

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STEVE HESSE, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

GODIVA CHOCOLATIER, INC. and DOES  
1 through 50,

Defendants.

Civil Action No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Steve Hesse (“Plaintiff”), on behalf of himself and all others similarly situated, brings this class action against Godiva Chocolatier, Inc. and DOES 1 through 50 (collectively, “Godiva” or “Defendant”), seeking monetary damages, injunctive relief, and other remedies. Plaintiff makes the following allegations based on the investigation of his counsel and on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

**INTRODUCTION**

1. Plaintiff brings this consumer protection and false advertising class action lawsuit against Godiva based on its false and deceptive packaging and advertising practices with respect to a number of its chocolate products manufactured and sold in the United States bearing a “Belgium 1926” statement on the label (the “Godiva Chocolate(s)” or “Product(s)”).

2. At all relevant times, Godiva has prominently displayed the “Belgium 1926” representation (the “Belgium Representation”) on the front packaging of all the Godiva Chocolates, representing that the Godiva Chocolates are made in Belgium.

3. Godiva also extensively utilizes the Belgium Representation across its entire marketing campaign, such as on its Godiva storefronts, supermarket display stands, and print and social media advertising.

4. Godiva intentionally plays on the false impression that the Godiva Chocolates are made in Belgium and then imported to the United States, in order to enhance the image of Godiva Chocolates as luxury chocolates. It does this because Belgian chocolates are widely known to be among the highest quality in the world.

5. However, unbeknownst to consumers, the Godiva Chocolates are not made in Belgium as represented. Rather, all of the Godiva Chocolates are made in Reading, Pennsylvania.

6. Plaintiff and other consumers purchased the Godiva Chocolates relying on Godiva's Belgium Representation and reasonably believing that the Godiva Chocolates are in fact made in Belgium.

7. Had Plaintiff and other consumers known that the Godiva Chocolates were not made in Belgium, they would not have purchased them, or would have paid significantly less for them. Therefore, Plaintiff and consumers have suffered injury in fact as a result of Godiva's deceptive practices.

8. Plaintiff brings this class action lawsuit on behalf of himself and all others similarly situated. Plaintiff seeks to represent a Nationwide Class and a New York Subclass (defined *infra* in paragraph 38) (collectively referred to as the "Classes").

9. Plaintiff, on behalf of himself and other consumers, is seeking damages, restitution, declaratory and injunctive relief, and all other remedies the Court deems appropriate.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under Rule 23 of the Federal Rules of Civil Procedure, there are thousands of proposed Class members, the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and costs, and Godiva is a citizen of a state different from at least some members of the proposed Classes.

11. This Court has personal jurisdiction over Godiva because Godiva has sufficient minimum contacts with the State of New York, and/or otherwise intentionally avails itself of the markets in the State of New York through the promotion, marketing, and sale of Godiva Chocolates in this State to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. Godiva is also headquartered in New York.

12. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Godiva maintains its principle place of business in this District and therefore resides in this District.

### **PARTIES**

13. Plaintiff Steve Hesse is a citizen of New York, and he currently resides in Suffolk County. In or around February of 2016 and 2017, and in or around November of 2016 and 2017, Mr. Hesse purchased the Godiva Dark Chocolate Raspberry bar from a Godiva store in Smith Haven Mall in Lake Grove, New York, and from a Kohl's store in East Setauket, New York. In purchasing the Product, Mr. Hesse saw and relied on the front label of the Product. Specifically, Mr. Hesse saw and relied on the phrase "Belgium 1926" on the label of the Product. Based on this representation, Mr. Hesse believed he was purchasing imported chocolate from Belgium. However, unbeknownst to Mr. Hesse, the Product that he purchased was not made in Belgium. Mr. Hesse would not have purchased the Product, or would have paid significantly less for it,

had he known that it was not made in Belgium. Therefore, Mr. Hesse suffered injury in fact and lost money as a result of Defendant's misleading, false, unfair, and fraudulent practices, as described herein.

14. Despite being misled by Defendant, Plaintiff wishes to and is likely to continue purchasing the Godiva Chocolates in the future. Although Plaintiff regularly visits stores where Defendant's Godiva Chocolates are sold, absent an injunction prohibiting the deceptive labeling and advertising described herein, he will be unable to rely with confidence on Godiva's representations in the future and will therefore abstain from purchasing the Products, even though he would like to purchase them. Furthermore, while Plaintiff currently believes the Godiva Chocolates are not made in Belgium, he lacks personal knowledge as to Godiva's specific business practices, leaving doubt in his mind as to the possibility that some chocolates made by Godiva could be made in Belgium. This uncertainty, coupled with his desire to purchase the Products, is an ongoing injury that can and would be rectified by an injunction enjoining Godiva from making the false and/or misleading representations alleged herein. In addition, Class members will continue to purchase the Godiva Chocolates, reasonably but incorrectly believing that they are made in Belgium, absent an injunction.

15. Defendant Godiva Chocolatier, Inc. (d/b/a Godiva) is a New Jersey corporation with its principle place of business in New York, New York. Godiva directly and/or through its agents, formulates, manufactures, labels, markets, distributes, and sells the Products nationwide. Godiva has maintained substantial distribution and sales in this District.

16. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such DOE Defendants under fictitious names. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated as a DOE

is in some manner highly responsible for the occurrences alleged herein, and that Plaintiff and Class members' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and capacities of such DOE Defendants when ascertained.

### **FACTUAL ALLEGATIONS**

#### **A. Belgian Chocolates Are Well-Known For Their Quality**

17. Belgium is widely understood and recognized as producing among the highest quality chocolates in the world.<sup>1</sup> Indeed, Belgium is known for its rich history as a chocolate producing nation. In the early 20<sup>th</sup> century, Belgian chocolatier Jean Neuhaus Jr. invented the praline – the first “filled” chocolate product.<sup>2</sup> The praline was a revolutionary invention for the chocolate industry and gave Belgian chocolatiers recognition for producing among the finest chocolates in the world.

18. To protect the Belgian chocolate image, the Belgian Royal Association of the Chocolate, Praline, Biscuits and Sugar Confectionary Industry (“CHOPRABISCO”) has developed the “Belgian Chocolate Code” that provides guidelines for labeling chocolate as coming from Belgium.<sup>3</sup> Among other reasons, the Belgian Chocolate Code is based on the fact “that the reputation of high quality associated with ‘Belgian Chocolate’ frequently induces competitors to mislead consumers by using texts or illustrations referring to Belgium[.]”<sup>4</sup>

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<sup>1</sup> The Brussels Times, *What makes Belgium's chocolate so popular?*, May 2, 2017, available at <http://www.brusselstimes.com/component/k2/8132/what-makes-belgium-s-chocolate-so-popular> (last visited on January 31, 2019).

<sup>2</sup> <https://www.neuhauschocolate.com/en/heritage.htm> (last visited on January 31, 2019).

<sup>3</sup> CHOPRABISCO, *Belgian Chocolate Code*, available at <http://www.choprabisco.be/engels/documents/BelgianChocolateCodeEN030507DEF.pdf> (last visited on January 31, 2019).

<sup>4</sup> *Id.* at 1.

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