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Nestlé's Non-Disclosure of Child and Slave Labor Issues on Packaging Not Deceptive or Unfair, Massachusetts Federal Court Holds

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Though child and slave labor is "widespread, reprehensible, and tragic," a federal court in the District of Massachusetts found it was not deceptive for Nestlé to omit from product labels that those practices (allegedly) exist in its supply chain. In granting defendant Nestlé's motion to dismiss, the court, after assuming that plaintiff's allegations are true, found that reasonable consumers would not be misled when manufacturers omit such information at the point of sale. *Tomasella v. Nestlé*, No. 18-cv-10269 (2019).

In this putative class action – one of a trio of similar lawsuits against chocolate manufacturers – plaintiff, who purchased various Nestlé products, claimed the company's omissions were deceptive and unfair, and violated Massachusetts consumer protection laws. Plaintiff claimed she would not have bought, or paid as much for, Nestlé's products had she known that child and slave labor allegedly existed in its products' supply chain.

First, the court examined whether Nestlé deceived customers by failing to disclose alleged child and slave labor practices in its supply chain on product packaging. Citing FTC administrative precedent, the court characterized Nestlé's omission as a "pure omission," involving a subject as to which the seller has said nothing, in a circumstance that does not give any meaning to that silence. Specifically, the court noted that plaintiff did not allege Nestlé made any false statements about child or slave labor on its packaging, "or that Nestlé's omissions turned an affirmative representation into a misleading half-truth." By selling chocolate, Nestlé is implying "the product is fit for human consumption." This implication, the court reasoned, "does not on its own give rise to any misleading impression about how Nestlé or its suppliers treat their workers." The court therefore found it was not reasonable for a consumer to "affirmatively form any preconception about" Nestlé's supply chain, "let alone make a purchase decision based on any such preconception." Because the labeling would not mislead consumers "acting reasonably under the circumstances, to act differently," plaintiff failed to state a claim for deceptive conduct. The court also held Nestlé's failure to disclose alleged child and slave labor practices in its supply chain did not constitute unfair trade practices under Massachusetts law, and Plaintiff did not point to any authority that defined such nondisclosure as unfair.

The *Tomasella* decision echoes a line of other federal cases in which putative class actions were filed alleging similar labor practices in the supply chains of other retailers and manufacturers. These cases, including several brought under California's consumer protection laws, also found there was no affirmative duty to disclose these types of supply chain labor practices. *See, e.g., Sud v. Costco*, 15-cv-03783 (N.D. Cal. 2017) and *Wirth v. Mars,* 15-cv-1470 (C.D. Cal. 2016)..

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