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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

REGAN IGLESIA, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

TOOTSIE ROLL INDUSTRIES, LLC,
an Illinois company,

Defendants.

) Case No.

) **CLASS ACTION**

) **COMPLAINT:**

-) 1. VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT (N.J.S.A Section 56:8-1, *et seq.*)
-) 2. BREACH OF EXPRESS WARRANTY (N.J.S.A. Section 12A:2-313 *et seq.*)
-) 3. UNJUST ENRICHMENT
-) 4. COMMON LAW FRAUD
-) 5. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
-) 6. INTENTIONAL MISREPRESENTATION
-) 7. NEGLIGENT MISREPRESENTATION

) **DEMAND FOR JURY TRIAL**

Plaintiff Regan Iglesia (“Plaintiff”), individually and on behalf of all others similarly situated, brings this Complaint against Defendant Tootsie Roll Industries, LLC (“Tootsie” or “Defendant”) in connection with the false, deceptive, unfair, unlawful, and fraudulent advertising and labeling of opaque theater box candy products Junior Mints® and Sugar Babies® (the “Products”). Plaintiff alleges upon his personal knowledge, acts, and experiences, and as to all other matters, upon information and belief, including investigation conducted by his attorneys and their retained experts:

INTRODUCTION

1. Tootsie manufactures the most popular theater box candy products in the world. To increase profits at the expense of consumers and fair competition, Tootsie pioneered a scheme to deceptively sell candy in oversized, opaque boxes that do not reasonably inform consumers that they are half empty. Tootsie’s “slack-fill” scam dupes unsuspecting consumers across America to pay for empty space at premium prices. Figures 1-4 below are true and correct representations of Tootsie’s Products illustrating their uniformly deceptive, unfair, and unlawful business practice.

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Figure 1.



- Empty Space (Slack-fill)
- Candy

Figure 2.



2. Defendant failed to comply with consumer protection and packaging statutes designed to prevent this scam, and relied on its name and goodwill to further this scam even in the face of other lawsuits against similar companies, including two certified class actions in California against Defendant's competitors for the same violations. This class action aims to remedy Defendant's unfair business practice by making consumers whole for money lost as a result of Defendant's deceptive product packaging.

Figure 3.



Empty Space (Slack-fill)

Candy

Figure 4.



3. Defendant marketed the Products in a systematically misleading manner by representing them as adequately filled when, in fact, they contained an unlawful amount of empty space or “slack-fill.”¹ Defendant underfilled the Products for no lawful reason. The only purpose of this practice was to save money (by not filling the boxes) in order to deceive consumers into purchasing Defendant’s Products over its competitors’ products. Defendant’s slack-fill scheme not only harmed thousands of consumers but also harmed their competitors who had implemented labeling changes designed to alert consumers to the true amount of product in each box, long before Defendant did. Accordingly, Tootsie has violated the New Jersey Consumer Fraud Act (“CFA”), Section 56:8-1, *et seq.*; New Jersey Administrative Code Section 13:45A-9.1, *et seq.*; was unjustly enriched; has

¹ Following an action by Plaintiff Ketrina Gordon against Defendant in the Central District of California, *Gordon v. Tootsie Roll Industries, Inc.*, Case No. 2:17-cv-02664-DSF-MRW (C.D. Cal.), Defendant updated the Products’ packaging to address the claims of consumer deception at issue. That Plaintiff discovered on May 2, 2018 that Defendant intended to roll out production of the updated packaging. Specifically, Defendant added to the front of the Products’ boxes a prominent depiction of the “actual size” of the candy therein, accompanied by a numerical “piece count” and additional disclaimers regarding, *inter alia*, product settling. Taken together, these packaging modifications eliminated consumer deception caused by Defendant’s previous packaging by conspicuously informing consumers of the exact size and number of candy pieces they are buying. In addition, such packaging modifications mirror compliance with the California State Assembly’s recent amendments to the applicable slack-fill statute. While such changes provide consumers greater transparency and the ability to make informed choices at the point of purchase before purchasing the Products, they do not address restitutionary relief and money lost by

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