

IN THE DISTRICT COURT FOR DAKOTA COUNTY, NEBRASKA

BRUCE M. SMITH,)	Civil Case. No. _____
Plaintiff,)	
)	
vs.)	
)	AMENDED CIVIL
AMERICAN BROADCASTING)	COMPLAINT AND
COMPANIES, INC., ABC NEWS, INC.,)	ELECTION FOR JURY TRIAL
JIM AVILA, DIANE SAWYER,)	
JAMIE OLIVER, BETTINA SIEGEL,)	
and DOES 1 to 10, inclusive,)	
)	
Defendants.)	

COMES NOW the Plaintiff, Bruce M. Smith, and for cause(s) of action against the above named Defendants, jointly and severally, states and alleges as follows:

I. SUMMARY OF THE ACTION

1. This is a complaint alleging the business demise of a leading American meat industry company known as Beef Products, Inc. (BPI) caused by the dissemination of untrue facts and misinformation by the Defendants, and Does 1 to 10, inclusive, jointly and severally, using the social media, video and film broadcasts, television and radio media broadcasts, print media, and other means of communication to achieve the unnecessary and unjustified elimination of a government approved food product from the wholesale and retail market place in the United States. The named Defendants, and Does 1 to 10, inclusive, jointly and severally, engaged in negligent, willful, and reckless behavior targeted against BPI resulting in the temporary and permanent closure of BPI food manufacturing plants, and directly causing the permanent loss of over 750 BPI employee jobs within a two month time period in 2012.

2. Commencing in 1981, BPI began producing a processed low fat lean beef meat originating from USDA inspected edible beef trimmings produced by the meat packing industry. BPI's lean meat was known as Lean Finely Textured Beef (LFTB), and beginning in 2001, the company obtained approval from the United States Department of Agriculture (USDA) to use ammonium hydroxide as an antimicrobial processing agent in order to eliminate foodborne pathogens such as E.coli o157:H7, Salmonella, and Lysteria from LFTB. This was a minimal chemical application previously approved by the federal government in 1974 for use on a long list of food products, including red meat and meat scraps. Internationally the United Nations World Health Organization also had previously approved ammonium hydroxide as an acceptable food processing agent. Over time, BPI's LFTB product became a significant, safe and reliable source of lean beef meat for the ground beef industry nationwide in the United States. The USDA had declared LFTB to be a "wholesome, safe and nutritious" lean beef product for consumers to purchase and eat. The process used by BPI to manufacture LFTB also added value by recovering, on average, an additional ten to fifteen pounds of red meat from every head of slaughtered cattle, thus maximizing the utility of the animal.

3. Hundreds of millions of pounds of LFTB was being manufactured every year, not only by BPI, but by other meat industry companies such as Cargill. The American Meat Institute estimated that over ten billion pounds of ground beef was being manufactured in the United States annually prior to 2012. As much as seven hundred or more million pounds of LFTB was also being produced and sold every year for inclusion into the domestic ground beef food chain. For years, the USDA contracted to buy ground beef containing LFTB as part of the mix for the National School Lunch Program the

USDA managed. Because LFTB was cost effective and was also treated for bacteria, the American fast food industry found the use of LFTB ground beef in their menus advantageous for their restaurants and for the consumers. It is estimated that over the years last past more than three hundred billion meals had been served using BPI's LFTB product without any established link to a foodborne illness suffered by a consumer.

4. Pursuant to USDA and FDA regulations, LFTB was, and is, 100% beef, thus meaning additional retail labeling information that LFTB was included in a ground beef mix consumers were purchasing was not required. Ammonium hydroxide, used as a process treatment for LFTB to kill bacteria was, and still is, not considered an "ingredient." Since ammonia as a chemical compound is natural to meat and many other food products, and natural to the environment, including the human body, and was used in minute quantities to simply raise the pH level of the beef product to kill bacteria, additional labeling was not required under the law of ground beef containing LFTB.

5. That LFTB, prior to March 2012, was in approximately seventy percent of all the ground beef mixes nationwide in varying percentages of the whole mix. The USDA had earlier increased the percentage of LFTB to be included in the ground beef mix for the National School Lunch Program from ten percent up to fifteen percent of the mix because the product was "safe, wholesome and nutritious" while affording the USDA the opportunity to provide a cost effective food product for the National School Lunch Program .

6. That since January 2010 to March 2012, no positive tests results for any foodborne pathogens of concern had been produced from LFTB lab testing which totaled over 7,000 samples taken and tested during that time period according to the

USDA. That in 2011, Beef Products voluntarily agreed to expand its test and hold procedures to include testing for six other strains of Ecoli, in addition to Ecoli 0157:H7 as a part of its food safety program.

II. JURISDCITION AND VENUE

7. Venue is proper in this state and judicial district because a substantial part of the claims which arose took place in this jurisdiction and venue, each of the Defendants established minimum contacts in this state pursuant to Section 25-536, Neb.Rev.Stat., as amended. It is also alleged that the above named Defendants, and Does 1 to 10, inclusive, jointly and severally, and in consort with others not named in this complaint, committed tortious acts against the Plaintiff, and other BPI employees similarly situated, in the State of Nebraska and County of Dakota, including, but not limited to, intentional and negligent infliction of emotional distress, and defamation, common law product disparagement, and tortious interference concerning the BPI and BPI Tech. Defendants, and Does 1 to 10, inclusive, and others committed these torts, jointly and severally, against the Plaintiff and BPI employees whose largest LFTB production plant is in Dakota County, Nebraska, and who experienced the effect of Defendants' torts in Nebraska.

8. Jurisdiction and venue are proper in Dakota County, Nebraska, because Defendants, jointly and severally negligently and/or intentionally committed torts against the Plaintiff, BPI employees similarly situated, and their employer BPI and BPI Tech, located in Dakota County, and because the Plaintiff was injured in Dakota County. First, Defendants knowingly made false statements regarding BPI, which had its largest production facility in Dakota County. Second, Defendants knowingly made false

statements regarding LFTB and BPI/BPI Tech employees, all of whom are closely associated with LFTB and with BPI, known as the largest producer of LFTB in the country. Third, Defendants' false statements and tortious conduct significantly injured BPI in Dakota County. BPI suffered the financial and adverse damage to its business and reputation as a consequence of Defendants' conduct in Dakota County, ultimately resulting in the Plaintiff's loss of employment along with more than 700 other BPI/BPI Tech employees. Fourth, Defendants knew, or should have known, that their false statements and tortious conduct would injure BPI in Dakota County, and elsewhere, and the BPI/BPI Tech employees. Fifth, Defendants' false statements were broadcast in Dakota County by an ABC affiliate. Sixth, the ABC Defendants contacted BPI in Dakota County and/or were physically present at the Dakota County production facility in 2012 in connection with their coverage of BPI and LFTB stories of interest.

9. In addition to the reasons set forth above, jurisdiction and venue are proper in Dakota County, Nebraska, for the claims against the above named Defendants are based on the Defendants use of traditional and social media broadcast medias specifically designed and intended at all times material herein to eliminate LFTB from the ground beef supply in the United States, and elsewhere, thus resulting in the foreseeable elimination of BPI/BPI Tech employee jobs.

III. PARTIES

10. That the Plaintiff, Bruce M. Smith, is a resident of Union County, South Dakota, and at all times material herein was employed by BPI Technology, Inc., a Delaware corporation (BPI Tech) having its principal corporate offices situated in Union County, South Dakota.

11. That Beef Products, Inc., is a Nebraska Corporation (BPI) that owns and operates its largest food manufacturing facility in Dakota County, Nebraska, and is the sister corporation of BPI Technology, Inc.

12. That at all times material herein, BPI Tech provided sales, marketing and operating technical support services for all BPI food manufacturing facilities in the United States, including the Dakota County, Nebraska complex, so as to ensure and maintain its lawful, safe, continuous and legally compliant operation. Such services included, but were not limited to, environmental, health and safety, human resources, quality control and assurance, and administrative and technical support services.

13. Defendant American Broadcasting Company, Inc., (ABC) is a Delaware corporation with its principal place of business in New York County, New York. ABC broadcasts a variety of television shows, including World News with Diane Sawyer (“World News”), and it previously broadcast Food Revolution with Defendant Jamie Oliver. ABC knowingly or recklessly published over 100 false and disparaging statements regarding LFTB and BPI during World News, Food Revolution, and other programs.

14. Defendant ABC News, Inc. (ABC News) is a division of ABC. ABC News is a Delaware corporation with its principal place of business in New York County, New York. ABC News produces a variety of news programs, including World News, and claims that more people get their news from ABC News than from any other source. Defendant negligently, knowingly, or recklessly made over 100 untrue, false, misleading, and disparaging representations and statements regarding BPI and LFTB during news programs produced and broadcast by ABC News and in online reports published by ABC News.

15. Defendant Diane Sawyer is the news anchor and host of World News. On information and belief, Sawyer is a resident of New York County, New York. Defendants

ABC News and Sawyer promote her as a credible source of factual information for viewers and readers. Notwithstanding her reputation and self-promotion, Sawyer negligently, knowingly or recklessly made multiple untrue, false, misleading, and disparaging statements and representations regarding BPI and LFTB during ABC broadcasts and in social media postings.

16. Defendant Jim Avila is a Senior National Correspondent for ABC News. On information and belief, Avila is a resident of Washington, D.C. County, Washington D.C. ABC News and Avila promote him as a credible source of factual information for viewers and readers. Notwithstanding his reputation and self-promotion, Avila knowingly or recklessly made multiple false and disparaging statements regarding BPI and LFTB during ABC broadcasts, in ABC online reports and in social media postings.

17. That Defendant Jamie Oliver is a citizen of the United Kingdom who earns a living as a celebrity chef. Defendant Oliver was the host and principal character involved with the ABC broadcast of the American Food Revolution television show, and at all times material herein, conducted business in the United States using traditional and internet social media sources and venues targeting BPI with his tortious conduct intended to inflict permanent harm and damage upon the Plaintiff's said employer so as to permanently shutdown production of LFTB and, as a result, cause the permanent layoff of BPI/BPI Tech employees, including the Plaintiff.

18. That on information and belief, Defendant Bettina Seigel is a resident of the Houston, Texas, area who owns and operates an internet on-line website known as "The Lunch Tray" found at <http://www.thelunchtray.com/>. Defendant Seigel targeted BPI with knowingly or recklessly made multiple false and disparaging statements regarding

BPI and LFTB during a “pink slime” disinformation campaign, including the use of a false and misleading visual depiction of LFTB.

19. Unnamed as a Defendants at this time, Gerald Zirnstein and Carl Custer, both former employees of the USDA and are persons who participated in a “pink slime” disinformation campaign. Zirnstein and Custer appeared on ABC broadcasts and was quoted in ABC’s online reports. Zirnstein and Custer, jointly and severally, negligently, knowingly or recklessly made multiple untrue, false, misleading, and disparaging statements and representations regarding BPI and LFTB during the “pink slime” disinformation campaign.

IV. STATEMENT OF FACTS

20. That the Plaintiff incorporates by reference, as if fully set forth herein, the previous allegations alleged in Paragraphs 1 through 20, inclusive.

21. That on April 12, 2011, Defendant ABC broadcast on nationwide television the season premier of the American Food Revolution, a show hosted by Defendant Jamie Oliver. That Defendant Oliver proceeded to demonstrate his own inaccurate and misleading version of how the BPI Lean Finely Textured Beef (LFTB) food product was manufactured and produced, referring derisively to LFTB as “pink slime.” Defendant Oliver during this show referred to the beef trimmings used to make LFTB as “shit,” “not fit for human consumption,” and “good for dog food.” Defendant Oliver employed the use of a clothes washing machine to inaccurately demonstrate a centrifuge separation process and then poured liquid ammonia housecleaner, with a skull and crossbones label affixed, onto the red meat product he was handling so as to recklessly, and inaccurately portray a previously approved USDA/FDA ammonium hydroxide process used by Beef Products to kill foodborne pathogens, as unhealthy and unsafe. Defendant Oliver stated at the end of his demonstration, “You’ve just turned dog

food into potentially kid's food” and “. . . everything about this process to me is about no respect for food, or people, or children . . .”

22. That following the April 11, 2012, American Food Revolution television show referenced in paragraph 22. above, Defendant Oliver proceeded to use his celebrity chef media notoriety to place pressure on American fast food company McDonald's, and others, to immediately stop using LFTB ground beef in its retail menu food products. That prior to the fall of 2011, fast food restaurants such as McDonalds, Taco Bell, and Burger King, had used ground beef mixtures containing the Beef Products LFTB product without consumer or safety concerns for many years.

23. That in January 2012, McDonalds publicly confirmed its previously made decision to stop using any ground beef containing LFTB following Defendant Jamie Oliver's April 2011 American Food Revolution. Other fast food restaurants such as Taco Bell and Burger King followed suit and also quit using LFTB mixed ground beef by that time.

24. That as a consequence of the fast food industry's rejection of BPI's LFTB ground beef lean meat product following the April 2011 American Food Revolution “pink slime” broadcast, volume production of LFTB began to decline company wide at BPI in significant proportions compared to prior production levels.

25. That on March 5, 2012, the internet website known as The Daily posted a story stating that the USDA was planning on purchasing up to seven million pounds of LFTB to be included in the National School Lunch Program ground beef mix, despite American fast food restaurants like McDonalds, Taco Bell, and Burger King deciding not to serve ground beef mixed with LFTB to their respective retail customers anymore.

26. That on March 6, 2012, Defendant Bettina Siegel launched a national internet petition drive directed to the USDA and its officials demanding the “immediate” removal of all ground beef containing Beef Products LFTB product (referred to by Defendant Siegel as “pink slime”) from the National School Lunch Program. In support of said petition drive, Defendant Siegel referred internet visitors on that date to an internet link that provided a photo Defendant Siegel claimed represented Beef Products LFTB when, in fact, the photo had previously been represented in the social media as strawberry colored chicken paste used to make processed food products, not LFTB. See the attached photo which is marked Exhibit “A” and by this reference made a part hereof as if fully set forth herein.

27. That as a result of Defendant Siegel’s false, misleading, and negligent disregard for the truth, said Defendant obtained more than 250,000 on-line internet petition signatures in March 2012 demanding the “immediate” removal of LFTB ground beef from the National School Lunch Program by the USDA, a copy of said on-line petition wording marked Exhibit “B”, attached hereto and by this reference made a part hereof as if fully set forth herein.

28. That as part of Defendant Siegel’s campaign to ban LFTB from the National School Lunch Program, said Defendant intentionally and repeatedly referenced LFTB as “pink slime” during the month of March 2012, in order to reinforce a negative, repulsive and false “yuck factor” perception in the public consumer’s mind for LFTB. That the said Defendant used other negative derisive terms and phrases to inflame public perception against LFTB as part of a disinformation campaign designed to eliminate LFTB from the marketplace.

29. While attempting to correct the photo mistake which was officially posted as a 'correction' on March 7, 2012, at The Lunch Tray website, Defendant Siegel pasted the incorrect photo depicted in Exhibit "A" directly onto her March 7, 2012 web page, while only referring website visitors to another website location link to find a suggested accurate photo of LFTB. That because of Defendant Siegel's use of the internet and social media to disseminate inaccurate and misleading information about LFTB to BPI's detriment as described heretofore, and to the foreseeable detriment of the Plaintiff and BPI/BPI Tech employees similarly situated, such negligent, willful and reckless action and behavior could not be effectively corrected or retracted once disseminated.

30. That the Defendant ABC, acting by and through ABC World News, and Defendant Jim Avila, jointly and severally aired a series of "pink slime" national broadcasts over the public television airwaves, the first of which commenced on March 7, 2012, alerting the consuming public that up to 70% of the American ground beef supply contained "pink slime" consisting of beef trimmings which in the past had been used for dog food and oils, and not as a source of ground beef. Defendant Jim Avila reported that numerous nationally recognized food grocery store chains were selling "pink slime" ground beef and that former USDA scientists Zirstein and Custer had objected to the inclusion of "pink slime" in the ground beef supply in 2002, despite the USDA having approved the LFTB production process and use of ammonium hydroxide as a processing agent to help kill potentially harmful foodborne pathogens such as Ecoli 0157:H7, Salmonella, and Lysteria.

31. That the Defendant ABC, acting by and through ABC World News, and Defendant Jim Avila, jointly and severally, aired subsequent nationally televised

broadcasts on March 8, March 9, March 15, March 16, March 21, March 26, March 29, 2012, and on other date(s), reporting about the retail status and sale of BPI's LFTB. That the said Defendants constantly referred to LFTB as "pink slime" throughout their reporting and continually inquired of said national grocery store chains whether they were still selling "pink slime" ground beef.

32. That beginning with the March 7, 2012, "pink slime" news segment broadcast by the Defendant ABC as presented by ABC World News and Defendant Jim Avila, and continuing thereafter into the month of April 2012, said Defendants presented untrue, false, misleading, and disparaging statements and representations about BPI's LFTB product during the course of said Defendant's investigative news reporting, without first engaging in proper due diligence or follow up reporting in order to 'correct the record' about such untrue facts and misinformation.

33. That Defendant Jim Avila appeared with co-Defendant Bettina Siegel on a CNN nationally broadcast cable show hosted by Anderson Cooper on or about March 27, 2012, discussing the "pink slime" story and by doing so, reinforced the untrue, false, misleading, and disparaging statements and representations about BPI and LFTB earlier represented by said Defendants as the truth during March 2012.

34. That the untrue, false, misleading, and disparaging statements and representations when describing BPI's lean red meat product known as Lean Finely Textured Beef made by the Defendants, and Does 1 to 10, inclusive, and in concert, include, but are not limited to, the following:

- a. that LFTB was "pink slime";
- b. that LFTB was not beef or meat;

- c. that LFTB was a “filler” added to ground beef;
- d. that LFTB was a “substitute” for beef;
- e. that selling ground beef that included LFTB was “economic fraud” or “food fraud”;
- f. that LFTB was made from “waste,” “scraps,” “low grade” beef trimmings and “low quality” beef trimmings “contaminated” with “excrement”;
- g. that LFTB is made from beef trimmings that were “once used only for dog food and cooking oil”;
- h. that LFTB is “more like gelatin” than beef;
- i. that LFTB’s “protein comes mostly from connective tissue.”
- j. that LFTB was not beef or meat;
- k. that LFTB was not safe for consumption;
- l. that LFTB was not nutritious.
- m. that BPI engaged in improper conduct to obtain approval for LFTB from the USDA.
- n. that LFTB was a “meaty goo” substance.
- o. that LFTB was “shit.”
- p. that LFTB was “not fit for human consumption.”
- q. that LFTB was “good for dog food.”

See also, Exhibit “C” attached hereto and by this reference made a part hereof as if fully set forth herein, said exhibit consisting of a further detailed listing of “pink slime” references made by the Defendants Jim Avila, the American Broadcasting Companies,

Inc., ABC News, Inc., and Does 1-10, inclusive, commencing March 8, 2012, through April 3, 2012, as alleged by BPI in CIV# 12-292, Circuit Court, First Judicial District, County of Union, State of South Dakota.

35. That on May 14, 2012, Plaintiff's employer BPI terminated Plaintiff's employment effective May 15, 2012, due to BPI's loss of business and forced closure of three production plants and significant production cutbacks at the remaining facility in Dakota County, Nebraska, all of which resulted in the permanent lay off of more than 750 BPI/BPI Tech employees. Plaintiff's job loss directly resulted from the actions of the Defendants, and Does 1 to 10, inclusive, jointly and severally, to cause the removal of LFTB ground beef product from the retail grocery stores and fast food restaurants throughout the United States, and from the USDA National School Lunch Program, using traditional and social media networks and news sources as a means to an end.

**V. CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)**

36. That the Defendants, and Does 1 – 10, inclusive, jointly and severally owed a duty of care to the Plaintiff so as to avoid the communication of untrue, false, misleading, and disparaging statements and representations when describing BPI's lean red meat product known as Lean Finely Textured Beef, all of which caused the wholesale and retail consuming public to reject said food product, causing Plaintiff extreme emotional distress, hardship, pain and suffering, and the loss of Plaintiff's job. That the Defendants, jointly and severally, breached their duty of care owed to the Plaintiff by negligently communicating through the print media, television, radio, and social internet media networks:

- a. that LFTB was "pink slime";
- b. that LFTB was not beef or meat;
- c. that LFTB was a "filler" added to ground beef;

- d. that LFTB was a “substitute” for beef;
- e. that selling ground beef that included LFTB was “economic fraud” or “food fraud”;
- f. that LFTB was made from “waste,” “scraps,” “low grade” beef trimmings and “low quality” beef trimmings “contaminated” with “excrement”;
- g. that LFTB is made from beef trimmings that were “once used only for dog food and cooking oil”;
- h. that LFTB is “more like gelatin” than beef;
- i. that LFTB’s “protein comes mostly from connective tissue.”
- j. that LFTB was not beef or meat;
- k. that LFTB was not safe for consumption;
- l. that LFTB was not nutritious.
- m. that BPI engaged in improper conduct to obtain approval for LFTB from the USDA.
- n. that LFTB was a “meaty goo” substance.
- o. that LFTB was “shit.”
- p. that LFTB was “not fit for human consumption.”
- q. that LFTB was “good for dog food.”

See also, Exhibit “C” attached hereto and by this reference made a part hereof as if fully set forth herein, said exhibit consisting of a further detailed listing of “pink slime” references made by the Defendants Jim Avila, the American Broadcasting Companies, Inc., ABC News, Inc., and Does 1-10, inclusive, commencing March 8, 2012, through

April 3, 2012, as alleged by BPI in CIV# 12-292, Circuit Court, First Judicial District, County of Union, State of South Dakota.

37. That the Defendants and Does 1 to 10, inclusive, failed to truthfully represent the facts in a reasonably accurate manner.

38. That the Defendants, and Does 1 to 10, inclusive, jointly and severally failed to exercise reasonable care when they disseminated information to the public concerning LFTB and Plaintiff's employer BPI/BPI Tech that was untrue, false, misleading, and disparaging of the food product involved.

39. That the Defendants, and Does 1 to 10, inclusive, jointly and severally created an unreasonable risk of inflicting emotional harm and distress onto the Plaintiff.

40. That the Defendants, and Does 1 to 10, inclusive, jointly and severally failed to otherwise exercise due care with respect to the matters alleged in this complaint.

41. That as a direct and proximate result of the negligence of Defendants, and Does 1 to 10, inclusive, jointly and severally as set forth above, Plaintiff's employment with BPI/BPI Tech was terminated on May 15, 2012.

42. That as a further direct and proximate result of the negligence of Defendants, and Does 1 to 10, inclusive, jointly and severally as set forth above, Plaintiff suffered extreme emotional distress and hardship and pain and suffering, prior to and after Plaintiff's employment termination.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for the following:

1. General damages according to proof not to exceed, \$70,000;
2. Interest according to law;

3. Costs of this action;
4. A jury trial; and
4. Any other and further relief that the court considers proper.

BRUCE M. SMITH, Plaintiff

By: _____

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