

CONSUMERS BRING CLAIM FOR FAILING TO DISCLOSE CHILD LABOUR IN SUPPLY CHAIN

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Legal Briefings

A [consumer class action](#) has been filed in the federal district court of Massachusetts, alleging that Hershey has been misleading consumers by failing to disclose an alleged use of child labour in its supply chains to consumers at the point of purchase. Similar class action lawsuits have now also been brought against Mars and Nestle in the same district.

These cases follow the 2016 dismissal by the district court of California of similar consumer "non-disclosure" actions against the chocolate makers, currently on appeal before the Ninth Circuit. Just as the 2016 dismissals could [serve as a case study](#) for how the English Courts may interpret the reporting requirements under the UK Modern Slavery Act, the claims against Hershey could give some indication as to potential future developments (or present limitations to) consumer human rights class actions.

The claimants in *Hershey* are seeking to rely on Hershey's public human rights, sustainability and corporate responsibility statements to bring claims under the Massachusetts Consumer Protection Act and in unjust enrichment. In particular, the Claimants refer to Hershey's statements of "*zero tolerance for the worst forms of child labor in its supply chain*" and the reports that it has made as to its "*large-scale efforts*" and "*programs to help eliminate*" child labour. The Claimants do not plead any case of specific instances of child labour in the Hershey supply chain. Rather they rely on Hershey's public disclosures that the Ivory Coast is one of their primary sourcing countries for cocoa beans, coupled with well-publicised studies citing the extensive use of child labour in the Ivory Coast.

The claim centres on allegations that Hershey knew that there is child labour within its supply chain, that Hershey failed to disclose such information at the point of sale to consumers and that consumers were thereby deceived into buying a product that they would otherwise not buy (or paying more for the product than they otherwise would). It is alleged that this is a breach of Massachusetts consumer protection law and/or that Hershey received an unjust enrichment as a result of its failure to disclose.

As with many other food and beverage false labelling class actions, the Claimants' case presents a number of difficulties in relation to causation (did the alleged failure to disclose actually have any impact on consumer decisions) and/or loss (what discounted price would a consumer have paid had a disclosure been in place). However, of potentially greater significance in supply chain "non-disclosure" actions and of broader interest will be the response of the court to the question as to whether or not consumer products, including food and drink, could or should contain any warning (as alleged) as to the sourcing of the product. In particular, any finding that Hershey should have included a warning on its packets instinctively raises a number of practical questions. These questions include:

- Are damages lawsuits the right tool to address potential issues of child labour in manufacturer supply chains, particularly where the corporate targets of such suits have implemented programs to uncover and eliminate such practices in the upstream market?
- Where the allegedly concealed information was easily available from other public sources, including the company's public disclosures, are product labelling statements necessary to avoid potential consumer confusion or deception?
- Exactly what false impression are consumers actually receiving from the allegedly fraudulent product labels?
- Is the allegedly non-disclosed information material to all consumers, such that the class action procedure is an appropriate vehicle to resolve the claims?

The cases are at an extremely early stage, but introducing such a legal development is ordinarily the role of legislators, through carefully considered regulation that has been subject to consultation and scrutiny. It is not ordinarily the role of the courts to extend the law in this fashion. However, this case is worth watching, particularly in the UK, as the claimants' reliance in this case on Hershey's public statements mirrors the approach presently being taken by class action lawyers in the UK, who are seeking to bring actions in tort against parent companies in English Courts in relation to alleged activities of their overseas subsidiaries.

In the meantime, companies should continue to consider how best to ensure that respect for human rights is firmly embedded in their own operations and those of their business partners and suppliers and they should ensure that their reporting and public statements, whilst remaining ambitious where appropriate, are realistic and rooted in the reality of the risks that the particular company faces.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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