

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MANHATTAN

Christopher Leonard, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

Mondelēz Global LLC,

Defendant

1:21-cv-10102

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. Mondelēz Global LLC (“Defendant”) manufactures, labels, markets, and sells chocolate sandwich cookies containing mint creme identified as “Fudge Covered,” under the Oreo brand (“Product”).



I. DEFINITIONS OF FUDGE

2. Fudge “is a type of sugar candy that is made by mixing sugar, butter and milk.”¹
3. Though fudge can have any flavor, milkfat is the central component.
4. 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.”²
5. 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.³
6. A 1902 fudge recipe from Mrs. Rorer's New Cook Book includes:⁴
 - 4 ounces of chocolate
 - 2 cups of sugar
 - 1 teaspoonful of vanilla
 - 1/2 cup of milk
 - 1 rounding tablespoonful of butter
7. Molly Mills, one of today’s leading authorities on fudge, recently described it as made “most commonly from butter, milk, sugar, and chocolate.”⁵
8. 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.⁶

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

² Mrs. J. Montgomery Smith, of Wisconsin, Alternate Lady Manager.

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

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

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

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

9. An A-Z of Food and Drink, an authoritative treatise, describes fudge as “a sort of soft, somewhat toffee-like sweet made by boiling together sugar, butter, and milk.”⁷

10. A leading textbook 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 ^a	20–40	0	12–20	0
Cream	0	25–35	0	0
Butter ^b (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

^aOther dairy ingredients might include evaporated milk or dried milk powder^bSalted butter needed for toffee

11. Dictionaries confirm the definitions held by confectionery experts.

12. 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.”⁸

13. The Cambridge Dictionary defines fudge as “a soft sweet made from sugar, butter, and milk.”⁹

14. Collins Dictionary defines fudge as “a soft brown candy that is made from butter, cream, and sugar.”¹⁰

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

⁸ [Fudge definition](#) – Google search.

⁹ Cambridge Dictionary, [fudge](#).

¹⁰ Collins Dictionary, [fudge](#).

15. Dictionary.com defines fudge as “a soft candy made of sugar, butter, milk, chocolate, and sometimes nuts.”¹¹

16. Macmillan Dictionary defines fudge as a “soft brown sweet food made from sugar, butter, and milk or cream.”¹²

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

17. The quality of fudge depends on the amount and type of fat-contributing ingredients.¹³

18. The small droplets of fat are dispersed throughout the fudge mass, providing lubricity, and imparting desirable flavor release.¹⁴

19. The fat ingredients are typically from dairy and based on milk fat, mainly added through butter (80% milkfat).

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

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

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

23. Alternatives to milk fat, such as vegetable oils, are often used in place of dairy ingredients to reduce cost.

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

¹¹ Dictionary.com, [fudge](#).

¹² Macmillan Dictionary, [fudge](#).

¹³ International Dairy Federation, Bulletin, 1982.

¹⁴ 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

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

26. The result of substituting vegetable oils for dairy ingredients is that any resulting “fudge” will provide less satiety, a waxy and oily mouthfeel, and leave an aftertaste.

27. One popular recipe website echoes the importance of dairy ingredients to fudge, advising, “When making fudge, be sure to use good quality butter and do not substitute margarine (vegetable oils),” since they contain more water and can prevent the fudge from setting up properly.¹⁵

28. Another site cautions, “Look for recipes that call for butter instead of margarine (vegetable oils).”¹⁶

29. One chef recommends to “Never use margarine (vegetable oils) instead of butter [in fudge], because your fudge won’t taste as good and will have a shorter shelf life.”

30. Whether a product contains fudge and/or ingredients expected in fudge, is basic front label information consumers rely on when making quick decisions at the grocery store.

31. The Product lacks essential fudge ingredients – dairy ingredients with milkfat – and substitutes lower quality and lower-priced palm and palm kernel oil and nonfat milk, shown the ingredient list.

¹⁵ [Use Real Butter For Making Best Fudge](#), RecipeTips.com.

¹⁶ [Easy Fudge Making Tips](#), The Happy Housewife.

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