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United States District Court
Southern District of New York

1:20-cv-08512

Lauren Yu, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Froneri US, Inc.,

Defendant

Class Action Complaint

Plaintiff by attorneys allege upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Froneri US, Inc. (“defendant”) manufactures, distributes, markets, labels and sells vanilla ice cream bars purporting to be dipped in milk chocolate and covered with almonds and toffee under the Häagen-Dazs brand (“Product”).

2. The Product is available to consumers from retail and online stores of third-parties and is sold in 3 OZ bars, individually and in packages of three.

3. The relevant front label representations include “Häagen-Dazs,” “Coffee Almond Crunch Ice Cream Bars,” “Coffee Ice Cream Dipped in Rich Milk Chocolate, Almonds and Toffee” and an image of the Product.



coffee ice cream dipped in rich
milk chocolate, almonds and toffee

4. The unqualified, prominent and conspicuous representation that the Product contains, and is dipped in “milk chocolate” is false, deceptive and misleading because the purported chocolate contains ingredients consumers do not expect in chocolate – vegetable oils.

5. Chocolate is made from cacao beans, which are not consumed by themselves – they are subject to fermentation, drying and roasting, which produces cacao nibs.

6. The nibs are then ground to produce cocoa mass or chocolate liquor, which is separated into components of cocoa solids and cocoa butter.

7. Consumers want chocolate in chocolate products to come from a real source, i.e.,

from cacao beans.

8. Chocolate (from cacao beans) provides greater satiety and a creamy and smooth mouthfeel compared to other ingredients which substitute for chocolate, like vegetable oils, that provide less satiety, a waxy and oily mouthfeel and leave an aftertaste.

9. From the time chocolate was first made, companies have adulterated chocolate products with synthetics and substitutes such as cheaper, lower quality vegetable oils.

10. Congress directed the Food and Drug Administration (“FDA”) to establish standards and rules to combat the marketing of foods from which traditional constituents are removed or new or different (often cheaper and artificial) ingredients are substituted.

11. In terms of chocolate products, this entails the substitution of more valuable ingredients like cacao fat and replacement with less valuable, lower quality ingredients like vegetable oils.

12. Chocolate has specific labeling requirements because it is uniquely vulnerable to being adulterated, one of the most popular and one of most costly foods.

13. The chocolate standards have been in place for over fifty (50) years, and companies’ adherence to these regulations have benefitted consumers who otherwise would not be able to rely on a product’s representations.

14. Regulations regarding chocolate effectively establish custom and practice in the industry so that consumers’ experience with that custom and practice primes them to infer from a product’s labeling whether a product contains chocolate or is a chocolate mixture (compound) which contains vegetable oils.

15. Over ten years ago in response to a proposal to modify the chocolate standards to allow vegetable oils, industry leader Mars Wrigley was adamant in its opposition, because it

recognized what consumers wanted:

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.¹

16. For example, the optional ingredients in milk chocolate include cacao fat, nutritive carbohydrate sweeteners, spices, natural and artificial flavorings, dairy ingredients and emulsifying agents but not vegetable oils. 21 C.F.R. § 163.124(b).

17. Since the Product's front label represents the Product contains "rich milk chocolate" without qualification, consumers expect that it only has chocolate ingredients, when this is not accurate.

18. This conclusion is consistent with a consumer survey indicating consumers understand the Product's representations, *viz.*, "rich milk chocolate" to refer to a chocolate product which contains cacao ingredients and not vegetable oils or fats.

19. However, the representation of "rich milk chocolate" is misleading and at best, a "half-truth," because the chocolate part of the Product contains ingredients not found in real chocolate – "COCONUT OIL."

INGREDIENTS: COFFEE ICE CREAM: CREAM, SKIM MILK, SUGAR, EGG YOLKS, COFFEE. **MILK CHOCOLATE AND VEGETABLE OIL COATING WITH ALMONDS AND TOFFEE:** MILK CHOCOLATE (SUGAR, WHOLE MILK POWDER, CHOCOLATE, COCOA BUTTER, SOY LECITHIN, VANILLA EXTRACT), COCONUT OIL, ALMONDS ROASTED IN VEGETABLE OIL (ALMONDS, SAFFLOWER OIL), TOFFEE (CORN SYRUP, SUGAR, BUTTER [CREAM, SALT], BROWN SUGAR, ALMONDS, BAKING SODA, SOY LECITHIN, SALT).

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¹ [Mars US Announces Support for Current Chocolate Standard of Identity](#), Press Release, September 17, 2007.

OIL (ALMONDS, SAFFLOWER OIL), TOFFEE (CORN SYRUP, SUGAR, BUTTER [CREAM, SALT], BROWN SUGAR, ALMONDS, BAKING SODA, SOY LECITHIN, SALT).

20. The Product does not designate the chocolate as “milk chocolate and vegetable oil coating” on the front label, which would tell consumers what they are buying. See 21 C.F.R. § 163.155(c) (“Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food, e.g., “milk chocolate and ___ oil coating”, the blank being filled in with the common or usual name of the specific vegetable fat used.”).

21. Consumers do not expect to have to resort to the fine print on a product’s ingredient list to find information they are accustomed to seeing on the front label.

22. Defendant’s branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud plaintiff and consumers.

23. 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 like plaintiff.

24. The value of the Product that plaintiff purchased and consumed was materially less than its value as represented by defendant.

25. Had plaintiff and class members known the truth, they would not have bought the Product or would have paid less for them.

26. As a result of the false and misleading labeling, the Product is sold at a premium price, approximately no less than \$5.99 for three 3 OZ bars, excluding tax, compared to other similar products represented in a non-misleading way.

Jurisdiction and Venue

27. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) (Class Action Fairness Act

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