

## Ghirardelli Tastes Victory In Chocolate-Less White Chips Suit

By **Mike LaSusa**

*Law360 (April 8, 2020, 6:10 PM EDT)* -- Ghirardelli Chocolate Co. on Wednesday escaped a lawsuit claiming the sweets maker tricked consumers into thinking its cocoa-free white baking chips actually contained chocolate, with a California federal judge saying reasonable consumers wouldn't have been bamboozled by the product's packaging.

U.S. District Judge Phyllis J. Hamilton granted Ghirardelli's bid to have the proposed class action thrown out, noting that the words "chocolate" and "cocoa" don't appear anywhere on the packaging for the Bay Area company's "Premium Baking Chips Classic White Chips."

The two California consumers who brought the suit — Linda Cheslow and Steven Prescott — had argued that the description of the chips as "white" implied they contained white chocolate, but Judge Hamilton disagreed with that logic.

"The use of the term 'white' does not lend itself to defining the quality of the product," the judge said. "For example, white wine may define the characteristic of the wine's color but does not inform the consumer whether the wine is a zinfandel or gewürztraminer."

Moreover, the description of the product as premium is only "generalized boasting upon which no reasonable consumer would rely," and a recipe on the back of the package with a picture of a white chip-studded cookie doesn't imply anything about the content of the chips, Judge Hamilton said.

"The recipe invites the consumer to use the white chips to create a cookie," she said. "It makes no affirmative statement that it is a chocolate cookie and reading a message into that recipe is not plausible."

Cheslow and Prescott sued in September in state court before Ghirardelli removed it to the federal level in November and quickly filed a motion to dismiss.

The consumers said they were tricked by Ghirardelli's product in part because of deceptive labeling, and also because the company had previously sold a similarly packaged product that actually did contain white chocolate.

Judge Hamilton, however, did not buy the "bait and switch" argument.

"Assuming plaintiffs' allegations are true, there are no factual allegations that plaintiffs relied on Ghirardelli's previous white chocolate chips packaging," she said.

The judge allowed the consumers a chance to refile their case, but expressed reservations that a retooled lawsuit could work.

"Because defendant's product packaging would not change in an amended complaint, the court is skeptical that the complaint can be amended to state a claim," she said.

The consumers' attorney, Matthew Theriault of Clarkson Law Firm PC, suggested to Law360 on Wednesday that his clients would refile, saying a study that was done after the case was filed showed most consumers thought the Ghirardelli product contained chocolate.

"That study also reached the same conclusions with respect to other fake white chocolate chip products, like Nestle's white chips," Theriault said. "We are confident that once the court reviews these amended allegations, it will allow this case proceed to the merits."

Ghirardelli declined to comment.

The consumers are represented by Ryan J. Clarkson, Shireen M. Clarkson, Matthew T. Theriault and Bahar Sodaify of Clarkson Law Firm PC.

Ghirardelli is represented by Dale J. Giali and Keri E. Borders of Mayer Brown LLP.

The case is Cheslow et al. v. Ghirardelli Chocolate Co., case number 4:19-cv-07467, in the U.S. District Court for the Northern District of California.

--Editing by Adam LoBelia.