



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Hershey Hit With Another Suit Alleging Lead In Dark Chocolate

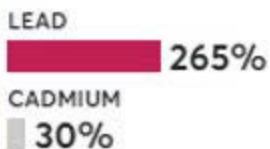
By Craig Clough

Law360 (January 9, 2023, 8:12 PM EST) -- The Hershey Company was hit Friday with a proposed class action in California federal court alleging some of the company's dark chocolate products contain dangerous levels of lead and cadmium, in at least the second such suit recently filed against the candy giant.

Both suits point to a December report in Consumer Reports Magazine that said toxic levels of lead and cadmium were found in some of Hershey's dark chocolate products.



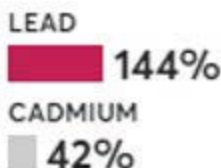
Hershey's
Special Dark Mildly Sweet Chocolate



Lily's
Extremely Dark Chocolate
85% Cocoa



Lily's
Extra Dark Chocolate
70% Cocoa



Plaintiff Eva Grausz alleges in a putative class action filed Friday that a recent Consumer Reports story revealed dangerous levels of heavy metals in some dark chocolate products made by The Hershey Company. (Court Documents)

Plaintiff Eva Grausz's Friday suit said she regularly purchased Lily's Extremely Dark Chocolate 85% Cocoa, which is made by Hershey and tested at 143% of the maximum allowable dose level for lead in the state of California and 101% of the maximum allowable dose for cadmium, according to Consumer Reports.

"No reasonable consumer would know, or have reason to know, that the products contain heavy metals, including lead and cadmium," Grausz said in the **complaint**. "Worse, as companies across the industry have adopted methods to limit heavy metals in their dark chocolate products, Hershey has stood idly by with a reckless disregard for its consumers' health and well-being."

Hershey was put on notice in 2017, along with several other manufacturers and distributors of dark chocolate products, of the presence of heavy metals in its dark chocolate products by being provided with certificates of merit from independent experts, but failed to warn consumers, according to the suit.

"Hershey knew or should have known that it owed consumers a duty of care to adequately test for lead, cadmium, and other heavy metals, particularly considering that it was provided notice of independent expert testing of some of its dark chocolate bars," Grausz said. "Had Hershey done so, it would have known that its products contained significant levels of lead and cadmium. Alternatively, Hershey did know that its products contained significant levels of heavy metals and purposely hid that fact from consumers."

Hershey's products were among 28 different chocolate products tested by the Consumer Report, which published a finding last month titled "Lead and Cadmium Could Be in Your Dark Chocolate."

Hershey is not the **only company** to be targeted with a lawsuit about alleged heavy metals in its dark chocolate as a result of the Consumer Reports story, as Mars Inc. and Trader Joe's **were both targeted** with putative class actions earlier this month.

Plaintiff Christopher Lazazzaro also filed a putative class action against Hershey in New York federal court in December over alleged heavy metals in its dark chocolate products, with the suit citing the Consumer Reports story.

Grausz's suit seeks to represent a class of consumers who purchased certain Hershey dark chocolate products over the four years preceding the filing of the lawsuit.

According to the suit, Grausz regularly bought Lily's Extremely Dark Chocolate 85% Cocoa during the class period, often making her purchases from Target stores in San Diego, only to later discover that they may contain lead and cadmium, which are chemicals known to cause cancer and other serious health issues, including reproductive harm.

"When purchasing the product, plaintiff was seeking a chocolate bar she believed to be healthier than other confectionaries, by virtue of its higher cocoa (and thus lesser sugar) content," Grausz said. "Moreover, plaintiff would have avoided any food she knew contained toxic ingredients, especially heavy metals like lead and cadmium. She would also have avoided purchasing any food she knew could increase her risk of inhibited neurological function, anemia, kidney damage, seizures, coma, or death."

Cadmium is found in the soil by the cacao plant as it grows, and lead is typically detected on the outer shell of the cacao beans after harvest, according to the suit, which added that "Notably, the lead is getting into the Hershey products after harvesting."

Grausz's suit brings claims for violations of California's Unfair Competition Law, False Advertising Law, the Consumers Legal Remedies Act, breach of implied warranty under the Song-Beverly Act and unjust enrichment.

Grausz also wants the court to certify the proposed class of consumers, order Hershey to stop further fraudulent or deceptive business practices, stop the misleading labeling and marketing of its products and order Hershey to disclose the presence or risk of heavy metals in its products, among other things. The suit also seeks unspecified damages, restitution and an order requiring Hershey to disgorge all allegedly ill-gotten profits.

Hershey and counsel for Grausz did not immediately respond to requests for comment.

Grausz is represented by Jack Fitzgerald, Paul K. Joseph, Melanie Persinger, Trevor M. Flynn and

Caroline S. Emhardt of Fitzgerald Joseph LLP.

Counsel information for Hershey was not immediately available.

The case filed in December is Christopher Lazazzaro v. The Hershey Company, case number 2:22-cv-07923, in the U.S. District Court for the Eastern District of New York. Friday's lawsuit is Eva Grausz v. The Hershey Company, case number 3:23-cv-00028, in the U.S. District Court for the Central District of California.

--Additional reporting by Gina Kim. Editing by Ellen Johnson.

All Content © 2003-2024, Portfolio Media, Inc.