

Proposed Class Action Lawsuit Alleges ‘Simply Cocoa’ and ‘Made With Real Cocoa’ are False and Deceptive Claims for Hot Chocolate That Contains Alkalized Cocoa

Article By:

Food and Drug Law at Keller and Heckman

Swiss Miss Hot Cocoa Ingredients Not So ‘Simple,’ Buyers Say

- In a proposed statewide class of consumers who purchased Swiss Miss hot chocolate and similar products, an individual has sued ConAgra under various California consumer protection laws. The plaintiff alleges that he made an on-line purchase of Swiss Miss Simply Cocoa Dark Chocolate Hot Chocolate Mix based on his belief that the product contained cocoa in its simplest form as suggested by the name ‘Simply Cocoa’ and the claim ‘Made with Real Cocoa.’ According to the complaint, the product actually contains alkalized cocoa, which the plaintiff alleges is not a simple form of cocoa because it is heavily processed and is inferior to “natural cocoa” in that it has less “real cocoa” taste and reduced levels of healthful antioxidants as compared to non-alkalized cocoa.
- Although the Swiss Miss ingredient statement lists ‘Cocoa (Processed with Alkali),’ which could serve to clarify any potential confusion as to the nature of the cocoa ingredient, it is uncertain whether a “reasonable” consumer would be obliged to check the ingredient statement. As we [reported](#) previously, a federal appeals court that reversed the dismissal of a lawsuit charging New England Coffee’s Hazelnut Crème coffee violates Massachusetts’ consumer protection laws because the product does not contain hazelnuts found that a reasonable consumer who cared whether the coffee contained real hazelnuts may check the list of ingredients, but “perhaps a reasonable consumer would find in the product name sufficient assurance so as to see no need to search the fine print on the back of the package.” Thus, the fact that the Swiss Miss ingredient statement lists alkalized cocoa may not necessarily undermine the plaintiff’s claims that the terms ‘simple’ and ‘real’ on the front of the package deceptively imply that the product is made with non-alkalized cocoa.
- To the extent that claims against the Simply Cocoa product frame the alkalized cocoa as ‘unnatural,’ the case also raises an issue discussed in our [coverage](#) of lawsuits involving ‘natural flavors.’ Namely, is it the degree of processing and not just plant derivation that distinguishes a synthetic from a natural substance and, if so, what level of processing brings an ingredient outside of the realm of ‘natural’? While allegations that the ‘simple’ version of cocoa contains higher levels of ‘healthy’ antioxidants and a different flavor than the alkalized

version distinguish the cocoa ingredient from flavor ingredients where 'natural' versions are not chemically distinct from 'synthesized' versions, the issues involving the extent of chemical processing are still relevant to interpretation of 'simply' and 'real,' especially as the Swiss Miss product label also claims "no artificial flavors."

© 2025 Keller and Heckman LLP

National Law Review, Volume IX, Number 329

Source URL: <https://natlawreview.com/article/proposed-class-action-lawsuit-alleges-simply-cocoa-and-made-real-cocoa-are-false-and>