something) poorer in quality by adding another substance, typically an inferior one.”

² Article 17, Adulteration, Packing, and Branding of Food and Food Products, AGM § 198 *et seq.*; Official Compilation of Codes, Rules and Regulations of the State of New York (“N.Y.C.R.R.”), Title 1, Department of Agriculture and Markets, Chapter VI, Food Control, Subchapter C, Food and Food Products (Article 17, AGM), including 1 N.Y.C.R.R. § 250.1 (adopting federal standards of identify for foods), 1 N.Y.C.R.R. § 259.1(a) (adopting Parts 100, 101 and 102 of Title 21).

11. The Products are “adulterated,” because the “substance[s] [of *Neurospora crassa*, or red bread mold, or mycelium, the mass of branched, tubular filaments (hyphae) of fungi] has been substituted wholly or in part [] for [mushrooms, and/or mushroom roots].” AGM § 200(8); 21 U.S.C. § 342(b)(2).

12. This was disclosed through, among other sources, a press release, promoting the company’s patent “on a composition of matter containing *Neurospora crassa*, commercially known as MushroomRoot.”³

13. Instead, Emergy “puts a teaspoon of *Neurospora crassa* spores into a brewery-like tank and adds sugar for the fungi to eat.”⁴



³ Meati Foods™ Receives U.S. Patent for MushroomRoot™ (*Neurospora crassa*) Food Applications.

⁴ Julian Spector, Meati is turning fungi into climate-friendly steaks. Will diners bite?, June 27, 2024, Canary Media.

14. Unlike traditional mushrooms, mycelium fibers are “harvested” from the vats, they are assembled in an industrial factory, and pressed into the shapes of cutlets and steaks.



15. The Products is “misbranded,” because its description as “Made From Mushroom Root,” and/or purporting to consist of “95% [of] Mushroom Root Protein,” causes purchasers to expect a non-de minimis amount of mushrooms and/or mushroom components. AGM § 201(1); 21 U.S.C. § 343(a)(1).

16. As the typical consumer is not a botanist, they should be forgiven for not knowing the differences between fungi and plants, especially in the thirteen seconds taken to choose what to buy.

17. The mycelium used in the Products, from *Neurospora crassa*, cannot be used to create or grow mushrooms, and is not a mushroom.

18. Purchasers are not informed that *Neurospora crassa* is a type of mold, the consumption of which can cause serious allergic reactions, and other harmful

effects.

19. The Products are “misbranded,” because their “statements of identity,” “Mushroom Root Classic Cutlets,” and “Mushroom Root Classic Steaks,” are neither truthful nor non-misleading. AGM § 201(9); 21 U.S.C. § 343(i); 21 C.F.R. § 102.5(a); 21 C.F.R. § 101.3(b)(2); 1 N.Y.C.R.R. § 259.1(a).

20. This is because the mycelium used to create the Products has little to no connection to mushrooms.

21. The FDA recognized the difference between mushroom mycelium and real mushrooms, and required that “Any food in which mushroom mycelium is used should be labeled to state that fact.”⁵

22. It required that “Labeling should not suggest or imply that the food contains mushrooms,” when it contains “mushroom mycelium.”

23. In fact, “mushroomroot” is not a recognized term in mycology, the branch of botany focused on fungi.

24. This is because “mushroomroot” is a trademarked term for the end-products created from *Neurospora crassa*.

25. Mushrooms lack roots like plants, and mycelium is the thread-like body of a fungus, that grows underground.

⁵ CPG Sec 585.525: Mushroom Mycelium - Fitness for Food; Labeling.

26. This is because “Mushroom Root,” does not “accurately identif[y] or describe[], in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients.” 21 C.F.R. § 102.5(a); 21 C.F.R. § 101.3(b)(2); 1 N.Y.C.R.R. § 259.1(a).

27. As a result of the false and misleading representations and omissions, the Products are sold at a premium price, approximately \$8.99, for 8.8 ounces, higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions, when these factors are taken together, and/or utilized for the purpose of conjoint analysis, choice analysis, choice-based ranking, hedonic pricing, and/or other similar methods, to evaluate a product’s attributes and/or features.

JURISDICTION

28. Plaintiff Burns is a resident of Kings County, New York.

29. The Court has jurisdiction over Defendant, because it transacts business within New York, and sells the Products to consumers within New York, through third parties, including grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery, and/or other similar locations, in this State, and/or online, to citizens of this State.

30. Defendant transacts business in New York, through the sale of the Products to citizens of New York, from third parties, including grocery stores, big

box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery, and/or other similar locations, in this State, and/or online, to citizens of this State.

31. Defendant has committed tortious acts within this State through the distribution and sale of the Products, which is misleading to consumers in this State.

32. Defendant has committed tortious acts outside this State by distributing, marketing, labeling, packaging, representing, and/or selling the Products in a manner which causes injury to consumers within this State, by misleading them as to its contents, production practices, type, origins, quantity, amount, and/or quality, by regularly doing or soliciting business, or engaging in other persistent courses of conduct to sell the Products to consumers in this State, and/or derives substantial revenue from the sale of the Products in this State.

33. Defendant has committed tortious acts outside this State by labeling the Products in a manner which causes injury to consumers within this State by misleading them as to its contents, ingredients, production practices, type, origins, amount, and/or quality, through causing the Products to be distributed throughout this State, such that it expects or should reasonably expect such acts to have consequences in this State and derives substantial revenue from interstate or international commerce.

VENUE

34. Venue is in this Court because Plaintiff Burns' residence is in Kings County.

PARTIES

35. Plaintiff Burns is a consumer, not a merchant or re-seller.

36. Plaintiff Burns is a resident of Kings County, New York.

37. Defendant Emery Inc. is a Delaware corporation with a principal place of business in Colorado.

38. Plaintiff is like most consumers, and looks to, and/or cannot avoid viewing, the front label of foods, to see what he is buying, and/or to learn basic information about them.

39. Plaintiff is like most consumers, and is accustomed to the front label of packaging telling him about a food's predominant or significant ingredients.

40. Plaintiff is like many consumers, who tries to consume plant-based foods, and plant-based meat alternatives, for the reasons indicated.

41. Plaintiff is like most consumers, and is accustomed to the front label of packaging telling them the source of the food they are buying, because this is something required by law, and what most products have been doing for over one hundred years.

42. Plaintiff is like most consumers, who when they see a front label which promotes or describes a food as based on mushroom root, they expect it to be from

mushrooms, not a strain of mycelium grown in an industrial factory.

43. Plaintiff read, saw, and/or relied on the packaging and labeling, to mean the Products contained mushrooms, not mycelium, which had no connection to real mushrooms.

44. Plaintiff bought one or more of the Products, with the labeling and packaging identified here, at or around the above-referenced price.

45. Plaintiff purchased one or more of the Products, between November 2021 and November 2024, at stores in New York.

46. Plaintiff paid more for the Products than he would have, had he known it did not contain real mushrooms, but mycelium, which was not capable of creating mushrooms, as he would have paid less.

47. The Products were not “worthless” to Plaintiff, but worth less, than what Plaintiff paid, and he would not have paid as much, absent Defendant’s false and misleading statements, and/or omissions.

48. Plaintiff obtained value from the Products, but seeks the difference between the Products, as presented, and based on the absence of mushrooms, as he and the public understand this food.

49. The Products’ features and/or attributes, when taken together, and/or utilized for the purpose of conjoint analysis, choice analysis, choice-based ranking, hedonic pricing, or other similar methods, impacted Plaintiff’s purchasing choice,

compared to similar products lacking its features and/or attributes.

CLASS ALLEGATIONS

50. Plaintiff is a consumer, not a re-seller or merchant, and seeks to represent other consumers, in the class identified below, against a big business:

All persons in New York, who purchased the Products, with the labeling identified here, in New York, during the statutes of limitations, for each cause of action alleged.

51. Plaintiff's claims are based upon New York General Business Law ("GBL") §§ 349 and 350, passed by the legislature to protect unsophisticated consumers, against large and sophisticated commercial entities.

52. Excluded from the Class are (a) Defendant, Defendant's board members, executive-level officers, members, and attorneys, and immediate family members of any of the foregoing persons, (b) governmental entities, (c) the Court, the Court's immediate family, and Court staff and (d) any person that timely and properly excludes himself or herself from the Class.

53. Common questions of issues, law, and fact predominate, and include whether Defendant's representations were, and are misleading, and if Plaintiff and class members are entitled to damages.

54. Plaintiff's claims and basis for relief are typical to other members, because all were subjected to the same unfair, misleading, and/or deceptive representations, omissions, and/or actions.

55. Plaintiff is an adequate representative, because his interests do not conflict with other members.

56. No individual inquiry is necessary, since the focus is only on Defendant's practices, and the class is definable and ascertainable.

57. Individual actions would risk inconsistent results, be repetitive, and/or are impractical to justify, as the claims are modest, relative to the scope of the harm.

58. The class is sufficiently numerous, because the Products have been sold throughout the State for several years, with the representations, omissions, packaging, and/or labeling identified here, from numerous stores, and/or online, to citizens of this State.

59. Plaintiff's Counsel is competent and experienced in complex class action litigation, and intends to protect class members' interests adequately and fairly.

CAUSES OF ACTION

COUNT I

New York General Business Law ("GBL") §§ 349 and 350

60. To the extent required, this section incorporates by reference other paragraphs as necessary.

61. The purpose of the GBL is to protect consumers against unfair and deceptive practices.

62. This includes making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

63. The GBL considers false advertising, unfair acts, and deceptive practices in the conduct of any trade or commerce to be unlawful.

64. Violations of the GBL can be based on (1) other laws and standards related to consumer deception, (2) public policy, established through statutes, laws, or regulations, (3) principles of the Federal Trade Commission Act (“FTC Act”), (4) FTC decisions with respect to those principles, (5) any rules promulgated pursuant to the FTC Act, and/or (6) standards of unfairness and deception set forth and interpreted by the FTC or the federal courts relating to the FTC Act. 15 U.S.C. §§ 41, 45, *et seq.*

65. Defendant’s false and deceptive representations and omissions with respect to the Products’ contents, origins, nutrient values, servings, ingredients, flavoring, type, functionality, and/or quality, were material in that they were likely to influence consumer purchasing decisions.

66. The packaging and labeling of the Products violated the FTC Act, thereby violating the GBL, because the representations, omissions, design, markings, and/or other elements, including, “Made From Mushroom Root,” “Mushroom Root Classic Cutlets,” “Mushroom Root Classic Steaks,” and/or “95% Mushroom Root Protein,” caused purchasers to expect it contained mushrooms and/or was made from mushrooms, even though neither was true, which was unfair and deceptive to consumers.

67. The packaging and labeling of the Products violated laws, statutes, rules, regulations, and/or norms, which prohibit unfair, deceptive, and/or unconscionable conduct, against the public.

68. The packaging and labeling of the Products violated the GBL, because the representations, omissions, design, markings, and/or other elements, including, “Made From Mushroom Root,” “Mushroom Root Classic Cutlets,” “Mushroom Root Classic Steaks,” and/or “95% Mushroom Root Protein,” caused purchasers to expect it contained mushrooms and/or was made from mushrooms, even though neither was true, which was contrary to statutes and/or regulations, which prohibit consumer deception by companies in the labeling of food products.

<u>State</u>	<u>Federal</u>
<u>AGM § 200(7)</u>	<u>21 U.S.C. § 342(b)(1)</u>
<u>AGM § 200(8)</u>	<u>21 U.S.C. § 342(b)(2)</u>
<u>AGM § 201(1)</u>	<u>21 U.S.C. § 343(a)(1)</u>
<u>AGM § 201(9)</u>	<u>21 U.S.C. § 343(i)</u>
1 N.Y.C.R.R. § 259.1(a)	<u>21 C.F.R. § 101.22</u>
.....	<u>21 C.F.R. § 102.5</u>

69. Plaintiff paid more for the Products, and would not have paid as much, if he knew that it did not contain mushrooms and/or was from mushrooms.

70. Plaintiff seeks to recover for economic injury and/or loss he sustained, based on the misleading labeling and packaging of the Products, a deceptive practice

under the GBL.

71. Plaintiff may produce evidence showing how he and consumers paid more than they would have paid for the Products, relying on Defendant's representations, omissions, packaging, and/or labeling, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis, and/or other advanced methodologies.

72. This means individual damages will be based on the value attributed to the challenged claims and/or omissions, a percentage of the total price paid, instead of the Products' total price.

73. As a result of Defendant's misrepresentations and omissions, Plaintiff was injured and suffered damages, by payment of a price premium for the Products, which is the difference between what he paid based on its labeling, packaging, representations, statements, omissions, and/or marketing, and how much they would have been sold for without the misleading labeling, packaging, representations, statements, omissions, and/or marketing identified here.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative, and the undersigned as Counsel for the Class;

2. Awarding actual damages, but not (1) a penalty, or minimum measure of recovery created or imposed by statute, which may be prohibited by any statute, and (2) punitive damages;
3. Awarding attorneys' fees based on GBL §§ 349 and 350, in the Court's discretion; and
4. Other and further relief as the Court deems just and proper.

Dated: December 23, 2024

Respectfully submitted,

/s/ Spencer Sheehan

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Notice of Lead Counsel Designation:

Lead Counsel for Plaintiff

Spencer Sheehan

Sheehan & Associates P.C.

Counsel for Plaintiff

Certificate of Service

I certify that on December 23, 2024, I served and/or transmitted the foregoing by the method below to the persons or entities indicated, at their last known address of record (blank where not applicable).

	Electronic Filing	First-Class Mail	Email	Fax
Defendant's Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaintiff's Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

/s/ Spencer Sheehan