

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS DIVISION**

Donna Burns, individually and on behalf of all  
others similarly situated,

Plaintiff,

- against -

General Mills Sales, Inc.,

Defendant

3:21-cv-01099

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. General Mills Sales, Inc. (“defendant”) manufactures, labels, markets, and sells a dry mix identified as “Fudge Brownie Mix,” under the Betty Crocker brand (“Product”).



2. The representation is misleading because it gives consumers the impression it contains a greater relative and absolute amount of the expected fudge ingredients than it does.

## I. DEFINITIONS OF FUDGE

3. Fudge “is a type of sugar candy that is made by mixing sugar, butter and milk.”<sup>1</sup>
4. Though fudge can have any flavor, milkfat is the central component.
5. An 1893 recipe for fudge called for “Four cups granulated sugar; one cup cream; one cup water; one-half cake chocolate; one-half Cup butter.”<sup>2</sup>
6. In 1896, The Los Angeles Times published the original fudge recipe by the Vassar students credited with first making fudge: “Two cups of sugar, one cup of milk, a piece of butter one-half the size of an egg” and added flavoring.<sup>3</sup>
7. A 1902 fudge recipe from Mrs. Rorer's New Cook Book includes:<sup>4</sup>
  - 4 ounces of chocolate
  - 2 cups of sugar
  - 1 teaspoonful of vanilla
  - 1/2 cup of milk
  - 1 rounding tablespoonful of butter
8. Molly Mills, one of today’s leading authorities on fudge, recently described it as made “most commonly from butter, milk, sugar, and chocolate.”<sup>5</sup>
9. The Oxford Companion to Sugar and Sweets notes that:
  - Traditionally, fudge is made by gently boiling granulated sugar and milk to the soft-ball stage (234° to 240°F/ 112° to 115°C); adding butter; cooling the mixture somewhat (120°F/49°C); then beating until thick, creamy, and less glossy.<sup>6</sup>

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<sup>1</sup> Wikipedia contributors. "[Fudge](#)." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 5 Jan. 2021. Web. 8 Jan. 2021.

<sup>2</sup> Mrs. J. Montgomery Smith, of Wisconsin, Alternate Lady Manager.

<sup>3</sup> Los Angeles Times, “‘Fudges’ Are Vassar Chocolates,” May 11, 1896, p.2.

<sup>4</sup> Sarah Tyson Rorer [Arnold and Company: Philadelphia] 1902, p. 629.

<sup>5</sup> Molly Mills, *Come Get Your Fudge: 40 Tasty and Creative Fudge Recipes for Everyone*, Amazon Digital Services LLC, June 11, 2019.

<sup>6</sup> Goldstein, Darra, and Sidney Mintz. *The Oxford companion to sugar and sweets*. Oxford University Press, 2015.

10. The encyclopedic, *An A-Z of Food and Drink*, describes fudge as “a sort of soft, somewhat toffee-like sweet made by boiling together sugar, butter, and milk.”<sup>7</sup>

11. A leading treatise on confectionary science and technology offers a model commercial formulation for fudge which includes between eight and sixteen percent butter and between twelve and twenty percent sweetened condensed milk.

10.2 Formulations and Ingredients

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**Table 10.1** Typical batch formulations (in %) for caramel, fudge and toffee

	Commercial caramel (ungrained)	Caramelized sugar caramel	Fudge	English toffee (American)
Water	15–25	0	10–15	8–10
Sucrose	10–20	55–65	30–50	45–55
Glucose syrup (42 DE)	36–46	0–5	10–20	0
Sweetened condensed milk <sup>a</sup>	20–40	0	12–20	0
Cream	0	25–35	0	0
Butter <sup>b</sup> (fat)	5–15	6–12	8–16	40–50
Fondant	0	0	3–5	0
Chocolate liquor/cocoa powder	0	0	0–10	0
Salt	0.2–0.5	0.2–0.5	0.2–0.5	0.3–0.6
Vanilla	0.1–0.3	0.1–0.3	0.1–0.3	0.1–0.3
Lecithin	0–0.4	0–0.4	0–0.4	0.25–0.45
Nuts (unroasted)	0	0	0–12	6–12

<sup>a</sup>Other dairy ingredients might include evaporated milk or dried milk powder<sup>b</sup>Salted butter needed for toffee

12. Dictionaries confirm the definitions held by confectionery experts.

13. Google Dictionary – based on its leading search engine that discovers the most relevant and accurate information – defines fudge as “a soft candy made from sugar, butter, and milk or cream.”<sup>8</sup>

14. The Cambridge Dictionary defines fudge as “a soft sweet made from sugar, butter, and milk.”<sup>9</sup>

15. Collins Dictionary defines fudge as “a soft brown candy that is made from butter, cream, and sugar.”<sup>10</sup>

<sup>7</sup> John Ayto, *An A-Z of Food and Drink*, Oxford University Press, 2002, p. 133.

<sup>8</sup> [Fudge definition](#) – Google search.

<sup>9</sup> Cambridge Dictionary, [fudge](#).

<sup>10</sup> Collins Dictionary, [fudge](#).

16. Dictionary.com defines fudge as “a soft candy made of sugar, butter, milk, chocolate, and sometimes nuts.”<sup>11</sup>

17. Macmillan Dictionary defines fudge as a “soft brown sweet food made from sugar, butter, and milk or cream.”<sup>12</sup>

18. Fudge can be made and/or applied in various forms – solid, liquid (“hot fudge”) and as part of a dry mix (“cake mix”).

19. “Hot fudge” is a chocolate product often used as a topping for ice cream and desserts, in a heated form.

20. When making “hot fudge,” butter is typically replaced with heavy cream, resulting in a thick, pourable liquid while hot, becoming more viscous as it cools.

21. The difference between “hot fudge” and “chocolate sauce” is due to the fat content, as the former is thicker and richer, while the latter is thinner and more pourable.

22. Cake mix – or brownie mix – is a ready-made mixture of dry ingredients and additives necessary to the blending and baking process.<sup>13</sup>

23. “Complete” mixes are all-inclusive dry powder blends that only require the addition of water.

24. “Partial” mixes require the addition of water, shortening and/or eggs.

25. The type of fat used in complete mixes may be specially designed to be incorporated into a dry mix.

26. Since a cake mix is a dry blend, the dairy ingredients will typically include whole milk powder or buttermilk powder.

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<sup>11</sup> Dictionary.com, [fudge](#).

<sup>12</sup> Macmillan Dictionary, [fudge](#).

<sup>13</sup> The Complaint will use the terms “cake mix” and “brownie mix” interchangeably.

## II. FAT INGREDIENTS ARE ESSENTIAL TO FUDGE, REGARDLESS OF FORM

27. The quality of fudge depends on the amount and type of fat-contributing ingredients.<sup>14</sup>

28. The small droplets of fat are dispersed throughout the fudge mass, providing lubricity, and imparting desirable flavor release.

29. If the fat content is too high, it can lead to oil separation and a greasy texture.<sup>15</sup>

30. The fat ingredients are typically from dairy or vegetable oils.

31. The dairy ingredients are based on milk fat, mainly added through butter, which is 80% milkfat.

32. In the context of a cake mix blend, buttermilk powder will often be used.

33. Other dairy ingredients like milk and milk derivatives may be added as well.

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

35. Dairy ingredients impart a creamy, rich taste to fudge, because milkfat contains hundreds of lactones, aroma compounds which contribute to its taste.

36. Milk fat melts at about mouth temperature (35 °C/95 °F) and does not contribute to a waxy sensation.

37. Alternatives to milk fat – such as vegetable oils – do not melt at mouth temperature and leave a waxy mouthfeel.

38. Vegetable fats do not contribute to the flavor of fudge, because they are theoretically “refined, bleached and deodorized.”

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<sup>14</sup> International Dairy Federation, Bulletin, 1982.

<sup>15</sup> Hartel R.W., von Elbe J.H., Hofberger R. (2018) Caramel, Fudge and Toffee. In: Confectionery Science and Technology. Springer, Cham. [https://doi.org/10.1007/978-3-319-61742-8\\_10](https://doi.org/10.1007/978-3-319-61742-8_10)

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