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Lindt Hid Dark Chocolate Bars' Unsafe Metal Levels, Suit Says

By **Collin Krabbe**

Law360 (February 14, 2023, 3:25 PM EST) -- Candymaker Lindt withheld from customers that two kinds of its dark chocolate bars are at risk of containing dangerous levels of heavy metals in order to boost sales when in reality the sweets aren't safe for consumption, a proposed class action in New York federal court alleges.

Luke Gralia, Kamila Harkavy, Sarah Sherman and Crystal Rodriguez — all of California or New York — said on Monday that Lindt's "Excellence Dark Chocolate 70% Cocoa" and "Excellence Dark Chocolate 85% Cocoa" have unsafe levels of cadmium and lead, both known to potentially cause health issues.

The suit rests partly on a December 2022 report from Consumer Reports detailing the results of its testing of various dark chocolates for lead and cadmium, referencing California's maximum allowable dose level for each to determine the risk posed, the plaintiffs said. And the Lindt products at issue in the suit tested too high — registering 116% cadmium levels for the 70% cocoa bar and 166% lead levels for the 85% cocoa bar, the suit says.

But Lindt had been alerted to cadmium and lead levels before, according to the plaintiffs, who said that a consumer advocacy group tested Lindt's products back in 2014 and the company "was informed that its dark chocolate products had dangerously high levels of cadmium and lead," the suit says. Yet, the company omitted the presence or risk of "significant amounts" of cadmium and lead from its packaging, the plaintiffs said.

"Prior to purchasing the products, plaintiffs and the class members were exposed to, saw, read, and understood defendant's labels, and relied upon them in purchasing the products, but defendant failed to disclose the presence (or risk) of heavy metals," the suit says.

"As a result of defendant's concealment of the fact that the products contained toxic heavy metals, plaintiffs and the class members reasonably believed that defendant's products were free from substances that would negatively affect children's development as well as their own health," according to the plaintiffs.

The suit proposes a class of people in the U.S. who bought the chocolate bars "from the beginning of any applicable limitations period through the date of judgment," as well as New York and California subclasses. The plaintiffs brought claims for unjust enrichment, two counts of breaking New York's general business law and breaking California's Unfair Competition Law, seeking compensatory and punitive damages.

A representative for Lindt could not immediately be reached for comment on Tuesday.

The plaintiffs are represented by Max S. Roberts, L. Timothy Fisher, Sean L. Litteral and Luke W. Sironski-White of Bursor & Fisher PA, Kevin Laukaitis of Laukaitis Law Firm LLC and Jack Fitzgerald of Fitzgerald Joseph LLP.

Counsel information for Lindt was not immediately available.

The case is Gralie et al. v. Lindt & Sprungli (USA) Inc., case number 1:23-cv-01186, in the U.S. District Court for the Eastern District of New York.

--Editing by Marygrace Anderson.

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