

Hershey Kisses Chocolate Mislabeling Suit Goodbye

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A California federal judge recently handed a victory to the Hershey Co. in a suit alleging the company falsely represented that its Brookside chocolate products have no artificial flavors. [Clark v. Hershey Co., 18-cv-06113 \(N.D. Cal. Nov. 15, 2019\)](#). U.S. District Judge William Alsup granted summary judgment in favor of Hershey on the basis of facts undermining plaintiffs' contentions that they were misled by the products' labeling and relied on the misleading labeling in deciding to purchase the Brookside chocolates.

The plaintiffs filed a consumer class action in October 2018 alleging that Hershey deliberately deceived consumers by labeling its Brookside Dark Chocolate products as containing no artificial flavors, when in fact the products contain malic acid, a synthetic chemical. The plaintiffs claimed they believed they were purchasing all-natural products made only with natural ingredients, and were surprised to learn the chocolates contained an artificial ingredient.

According to the suit, Hershey falsely represented that the products contained all natural ingredients by including the "no artificial flavors" label, and neglecting to include a label disclosing the artificial flavoring as required by California law.

As an initial matter, Judge Alsup distinguished between the terms "artificial ingredient" and "artificial flavor," finding that while the description "artificial ingredient" covers a wide range of substances, "artificial flavor" is to be understood more narrowly as something used to impart flavor. Thus, the judge found that Clark had misunderstood the "no artificial flavors" label by interpreting it to mean the products contained no artificial ingredients whatsoever, and that Clark's injury stemmed from his own misunderstanding rather than from any alleged mislabeling.

Regarding the claims of the two other plaintiffs, Judge Alsup found that both began purchasing the products well before the introduction of the label, and did not demonstrate any change in purchasing habits following the appearance of the label containing the “no artificial flavors” language. This being the case, the judge found no indication that the label played any role in either plaintiff’s decision to purchase the products. In fact, the judge noted, the decision to stop buying the products was prompted by the lawyers informing plaintiffs that the chocolates contained an artificial ingredient, and not based upon the label.

As part of the order granting summary judgment, Judge Alsup also denied as moot the plaintiffs’ request to certify California and New York classes in the suit.

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