

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

Kayla Cerretti, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

Whole Foods Market Group, Inc.,

Defendant

1:21-cv-05516

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. Whole Foods Market Group, Inc. (“defendant”) manufactures, labels, markets, and sells “Organic Chocolate Ice Cream Bars,” or more specifically, “Organic Vanilla Ice Cream Dipped in Organic Chocolate,” depicted amidst chunks of chocolate, under its 365 brand (“Product”).



Dipped in Organic Chocolate

2. The side panel describes the “Chocolate [Coated] Vanilla Ice Cream Bars.”



Our Organic Ice Cream Bars are made the old fashioned way with the finest organic ingredients. We start with fresh cream and cane sugar, then dunk our rich ice cream in chocolate for a smooth, thick shell. Indulge in the pure decadence of our organic ice cream bars.

3. The representations are misleading because the Product has less chocolate than consumers expect.

#### **I. DEFINITION OF CHOCOLATE**

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

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

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

7. 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.”

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

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

10. The Food and Drug Administration (“FDA”), and by extension, Illinois, adopted these dictionary definitions, and defines 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); Illinois Food, Drug and Cosmetic Act (“IFDCA”), 410 ILCS 620/1 et seq.; 410 ILCS 620/21(j) (“[a] federal regulation automatically adopted pursuant to this [Federal Food, Drug & Cosmetic] Act takes effect in this State on the date it becomes effective as a Federal regulation.”).

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

12. In the context of chocolate, all definitions universally exclude fats from sources other than cacao ingredients, namely, vegetable fats (oils).<sup>1</sup>

13. 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).

14. Federal and identical state regulations require a product’s front label to contain a common or usual name which accurately identifies or describes, “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).

---

<sup>1</sup> Vegetable oils are referred to as vegetable fats because they may be solid at room temperature.

15. Defendant's representations violate 21 U.S.C. § 343(a)(1) and 410 ILCS 620/11, which deem a food misbranded when the label contains a statement that is "false or misleading."

16. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, provides protection for consumers purchasing products like Defendant's Product, and states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression, or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . are hereby declared unlawful

17. Whether the coating of an ice cream bar is made only from chocolate ingredients or contains more vegetable oils than any chocolate ingredients, is basic front label information consumers rely on when making quick decisions at the grocery store.

## II. CONSUMERS EXPECT CHOCOLATE TO BE MADE FROM CACAO BEANS

18. 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."<sup>2</sup>

19. The main adulterants and extenders are typically starches and vegetable fats.

20. In 2007, the largest confectionery companies sought to re-define chocolate, by replacing cacao ingredients with "cocoa butter equivalents" ("CBE"), or vegetable fats.

21. Over thirty-thousand Americans submitted critical comments, crashing the FDA's website.

22. 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?"<sup>3</sup>

---

<sup>2</sup> 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).

<sup>3</sup> Rebecca Roberts, An Argument Against 'Healthy' Chocolate, Talk of the Nation, Apr. 24, 2007, NPR; candyblog.net.

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

24. 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.”<sup>4</sup>

25. 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)

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

27. 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.”

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

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.

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

30. Roughly sixty percent of respondents who observe a product described as coated, or dipped, in chocolate, with pictures of chocolate ingredients, expect they will not be provided lower

---

<sup>4</sup> Jerry Hirsch, The Courage of their Confections, Apr. 14, 2007, Los Angeles Times.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.