

Ghirardelli Beats Retooled Chocolate-Free White Chips Suit

By **Mike LaSusa**

Law360 (July 20, 2020, 7:53 PM EDT) -- Ghirardelli Chocolate Co. dodged a second attempt at a lawsuit in California federal court alleging the sweets maker tricked consumers into thinking its cocoa-free white baking chips actually contained chocolate, with the judge saying the candy buyers undercut their own case by introducing a new consumer survey.

U.S. District Judge Phyllis J. Hamilton tossed the case in a Friday order, saying the retooled suit pointed to a consumer survey that found 92% of respondents thought that Ghirardelli's Premium Baking Chips Classic White Chips contained white chocolate, based on a picture of the front of the item's packaging.

But Judge Hamilton said the survey hurt the consumers' case more than it helped.

"What's notable about the survey is not what it does allege but what it fails to address," the judge said. "As defendant points out, the survey only showed respondents the front panel of the product. By omitting the back panel, the survey deprived respondents of relevant information, namely the ingredient list."

Judge Hamilton had granted a previous bid by Ghirardelli 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 product.

Two California consumers, Linda Cheslow and Steven Prescott, filed the suit in September in state court before Ghirardelli removed it to the federal level in November and quickly filed a motion to dismiss.

Cheslow and Prescott 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 real 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 in an April order tossing the case.

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

The consumers filed an amended complaint in April, refining their earlier allegations and adding the evidence from the survey. However, Judge Hamilton said Friday that they didn't give "any reason for the court to change its findings."

Neither side responded on Monday to requests for comment.

The plaintiffs are represented by Ryan J. Clarkson, Shireen M. Clarkson, Matthew T. Theriault, Bahar Sodaify and Zachary T. Chrzan 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 Jay Jackson Jr.