

Sheehan & Associates, P.C.
Spencer Sheehan
505 Northern Blvd., Suite 311
Great Neck, NY 11021
(516) 303-0552
spencer@spencersheehan.com

United States District Court
Eastern District of New York

1:19-cv-03735

Curtis Winston, Jane Doe, individually and
on behalf of all others similarly situated

Plaintiffs

- against -

The Hershey Company

Defendant

Complaint

Plaintiffs by attorneys alleges upon information and belief, except for allegations pertaining to plaintiffs, which are based on personal knowledge:

1. The Hershey Company (“defendant”) manufactures, distributes, markets, labels and sells peanut butter cups in a white confection coating under the Reese’s brand name (“Products”).

2. The Products are available to consumers nationwide from brick and mortar and online stores of third-parties and/or defendant’s website or stores.

3. The Products are uniformly marketed as “white” alternatives to the standard peanut butter cups enrobed in milk, and dark, chocolate.

4. Defendant has promoted the Products as white chocolate by including it in its marketing campaigns paired with the milk and dark chocolate varieties

5. Where a reasonable consumer is presented with “milk” and “dark” varieties of a chocolate product, and another version of that (chocolate) product is identified only as “White,” they will refer to and understand that product to be or consist of “white chocolate,” and expect it

to contain cacao-derived ingredients.

6. The Products are misleading because despite being portrayed and represented as a “white [chocolate]” alternative to the milk and dark varieties, through association, common usage, omission and absence of clarification, they do not contain white chocolate, because the ingredient list reveals the absence of cocoa butter (cacao fat).

INGREDIENTS: PEANUTS; SUGAR; VEGETABLE OIL [PALM OIL; SHEA OIL; SUNFLOWER OIL; PALM KERNEL OIL; AND/OR SAFFLOWER OIL]; SKIM MILK; DEXTROSE; CORN SYRUP SOLIDS; LACTOSE (MILK); CONTAINS 2% OR LESS OF: SALT; LECITHIN (SOY); TBHQ AND CITRIC ACID, TO MAINTAIN FRESHNESS; VANILLIN, ARTIFICIAL FLAVOR; PGPR. 

Ingredients: Peanuts; Sugar; Vegetable Oil [Palm Oil; Shea Oil; Sunflower Oil; Palm Kernel Oil and/or Safflower Oil]; Skim Milk; Dextrose; Corn Syrup Solids; Lactose (Milk); Contains 2% or Less of: Salt; Lecithin (Soy); TBHQ and Citric Acid, to Maintain Freshness; Vanillin, Artificial Flavor; PGPR.

7. Defendant has taken affirmative steps for consumers to mistakenly believe the Products contain white chocolate and has intentionally failed to correct the misimpressions.

8. The absence of any modifying term before or after “White” renders the Products misleading because consumers are not able to differentiate between white chocolate and cheaper substitutes like compound or confectionary coating made from vegetable oils when the term “White” is applied to a product traditionally associated with chocolate.



9. The Products do not contain any modifying or descriptive terms such as “[White] Crème,” “[White] Confectionary Coating” or “[White] Compound Coating” which would clarify

ambiguity or misimpression.

10. The Products' packaging is completely ivory white as opposed to the standard product color with beige or less bright font color

11. (3) the Products are situated adjacent to other chocolate-based versions of the Products instead of in a section devoted to non-chocolate confectionary

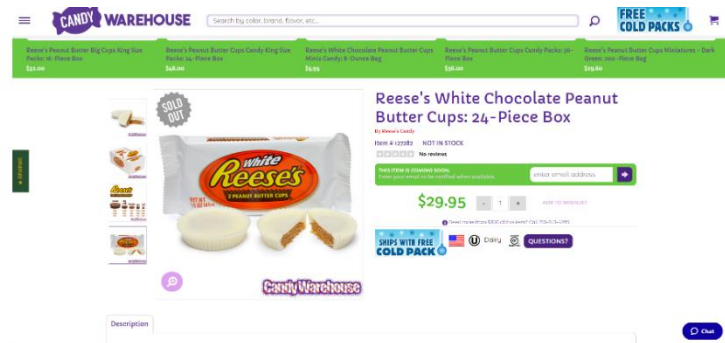
12. The Products are promoted as "white" chocolate versions of the standard chocolate product types by defendant's collective and joint promotion of the white variety with its milk and dark chocolate counterparts.



13. Defendant or its agents provide descriptions of the Products to third-parties, who designate the Products as "white chocolate."



CandyWarehouse.com



CandyFavorites.com



14. Defendant has the ability to change erroneous listings of its Products by third-parties in the same way a movie studio has the ability to issue “takedown requests” to unauthorized distributions of media content.

15. Consumers’ understanding of a product includes factors beyond the text on the label, such as comparison products and product placement.

16. Defendant’s retail strategy has furthered consumer’s mistaken beliefs by:

- Arranging, through instructions to suppliers and vendors, for the Products to be placed alongside milk and dark chocolate varieties;
- Identifying or acceding to identification of the Products by third-parties, as “Reese White Chocolate Cup” stock keeping unit (SKU);
- Placing the Products with other chocolate products as opposed to non-cacao confections.



17. Not only reasonable consumers, but journalists also confuse the Products with real white chocolate.

18. In 2018, an Iowa man found a Reese's Peanut Butter Cup without peanut butter.

19. Defendant's representatives thoughtfully provided him a bounty of peanut butter cups in all varieties and a light-hearted letter, stating "Sometimes we like to remind people you need both chocolate AND peanut butter...here's enough chocolate AND peanut butter."



Sometimes we like to remind people that you need both chocolate AND peanut butter, together, to have the perfect candy.

This was one of those times. And you were the unlucky person. Now that we made our point, here's enough chocolate AND peanut butter to make everything cool between us.

- Reese's

20. In writing up this feel-good story, a reporter described the lucky man's haul as consisting of "dark chocolate cups, regular cups, big cups, white chocolate cups and the king size Nutrageous bars."¹

21. This incident is not offered to impute conduct to defendant.

22. Rather, it evinces how consumers and the public refer to and characterize the Products – as "white chocolate" varieties of the overall product line.

23. Chocolate – whether milk, dark or white – owes its popularity largely to "its unique eating characteristics" – because "[I]t melts in the mouth, imparting a sensation of cooling. The surfaces of the oral cavity are coated by the melted chocolate and flavour is released."²

24. This appreciation for chocolate is not new, as cacao beans were highly valued in Mesoamerica, even used as a currency by the Aztec rulers.

25. The value of the cacao beans was due to its ability to release and impart flavor and provide energy and nutrition.

26. Like all highly valued commodities, they attracted con men seeking to dupe the unwitting customer.

27. Aztec traders were no different than today's hucksters, employing various methods to disguise fake cacao beans, including "hot ashes, chalk, and a generous coating of amaranth dough, wax, or avocado pits" and "mix[ing] the fake cacao with pure Theobroma cacao beans."³

28. This enduring appreciation for chocolate, including the white variety, means there are constant attempts at passing off white-colored confections which lack the key component of cacao fat, in sufficient quantities to impart the attributes valued by consumers.

¹ Ashley Hoffman, [Man's Chocolate Dreams Fulfilled After a Disappointing Piece of Candy](#), Time, Apr. 20, 2018.

² Bettina Wolf, [Rheological properties of chocolate](#), New Food, May 13, 2011.

³ [Deceptive Chocolate: Tracing Counterfeit Cacao Culture from Aztec Currency to Modern Production](#), Mar. 15, 2019 on [Chocolate Class](#); Multimedia Essays on Chocolate, Culture, and the Politics of Food.

29. These deceptive tactics are not surprising, given the recent surge in “food fraud” incidents across the world.⁴

30. Whether reports of cottonseed oil substituting for extra virgin olive oil, the horsemeat scandal in the European Union where beef was replaced, or the dangers of melamine in milk products from China, no country in today’s inter-connected world is completely protected.⁵

31. While food fraud is often associated with negative impacts on public health from physically harmful ingredients, the Congressional Research Service concluded that non-harmful product alterations and representations represent a distinct sub-type of food fraud.

32. In the case of white chocolate products, this includes the (1) replacement of valuable ingredients – cocoa butter - with less expensive substitutes like vegetable fats like palm oil and (2) addition of “small amounts of a non-authentic substance to mask inferior quality ingredient[s]” such as color additives or preservatives.⁶

33. Food fraud also encompasses the deliberate misidentification and obfuscation of a product’s identity or marketing a version of a commonly recognized food which lacks the characterizing and valuable ingredients (“imitation foods”).

34. In the case of white chocolate, it is the minimum amount of cacao fat (20%) that separates this food from mere confectionary, or candy.

35. Consumers expect certain attributes and qualities from products represented and characterized as a type of chocolate, due to the common expectation they will contain cacao-derived ingredients – primarily cocoa nibs and cocoa butter.

⁴ USP press release, “Food Fraud Reports Up 60% Since 2010,” January 23, 2013.

⁵ Jenny Eagle, [‘Today’s complex, fragmented, global food supply chains have led to an increase in food fraud’](#), FoodNavigator.com, Feb. 20, 2019; M. Dourado et al., [Do we really know what’s in our plate?](#), Annals of Medicine, 51(sup1), 179-179 (May 2019).

⁶ Renée Johnson, “Food fraud and economically motivated adulteration of food and food ingredients.” Congressional Research Service R43358, January 10, 2014.

36. The nibs provide the distinctive smell and taste of chocolate while cocoa butter provides the rich mouthfeel and sensory experience.

37. By law, white chocolate refers to “the solid or semiplastic food prepared by intimately mixing and grinding cacao fat with one or more of the optional dairy ingredients...and one or more optional nutritive carbohydrate sweeteners.”⁷

38. The reason white chocolate has certain minimum requirements is to prevent consumers from being deceived by products that appear to be white chocolate, yet contain cheaper and lower quality vegetable fats, like palm and soybean oil, instead of higher quality cacao fat.

39. As an ingredient with applications beyond confectionery to cosmetics and pharmaceuticals, there is a strong incentive for bad actors to “pass off” inferior, cheaper and non-cacao fat ingredients as “white chocolate” by omission, association, implication or representation.

40. Because the Products are expected to contain cacao fat yet instead have other vegetable oils like palm oil, the Products are misleading to reasonable consumers.

41. Whereas real white chocolate dissolves on the tongue due to cocoa butter’s melting point at body temperature, the Products’ white compound coating lacks cocoa butter, and has a higher melting point, so it takes longer to melt in one’s mouth.

42. The absence of cacao-derived ingredients from white compound or confectioner’s coating results in limited flavor depth.

43. There is no requirement that the Products declare “white chocolate” for the representations to be misleading.

44. This is because the label representations are not made in a vacuum, but in an

⁷ 21 C.F.R. §163.124; defendant with Chocolate Manufacturers Association were responsible for establishing white chocolate standard of identity; Citizen Petitions from Hershey Foods, filed December 10, 1992, Docket No. 86P-0297/CP2 and the Chocolate Manufacturers Association, filed March 2, 1993, Docket No. 93P-0091/CP1.

environment where consumers have certain knowledge, associations and expectations.

45. Plaintiffs did not know, nor had reason to know, that the Product did not contain real white chocolate and were actually imitations, because the most-valued component – cacao fat – was substituted for lesser quality ingredients – palm, shea and sunflower oils.

46. Had Plaintiff and Class members known the Product did not contain real white chocolate, they would not have bought the Product or would have paid less for it.

47. The Products contain other representations which are misleading and deceptive.

48. As a result of the false and misleading labeling, the Products are sold at premium prices – no less than \$1.59 per 1.39 oz (39 g) excluding tax – compared to other similar products represented in a non-misleading way.

Jurisdiction and Venue

49. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2).

50. Upon information and belief, the aggregate amount in controversy is more than \$5,000,000.00, exclusive of interests and costs.

51. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

52. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and State.

53. A substantial part of events and omissions giving rise to the claims occurred in this District.

Parties

54. Plaintiff Winston is a citizen of Kings County, New York.

55. Jane Doe plaintiffs are citizens of the 49 states for which the identity of a named

plaintiff has not been disclosed, but who were affected in the same manner as the Named Plaintiffs.

56. The allegations as related to laws of other states where no named plaintiff has been disclosed serves as a placeholder upon joinder or amendment.

57. Defendant is a Delaware corporation with a principal place of business in Hershey, Pennsylvania.

58. During the class period, Named Plaintiffs and Jane Doe Plaintiffs purchased one or more of the Products for personal use, consumption or application with the representations described herein, for no less than the price indicated, *supra*, excluding tax, within their districts and/or states.

59. Named Plaintiffs and Jane Doe Plaintiffs purchased the Products based upon the representations on the packaging.

60. Named Plaintiffs and Jane Doe Plaintiffs would consider purchasing the Products again if there were assurances that the Products' representations were no longer misleading.

Class Allegations

61. The classes will consist of all consumers in all 50 states with sub-classes for the individual states.

62. The present complaint contains Named Plaintiffs from: New York, who will represent the state sub-class of persons who purchased any Products containing the actionable representations during the statutes of limitation in that State.

63. Common questions of law or fact predominate and include whether the representations were likely to deceive reasonable consumers and if Named Plaintiffs and Jane Doe Plaintiffs and class members are entitled to damages.

64. Named Plaintiffs' and Jane Doe Plaintiffs' claims and the basis for relief are typical

to other members because all were subjected to the same representations.

65. Named Plaintiffs are adequate representatives because their interests do not conflict with other members.

66. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

67. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest.

68. Named Plaintiffs' and Jane Doe Plaintiffs' counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

69. Plaintiffs seek class-wide injunctive relief because the practices continue.

New York General Business Law ("GBL") §§ 349 & 350, California Consumers
Legal Remedies Act, Civ. Code §§ 1750-1785 ("CLRA")
and Consumer Protection Statutes of Other States and Territories

70. Named Plaintiffs and Jane Doe Plaintiffs assert causes of action under the consumer protection statutes of the all 50 states, with Named Plaintiffs asserting the consumer protection laws of their individual states.

- a. Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et. seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et. seq.*;
- c. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et. seq.*;
- d. California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* and Unfair Competition Law, Cal. Bus. Prof. Code §§ 17200- 17210 *et. seq.*;
- e. Colorado Consumer Protection Act, Colo Rev. Stat § 6-1-101, *et. seq.*;
- f. Connecticut Unfair Trade Practices Act, Conn. Gen Stat § 42-110a, *et. seq.*;
- g. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et. seq.*;
- h. District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et. seq.*;
- i. Florida Deceptive and Unfair Trade Practices, Act *Florida Statutes* § 501.201, *et. seq.*;
- j. Georgia Fair Business Practices Act, §10-1-390 *et. seq.*;
- k. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et. seq.* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statute § 481A-1, *et. seq.*;
- l. Idaho Consumer Protection Act, Idaho Code § 48-601, *et. seq.*;

- m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et. seq.*;
- n. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et. seq.*;
- o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et. seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et. seq.*;
- p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et. seq.*;
- q. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et. seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et. seq.*;
- r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen Laws ch. 93A;
- s. Michigan Consumer Protection Act, §§ 445.901, *et. seq.*;
- t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et. seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn Stat. § 325D.43, *et. seq.*;
- u. Mississippi Consumer Protection Act, Miss. Code An. §§ 75-24-1, *et. seq.*;
- v. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et. seq.*;
- w. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code § 30-14-101, *et. seq.*;
- x. Nebraska Consumer Protection Act, neb. Rev. Stat. § 59 1601 *et. seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et. seq.*;
- y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et. seq.*;
- z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et. seq.*;
- aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et. seq.*;
- bb. New Mexico Unfair Practices Act, N.M. Sta. Ann. §§ 57 12 1, *et. seq.*;
- cc. New York General Business Law (“GBL”) §§ 349 & 350;
- dd. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et. seq.*;
- ee. Ohio Rev. Code Ann. §§ 1345.02 and 1345.03; Ohio Admin. Code §§ 109;
- ff. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et. seq.*;
- gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. § 646.608(e) & (g);
- hh. Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1 *et. seq.*;
- ii. South Carolina Unfair Trade Practices Act, S.C. Code Law § 39-5-10, *et. seq.*;
- jj. South Dakota’s Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et. seq.*;
- kk. Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et. seq.*;
- ll. Vermont Consumer Fraud Act, Vt. Stat. Ann. Tit. 9, § 2451, *et. seq.*;
- mm. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86/0101, *et. seq.*;
- nn. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et. seq.*;
- oo. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et. seq.*

71. Named Plaintiffs and Jane Doe Plaintiffs and class members assert causes of action under the consumer protection laws of their States, *supra*.

72. Defendant’s conduct was misleading, deceptive, unlawful, fraudulent, and unfair.

73. Defendant’s acts, practices, advertising, labeling, packaging, representations and

omissions are not unique to the parties and have a broader impact on the public.

74. Named Plaintiffs and Jane Doe Plaintiffs and class members desired to purchase products which were as described by defendant and expected by reasonable consumers, given the product or service type.

75. After mailing appropriate notice and demand, Jane Doe California and Massachusetts Plaintiffs and other plaintiffs who reside in a State where notice is required prior to seeking damages under that State's Consumer Protection Statutes, will have mailed and/or have amended the present complaint to request damages. Cal. Civil Code § 1782(a), (d); Mass. UDAP, Mass. Gen Laws ch. 93A.

76. Where applicable, subclasses of plaintiffs will seek injunctive and equitable relief and attorney fees for violations of relevant law, i.e., CLRA for California Subclass. Civ. Code § 1780(a); Cal. Bus. & Prof. Code § 17203.

77. The representations and omissions were relied on by Named Plaintiffs and Jane Doe Plaintiffs and class members, who paid more than they would have, causing damages.

Negligent Misrepresentation

78. Named Plaintiffs and Jane Doe Plaintiffs and class members incorporate by reference all preceding paragraphs.

79. Defendant misrepresented the misrepresented the substantive, compositional, health, organoleptic, sensory and/or nutritional attributes of the Products.

80. Defendant had a duty to disclose and/or provide non-deceptive labeling of the Products and knew or should have known same were false or misleading.

81. This duty is based on defendant's position as an entity which has held itself out as having special knowledge in the production, service and/or sale of the product or service type.

82. The representations took advantage of cognitive shortcuts made by consumers at the point-of-sale and their trust placed in defendant, a well-known and widely recognized and respected brand in this sector.

83. Named Plaintiffs and Jane Doe Plaintiffs and class members reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, the purchase of the Products.

84. Named Plaintiffs and Jane Doe Plaintiffs and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Breach of Express Warranty and Implied Warranty of Merchantability,
Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

85. Named Plaintiffs and Jane Doe Plaintiffs incorporate by reference all preceding paragraphs.

86. Defendant manufactures and sells products which contain a characterizing ingredient or flavor which is desired by consumers.

87. The Products warranted to Named Plaintiffs and Jane Doe Plaintiffs and class members that they possessed substantive, functional, nutritional, compositional, organoleptic, sensory, physical and/or other attributes when they did not.

88. Defendant had a duty to disclose and/or provide a non-deceptive description of the Products and knew or should have known same were false or misleading.

89. This duty is based, in part, on defendant's position as one of the largest users of the characterizing ingredient or flavor in the world.

90. The Products warranted to Named Plaintiffs and Jane Doe Plaintiffs and class members that Product was a different variety than the other product line offerings (milk, dark chocolate) as opposed to being of a whole different type (compound coating).

91. Named Plaintiffs and Jane Doe Plaintiffs desired to purchase products which were as described by defendant.

92. The Products did not conform to their affirmations of fact and promises, wholly due to defendant's actions and were not merchantable.

93. To the extent notice may be required, Named Plaintiffs and Jane Doe Plaintiffs either have sent or intend to send notice to defendant and reserve all rights to amendment of the complaint.

94. Named Plaintiffs, Jane Doe Plaintiffs and class members relied on defendant's claims, paying more than they would have.

Fraud

95. Named Plaintiffs and Jane Doe Plaintiffs incorporate by references all preceding paragraphs.

96. Defendant's purpose was to sell a product which contained a valuable characterizing ingredient or flavor, and represent the Products contained sufficient independent amounts of said ingredient or flavor.

97. Defendant's fraudulent intent is evinced by its absence of all modifying or clarifying terms such as "crème," "coating," or "compound" in conjunction with the term "white."

98. Defendant does not declare the products as a white chocolate version of the product type but that is the impression and intended result.

99. Defendant's intent was to secure economic advantage in the marketplace against competitors.

100. Named Plaintiffs and Jane Doe Plaintiffs and class members observed and relied on defendant's omissions and claims, causing them to pay more than they would have, entitling them

to damages.

Unjust Enrichment

101. Named Plaintiffs and Jane Doe Plaintiffs incorporate by references all preceding paragraphs.

102. Defendant obtained benefits and monies because the Products were not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Named Plaintiffs and Jane Doe Plaintiffs demand a jury trial on all issues.

WHEREFORE, plaintiffs pray for judgment:

1. Declaring this a proper class action, certifying named plaintiffs as representatives and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove and/or refrain from the challenged representations, restitution and disgorgement for members of the State Subclasses pursuant to the consumer protection laws of their States;
4. Awarding monetary damages and interest, including treble and punitive damages, pursuant to the common law and consumer protection law claims, and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiffs' attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: June 26, 2019

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan (SS-8533)

505 Northern Blvd., Suite 311

Great Neck, NY 11021

(516) 303-0552

spencer@spencersheehan.com

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Curtis Winston, Jane Doe individually and on behalf of all others similarly situated

Plaintiff

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The Hershey Company

Defendant

Complaint

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Tel: (516) 303-0552
Fax: (516) 234-7800

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: June 26, 2019

/s/ Spencer Sheehan
Spencer Sheehan

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Curtis Winston, Jane Doe, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Kings
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SHEEHAN & ASSOCIATES, P.C., 505 NORTHERN BLVD STE 311
GREAT NECK NY 11021-5101, (516) 303-0552

DEFENDANTS

The Hershey Company

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332

Brief description of cause:
False advertising

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

06/26/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Spencer Sheehan, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: /s/ Spencer Sheehan

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

Curtis Winston, Jane Doe individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

The Hershey Company

Defendant(s)

Civil Action No. 1:19-cv-03735

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

The Hershey Company
C/O THE CORPORATION TRUST COMPANY
CORPORATION TRUST CENTER 1209 ORANGE ST
WILMINGTON, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sheehan & Associates, P.C. 505 Northern Blvd., #311, Great Neck, NY 11021

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk