

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

Jessica Sneed, individually and on behalf of all  
others similarly situated,

Plaintiff,

- against -

Ferrero U.S.A., Inc.,

Defendant

1:22-cv-01183

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. Ferrero U.S.A., Inc. (“Defendant”) manufactures, labels, markets, and sells a plastic egg-shaped package with one section containing “Sweet Cream Topped With Cocoa Wafer Bites,” and the other consisting of a small toy, under the Kinder Joy brand (the “Product”).



**SWEET CREAM TOPPED  
WITH COCOA WAFER BITES**

2. More than half of the packaging is white, which represents milk, with two large “drops” of milk.
3. The rest of the packaging is orange, the same color as the statement, “Surprise Toy Inside.”
4. “Sweet Cream Topped With Cocoa Wafer Bites” is in brown font on top of the white background, next to drops of chocolate.
5. The representation as “Sweet Cream” is false, deceptive, and misleading, because the Product does not contain cream.

## **I. CREAM**

### **A. Cream is Made From Dairy Ingredients**

6. Cream is understood by consumers as a dairy ingredient.
7. Google Dictionary – based on its leading search engine that discovers the most relevant and accurate information – defines cream as “the thick white or pale yellow fatty liquid which rises to the top when milk is left to stand and which can be eaten as an accompaniment to desserts or used as a cooking ingredient.”
8. Merriam-Webster defines cream as the “yellowish part of milk containing from 18 to about 40 percent butterfat.”
9. The Britannica Dictionary defines cream as “the thick part of milk that rises to the top; the part of milk that contains fat.”
10. Collins Dictionary defines cream as “is a thick yellowish-white liquid taken from milk.
11. Dictionary.com defines cream as “the fatty part of milk, which rises to the surface when the liquid is allowed to stand unless homogenized.”

12. The Food and Drug Administration (“FDA”), and identical Illinois regulations, define cream as “the liquid milk product high in fat separated from milk, which may have been adjusted by adding thereto: Milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Cream contains not less than 18 percent milkfat.” 21 C.F.R. § 131.3(a).

13. The two main types of cream are sweet cream and sour cream.

14. “Sweet cream” does not mean any sweetener has been added, but that the cream has the naturally sweet flavor of milk, in contrast to a cultured cream such as “sour cream,” which has greater acidity.

#### B. Differences Between Cream and Artificial Cream

15. Cream is known for its “creamy” taste because milkfat contains hundreds of lactones, aroma compounds which contribute to its taste.

16. Artificial cream substitutes milkfat with vegetable oils to reduce cost.

17. These ingredients, like palm and palm kernel oil, are solid at room temperature, and referred to as “hard [vegetable] fats.”

18. In production of artificial cream, refined vegetable oils are carefully blended to have some physical properties resembling milkfat.

19. However, artificial cream may also include thickening agents, like gums and starches, salts, such as phosphates to provide buffer control against pH changes that can destabilize the emulsion, oxidation stabilizers, sugar, flavor and protein sources such as whey protein and skim milk.

20. The result of substituting vegetable fats for dairy fat is that the resulting “cream” will provide less satiety, a waxy and oily mouthfeel, and leave an aftertaste.

21. Milkfat melts at mouth temperature (35 °C/95 °F) and does not contribute to a waxy

sensation.

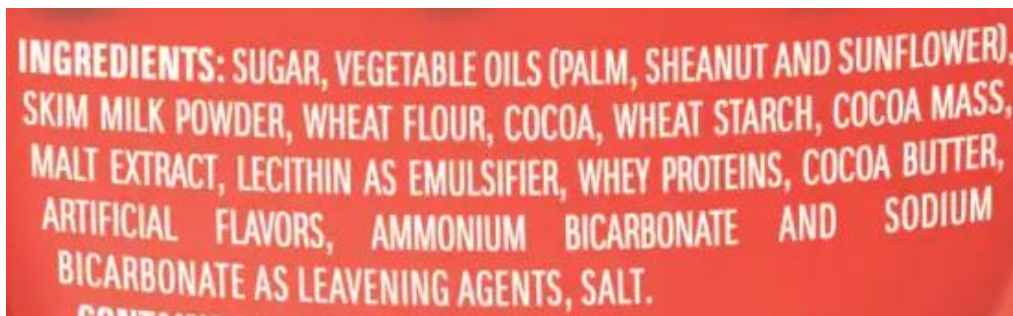
22. In contrast to dairy ingredients with milkfat, vegetable oils do not melt at mouth temperature and leave a waxy mouthfeel.

23. In contrast to fats from dairy ingredients, consumption of vegetable oils is linked to numerous health problems, like increased chances of heart disease and increased cholesterol.

24. Milkfat also contains calcium, vitamins A, D, E, and K, which are absent from hardened vegetable fats.

## II. REPRESENTATION AS “SWEET CREAM” IS MISLEADING

25. Despite labeling the Product as “Sweet Cream...,” the Product does not contain cream, as the ingredient list indicates no ingredients that are a source of milkfat.



**INGREDIENTS:** SUGAR, VEGETABLE OILS (PALM, SHEANUT AND SUNFLOWER), SKIM MILK POWDER, WHEAT FLOUR, COCOA, WHEAT GERM, WHEAT STARCH, COCOA MASS, MALT EXTRACT, SOY LECITHIN AS EMULSIFIER, WHEY PROTEINS, COCOA BUTTER, ARTIFICIAL FLAVORS, AMMONIUM BICARBONATE AND SODIUM BICARBONATE AS LEAVENING AGENTS, SALT.

26. Instead of cream, the Product contains artificial cream, derived from hardened vegetable oils, including “Palm, Sheanut and Sunflower [Oils].”

27. Though the Product contains two dairy ingredients, neither are cream.

28. “Skim Milk Powder,” listed third, is not “cream” and contains no fat.

29. “Whey Proteins” refers to the watery portion of milk that separates from the curds when making cheese, which contains little to no fat.

30. The Product lacks the nutritive, sensory, organoleptic, and other attributes expected from a product described as “[Sweet] Cream.”

### III. CONCLUSION

31. Defendant makes other representations and omissions with respect to the Product which are false or misleading.

32. Reasonable consumers must and do rely on a company to honestly identify and describe the components, attributes, and features of a product, relative to itself and other comparable products or alternatives.

33. The value of the Product that Plaintiff purchased was materially less than its value as represented by Defendant.

34. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

35. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for it.

36. As a result of the false and misleading representations, the Product is sold at a premium price, approximately no less than no less than \$1.99, excluding tax and sales, higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions.

#### Jurisdiction and Venue

37. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

# 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.