

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

Lawrence Rice, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

Dreyer's Grand Ice Cream, Inc.,

Defendant

1:21-cv-03814

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

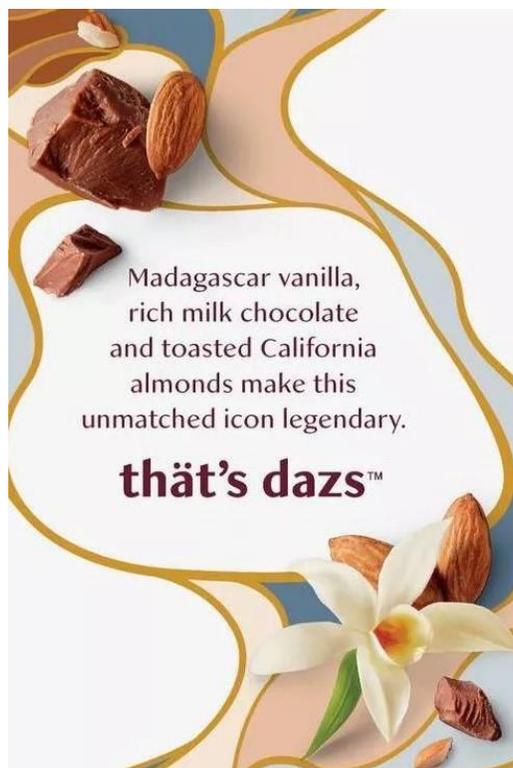
1. Dreyer's Grand Ice Cream, Inc. ("defendant") manufactures, labels, markets and sells "Vanilla Milk Chocolate Almond" ice cream bars purporting to be "dipped in rich milk chocolate," presented with chunks of chocolate, a vanilla flower and almonds, under the Häagen-Dazs brand ("Product").



2. The other label representations emphasize the Product's ingredients:

Madagascar vanilla, rich milk chocolate
and toasted California almonds make this
unmatched icon legendary.

that's daz



I. DEFINITION OF CHOCOLATE

3. Chocolate is defined by Merriam-Webster as a food “prepared from ground roasted cacao beans.”

4. Dictionary.com defines chocolate as a “a preparation of the seeds of cacao, roasted, husked, and ground, often sweetened and flavored, as with vanilla.”

5. The Cambridge Dictionary describes chocolate as “a sweet, usually brown, food made from cacao seeds, that is usually sold in a block.”

6. Google Dictionary – based on its leading search engine that discovers the most

relevant and accurate information – defines chocolate as “a food preparation in the form of a paste or solid block made from roasted and ground cacao seeds, typically sweetened.”

7. To make chocolate, cacao beans are “Fermented, roasted, [and] shelled,” producing cacao nibs.

8. The nibs are ground to produce cocoa mass or chocolate liquor and then combined with dairy ingredients, sweeteners and flavorings.

9. This state, and the Food and Drug Administration (“FDA”), adopted these dictionary definitions and define chocolate as made from cacao beans with a small amount of optional ingredients, including dairy (i.e., milk), sweeteners and flavorings. See 21 C.F.R. § 163.130(a).

10. While a definition draws a sharp boundary around a term to provide meaning, words are also defined by what they exclude.¹

11. In the context of chocolate, all definitions universally exclude fats from sources other than cacao ingredients, namely, vegetable fats (oils).²

12. Federal and state regulations require that where a food has some chocolate but is mainly vegetable oils, this should be disclosed to consumers. 21 C.F.R. § 163.155(c).

II. CONSUMERS EXPECT CHOCOLATE TO BE MADE FROM CACAO BEANS

13. Historians of chocolate note that “Mixing unnatural ingredients with chocolate – with the intent of extending the quantity of raw product and defrauding customers – has a long history.”³

14. The main adulterants and extenders were starches and vegetable fats.

15. In 2007, a group of the largest confectionery companies, which included the previous

¹ Carnap and Bar-Hillel.

² Vegetable oils are sometimes referred to as vegetable fats because they may be solid at room temperature.

³ L.P. Brindle and B.F. Olsen, [Adulteration – The Dark World of ‘Dirty’ Chocolate](#),” in *Chocolate* (eds. L.E. Grivetti and H.Y. Shapiro) (2009).

owner of Defendant, Nestle, S.A., sought to re-define chocolate by replacing cacao ingredients with “cocoa butter equivalents” (“CBE”), or vegetable fats.

16. Over thirty-thousand Americans submitted critical comments, crashing the FDA’s website.

17. In an interview on National Public Radio (“NPR”), Cybele May, proprietor of candy review website, was asked, “if it’s labeled chocolate, [does] it has to have cocoa butter in it?”⁴

18. May replied, “Absolutely, and it cannot contain other vegetable oils. It has to be completely from the cocoa bean.”

19. The Los Angeles Times interviewed consumers about this proposal, with one stating, “The idea of substituting vegetable oil for cocoa butter, a natural component of the cocoa bean that is the traditional source of chocolate,” “would [make her] feel like [she] was being duped.”⁵

20. One chocolatier commented, “This is all a question of money. If they can take something and dilute it, and still get the taste [for] a fraction of the cost, that’s what they want. *But the taste is not the same, he and others said.*” (emphasis added)

21. San Francisco-based Gary Guittard of Guittard Chocolate Co., described “this [episode] as a battle for the soul of the popular confection.”

22. Fran Bigelow, of Fran’s Chocolates in Seattle, was asked if she would “ever use vegetable fats and oils instead of cocoa butter in [her] chocolate?,” and responded, “No, no, no...we just are fighting to protect the integrity of chocolate,” by “educat[ing] consumers.”

23. The proposal was defeated, in part due to chocolate colossus and industry leader, Mars Wrigley, which stated:

⁴ Rebecca Roberts, An Argument Against 'Healthy' Chocolate, Talk of the Nation, Apr. 24, 2007, NPR; candyblog.net.

⁵ Jerry Hirsch, The Courage of their Confections, Apr. 14, 2007, Los Angeles Times.

At Mars, the consumer is our boss, and American consumers are passionate about chocolate. They don't want anyone to change the chocolate they've enjoyed for generations...As a privately held company, we have the freedom to invest in the highest quality chocolate and deliver what consumers want.

24. Consumer surveys, including one of over four hundred Americans, reached the same conclusions.

25. Roughly sixty percent of respondents who viewed the Product's front label chocolate statements with chunks of chocolate – expected it would contain more cacao bean ingredients than it did and would not contain lower quality chocolate substitutes.

III. REASONS WHY CONSUMERS WANT CHOCOLATE FROM CACAO BEANS

26. For several reasons, consumers are misled when a food represented as containing chocolate replaces cacao beans with soybeans, or other vegetable oils.

27. First, cacao ingredients are several times more expensive than vegetable oils.

28. Though cocoa butter makes up one-fourth of chocolate, it costs more than three times as much as vegetable oil.

29. Bigelow stated, “there's no benefit to the consumer [to eliminate cacao ingredients], but there's a benefit to the manufacturers that are using those vegetable oils or the lower-cost ingredients.”

30. Second, cacao ingredients provide greater satiety than vegetable oils – they are more filling, instead of leaving the consumer feeling like they did not eat anything or ate less, even though their caloric contents are roughly similar.

31. The result is greater consumption of empty calories.

32. Third, the creamy and smooth taste of chocolate is eliminated when vegetable oils are added in place of the cocoa butter from chocolate from cacao beans.

33. The substitution of vegetable oils – in amounts as low as five percent – contribute to

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