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8
9 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

10
11 Sharon James, on behalf of herself and all
12 others similarly situated,

13 Plaintiff,

14 v.

15 Chocmod USA Inc. and OverSeas Food
16 Trading Ltd.,

17 Defendants.

CASE NO.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Sharon James (“Plaintiff”), on behalf of herself and all others similarly situated,
2 by and through her attorneys, brings this Class Action Complaint against Chocmod USA Inc. and
3 OverSeas Food Trading Ltd. (“Defendants”), based upon personal knowledge as to herself, and
4 upon information, investigation and belief of her counsel.

5 **INTRODUCTION**

6 1. This class action seeks to challenge Defendants’ false and deceptive practices in the
7 marketing, distribution, and sale of their Truffettes de France Truffles product in the U.S. (the
8 “Product”).

9 2. Specifically, the front label of the Product includes the conspicuous representation
10 “Truffettes de France,” a French phrase literally translating to “Truffles from France.” This is an
11 unequivocal representation that the chocolate truffles are made in and imported from France.

12 3. Unbeknownst to consumers however, the Product is not made in or imported from
13 France.

14 4. Plaintiff and other consumers purchased the Product and paid a premium price
15 based upon their reliance on Defendants’ front label “Truffettes de France” representation. Had
16 Plaintiff and other consumers been aware that the Product was not made in France, they would not
17 have purchased the Product or would have paid significantly less for it. Accordingly, Plaintiff and
18 Class members have been injured by Defendants’ deceptive business practices.

19 **JURISDICTION AND VENUE**

20 5. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
21 of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under Rule 23 of the Federal
22 Rules of Civil Procedure, there are thousands of proposed Class members, the aggregate amount
23 in controversy exceeds \$5,000,000 exclusive of interest and costs, and Defendants are citizens of a
24 state different from at least some members of the proposed Classes, including Plaintiff.

25 6. This Court has personal jurisdiction over Defendants because Defendants have
26 sufficient minimum contacts in California, or otherwise intentionally avails itself of the markets
27 within California, through its sale of the goods and products in California and to California
28 consumers.

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1 18. The “Truffettes de France” representation is an unequivocal promise that the
2 Product contains truffles that are “from France.” The remaining French words – i.e., “Depuis
3 1948” – reinforce the representation that the Product is made in France. As such, reasonable
4 consumers purchasing the Product expect that the Product is made in France.

5 19. Unbeknownst to consumers, the Product is not made in France. While some of
6 Chocmod’s other chocolate products are made in France, the Product challenged here is
7 manufactured in and imported from Canada.

8 20. As such, the labeling of the Product is false and deceptive.

9 21. The reasonable belief that the Product contains chocolate truffles made in France is
10 material to consumers’ purchasing decisions due to the history and tradition behind French-made
11 truffles. Indeed, numerous customers have taken to the Product’s Amazon.com pages to complain
12 about being deceived by the Product’s origin:¹

13 ★★★★★ **False Advertising- NOT a product of France**

14 By Amazon Customer on November 20, 2015

15 One would suspect since the name of the product is de France, that they were made in France. I buy a lot of French Truffles
and when I ate the first one I knew immediately that it was not any truffle made in France I had ever eaten and in fact on the
side of the package it says product of Canada- Pretty bad false advertising if you ask me [see less](#)

16 ★★★★★ **Misleading title, made in Canada, NOT France**

17 By Average Joe Squared on October 24, 2012

18 After having had truffles that were made in and from France, we ordered these believing they would be similar. They were not.
The label is deceptive at worst, misleading at best. [see less](#)

19 ★★★★★ **So-so quality and definitely not from France**

20 By Judy on January 8, 2021

21 I bought these at a big box store in November. I was disappointed to see, despite the name, they are not from France, they are
from Canada. The flavor is ok but not intense chocolate, and with a slightly charred note; the texture is slightly grainy and not
the smooth melt -in-your-mouth you expect unless you count the rush of oil. In a side-by-side test, the Belgian Cocoa Dusted
Truffles from Aldi win hands down. From now on I will stick to Belgian truffles. [see less](#)

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27 ¹ https://www.amazon.com/Chocmod-Truffettes-France-Natural-Truffles/dp/B0008IT4OM/ref=sr_1_1?keywords=truffettes%2Bde%2Bfrance&qid=1667858188&sr=8-1&th=1

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2 **★★★★★ Not chocolate, not truffles and not from France!**

By Jim S. Royer on December 18, 2015

3 I am very disappointed by these "truffles " that are supposedly "de France." They are little globs of sweetened saturated palm
4 oil fat, covered with cocoa powder. They taste a little disgusting. They are made in Canada. I should have suspected that they
5 weren't chocolate truffles at the price they are being sold. But if you like fat coated with cocoa powder, you'll love these!
6 Unhealthy and unappetizing - a great snack! (Likely made from palm oil from palm plantations where Orangutan habitat has
7 been destroyed.) The fact that some people like them says a lot about the food we eat in the USA. If you want some real
8 chocolate, go to Trader Joes or your local chocolatier. This is most definitely not! [see less](#)

9
10 **★★★★★ Fake chocolate, not from France**

By Jeanne Sohn on April 12, 2018

11 Very disappointed with these "chocolates". I should have read the ingredients before purchasing. The main ingredient is
12 "vegetable oil (palm kernel, palm)", then sugar, then cocoa powder. No chocolate, no cocoa butter. It is also a Canadian
13 product, not French as implied in the name. The texture is grainy and feels like a chunk of fat. Will be discarding. [see less](#)

14 **★★★★★ Honesty is important too.**

By R.G. Pennsylvania on February 3, 2018

15 Made in Canada NOT France. Is that deceptive advertising or what? So, why isn't the name "Truffettes de Canada"? Ok candy,
16 but expensive. Give it a 1 star due to the sleazy deceptive name. [see less](#)

17 **★★★★★ Don't bother, first ingredient: vegetable oil**

By travis on March 5, 2019

18 Awful, awful, awful. The first ingredient is vegetable oil. It looks like fancy European chocolate, but tastes like candle wax
19 mixed with hershey's syrup. Wish I had known when I bought it that it's actually made in Canada, not France. Also, I'm not sure
20 how they differ, but I ordered from the seller showing the gold-colored box and I was sent the dark-blue one. [see less](#)

21 **★★★★★ Wretched little things**

By gimmedball on April 5, 2016

22 I totally agree with the 75 other people who give these "truffles" 1 star only. Frankly, I'd give it no stars - or, better yet, 5
23 negative stars. These were given to us as a gift, so at least I'm glad I didn't actually shell out any money for this stuff. These
24 dark brown powdery clumps are easily the worst-tasting confection I've ever had the displeasure of putting in my mouth. As
25 soon as I bit into my first one, I immediately spit out what was in my mouth before I even chewed it. My body literally rejected
26 it. These have absolutely no decent chocolate taste whatsoever, which is ridiculous for a chocolate truffle. Also, the packaging
27 is highly misleading. Truffettes "de France" that are a "product of Canada"? Also, the box says "Everyone will love their rich
28 taste and intense flavors." Well, just take a gander at all the taste complaints in the 75 one-star ratings to disprove what the
box says. All 2.2 lbs of these went straight into the wastebasket. [see less](#)

22. As the entity responsible for the development, manufacturing, packaging,
advertising, distribution and sale of the Product, Defendants knew or should have known that the
Product is falsely and deceptively advertised as French-made truffles. Moreover, Defendants
knew or should have known that Plaintiff and other consumers, in purchasing the Product, would
rely on Defendants' front label representations and be deceived. This is evidenced in part by the
numerous customer complaints made directly to Defendants on the Chocmod Amazon.com pages

1 for the Product (see above complaints). Nonetheless, Defendants deceptively advertise the Product
2 in order to capitalize on demand for authentic French-made sweets and gain an unfair advantage in
3 the market.

4 23. Consumers are willing to pay more for the Product based on the belief that the
5 Product is made in France, as promised on the front label. Plaintiff and other consumers would
6 have paid significantly less for the Product, or would not have purchased it at all, had they known
7 that the truth about it. Thus, through the use of misleading representations, Defendants command a
8 price that Plaintiff and the Classes would not have paid had they been fully informed.

9 24. Therefore, Plaintiff and other consumers purchasing the Product have suffered
10 injury in fact and lost money as a result of Defendants' false and deceptive practices, as described
11 herein.

12 **CLASS ACTION ALLEGATIONS**

13 25. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all other
14 applicable laws and rules, individually, and on behalf of all members of the following Classes:

15 **Nationwide Class**

16 All residents of the U.S. who purchased the Product within the applicable statute of
limitation ("Nationwide Class").

17 **California Class**

18 All residents of California who purchased the Product within the applicable statute of
limitation ("California Class").

19 **California Consumer Subclass**

20
21 All residents of California who purchased the Product for personal, family, or household
22 purposes, within the applicable statute of limitations period ("California Consumer
Subclass") (together with the Nationwide Class, and the California Class, the "Classes").

23 26. Excluded from the Classes are the following individuals and/or entities: Defendants
24 and their parents, subsidiaries, affiliates, officers and directors, current or former employees, and
25 any entity in which Defendants have a controlling interest; all individuals who make a timely
26 election to be excluded from this proceeding using the correct protocol for opting out; and all
27 judges assigned to hear any aspect of this litigation, as well as their immediate family members.

28

1 27. Plaintiff reserves the right to modify or amend the definition of the proposed
2 Classes and/or add subclasses before the Court determines whether class certification is
3 appropriate.

4 28. Plaintiff is a member of all the Classes.

5 29. **Numerosity**: Members of each Class are so numerous and geographically
6 dispersed that individual joinder of all Class members is impracticable. The precise number of
7 Class members is unknown to Plaintiff but is likely to be ascertained by the Defendants' records.
8 At a minimum, there likely are at least thousands of Class members.

9 30. **Commonality**: There are questions of law and fact common to the proposed
10 class(es). Common questions of law and fact include, without limitations:

- 11 a. whether Defendants' course of conduct alleged herein violates the statutes and
12 other laws that are pled in this Complaint;
- 13 b. whether reasonable consumers would rely upon Defendants' representations
14 about the Product and reasonably believe the Product is made in France;
- 15 c. whether Defendants knew or should have known their representations were
16 false or misleading;
- 17 d. whether Defendants were unjustly enriched by retaining monies from the sale
18 of the Products;
- 19 e. whether certification of each Class is appropriate under Rule 23;
- 20 f. whether Plaintiff and the members of each Class are entitled to declaratory,
21 equitable, or injunctive relief, and/or other relief, and the scope of such relief;
22 and
- 23 g. the amount and nature of the relief to be awarded to the Plaintiff and the
24 Classes, including whether Plaintiff and the Classes are entitled to punitive
25 damages.

26 31. **Typicality**: Plaintiff's claims are typical of the other Class members because
27 Plaintiff, as well as Class members, purchased the Product. Plaintiff and members of the Classes
28 relied on the representations made by the Defendants about the Product prior to purchasing the

1 Product. Plaintiff and the members of each Class paid for Defendants' Product and would not have
2 purchased it (or would have paid substantially less for them) had they known that the Defendants'
3 representations were untrue.

4 32. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the proposed
5 Classes as her interests do not conflict with the interests of the members of the proposed Classes
6 she seeks to represent, and she has retained counsel competent and experienced in class action
7 litigation. Thus, the interests of the members of the Classes will be fairly and adequately protected
8 by Plaintiff and her counsel.

9 33. **Predominance:** Pursuant to Rule 23(b)(3), the common issues of law and fact
10 identified in this Complaint predominate over any other questions affecting only individual
11 members of the Classes. Class issues fully predominate over any individual issue because no
12 inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendants'
13 misconduct detailed at length in this Complaint.

14 34. **Superiority:** A class action is superior to all other available methods for the fair
15 and efficient adjudication of this litigation because individual litigation of each claim is
16 impractical. It would be unduly burdensome to have individual litigation of hundreds of thousands
17 of individual claims in separate lawsuits, every one of which would present the issues presented in
18 the Complaint/lawsuit. Further, because of the damages suffered by any individual Class member
19 may be relatively modest in relation to the cost of litigation, the expense and burden of individual
20 litigation make it difficult, if not impossible. Furthermore, many of the Class members may be
21 unaware that claims exist against the Defendants.

22 **FIRST CLAIM FOR RELIEF**
23 **Violation of California's Consumers Legal Remedies Act**
24 **California Civil Code § 1750, *et seq.***
25 ***(For the California Consumer Subclass)***

26 35. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
27 forth herein.
28

1 36. Plaintiff brings this claim individually and on behalf of the members of the
2 proposed California Consumer Subclass against Defendants pursuant to California’s Consumers
3 Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

4 37. The Product is a “good” within the meaning of Cal. Civ. Code § 1761(a), and the
5 purchases of the Product by Plaintiff and members of the California Consumer Subclass constitute
6 “transactions” within the meaning of Cal. Civ. Code § 1761(e).

7 38. Cal. Civ. Code § 1770(a)(4) prohibits “[u]sing deceptive representations or
8 designations of geographic origin in connection with goods or services.” By labeling the Product
9 as “Truffettes De France,” Defendants have used a deceptive representation of geographic origin
10 in connection with goods. Therefore, Defendants have violated section 1770(a)(4) of the CLRA.

11 39. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
12 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
13 have...” By labeling the Product as “Truffettes De France,” Defendants have represented and
14 continues to represent that the Product has characteristics (i.e., are made in France) that it does not
15 have. Therefore, Defendants have violated section 1770(a)(5) of the CLRA.

16 40. Cal. Civ. Code § 1770(a)(7) prohibits “[r]espresenting that goods or services are of
17 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are
18 of another.” By labeling the Product as “Truffettes De France,” Defendants have represented and
19 continue to represent that the Product is of a particular standard (i.e., made in France) that it does
20 not meet. Therefore, Defendants have violated section 1770(a)(7) of the CLRA.

21 41. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent
22 not to sell them as advertised.” By labeling the Product as “Truffettes De France,” Defendants
23 have advertised the Product with characteristics they intended not to provide to consumers. As
24 such, Defendants have violated section 1770(a)(9) of the CLRA.

25 42. At all relevant times, Defendants have known or reasonably should have known
26 that the French representations on the Product are false and deceptive, and that Plaintiff and other
27 members of the California Consumer Subclass would reasonably and justifiably rely on the
28 Product’s French representations when purchasing the Product. Nonetheless, Defendants

1 deceptively advertise the Product as such in order to deceive consumers into believing they are
2 premium truffles from France.

3 43. Plaintiff and members of the California Consumer Subclass have justifiably relied
4 on Defendants' misleading representations when purchasing the Product. Moreover, based on the
5 materiality of Defendants' misleading and deceptive conduct, reliance may be presumed or
6 inferred for Plaintiff and members of California Consumer Subclass.

7 44. Plaintiff and members of the California Consumer Subclass have suffered and
8 continue to suffer injuries caused by Defendants because they would have paid significantly less
9 for the Product, or would not have purchased it at all, had they known that the Product was not
10 made in France.

11 45. Under Cal. Civ. Code § 1782, on September 21, 2022, Plaintiff sent a notice letter
12 by certified mail to Defendants, notifying them of her intent to pursue a claim for damages under
13 the CLRA (as well as other statutes) on behalf of herself and all others similarly situated, and gave
14 Defendants an opportunity to cure, consistent with Cal. Civ. Code § 1782. More than 30 days has
15 passed since Defendants' receipt of the notice letter, yet Defendants have not cured their deceptive
16 conduct. As such, Plaintiff seeks damages under the CLRA, as well as injunctive relief and all
17 other available remedies.

18 46. Attached hereto is a venue declaration executed by Plaintiff pursuant to Cal. Civ.
19 Code 1780(d).

20 **SECOND CLAIM FOR RELIEF**
21 **Violation of California's False Advertising Law**
22 **California Business & Professions Code § 17500, *et seq***
(For the California Class)

23 47. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
24 forth herein.

25 48. Plaintiff brings this claim individually and on behalf of the members of the
26 proposed California Class against Defendants pursuant to California's False Advertising Law
27 ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq*.

28 49. The FAL makes it "unlawful for any person to make or disseminate or cause to be

1 made or disseminated before the public . . . in any advertising device . . . or in any other manner or
2 means whatever, including over the Internet, any statement, concerning . . . personal property or
3 services professional or otherwise, or performance or disposition thereof, which is untrue or
4 misleading and which is known, or which by the exercise of reasonable care should be known, to
5 be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

6 50. Defendants have represented and continue to represent to the public, including
7 Plaintiff and members of the proposed California Class, through their deceptive labeling, that the
8 Product is made in France. Because Defendants have disseminated false and misleading
9 information regarding the Product, and Defendants know, knew, or should have known through
10 the exercise of reasonable care that the representations were and continue to be false and
11 misleading, Defendants have violated the FAL.

12 51. As a result of Defendants’ false advertising, Defendants have and continue to
13 unlawfully obtain money from Plaintiff and members of the California Class. Plaintiff therefore
14 requests that the Court cause Defendants to restore this fraudulently obtained money to her and
15 members of the proposed California Class, to disgorge the profits Defendants made on these
16 transactions, and to enjoin Defendants from violating the FAL or violating it in the same fashion
17 in the future as discussed herein. Otherwise, Plaintiff and members of the proposed California
18 Class may be irreparably harmed and/or denied an effective and complete remedy.

19 **THIRD CLAIM FOR RELIEF**
20 **Violation of California’s Unfair Competition Law (“UCL”),**
21 **California Business & Professions Code § 17200, *et seq.***
(For the California Class)

22 52. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
23 forth herein.

24 53. Plaintiff brings this claim individually and on behalf of the members of the
25 proposed California Class against Defendants.

26 54. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part, that “unfair
27 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
28 deceptive, untrue or misleading advertising”

1 55. Under the UCL, a business act or practice is “unlawful” if it violates any
2 established state or federal law. Defendants’ false and misleading advertising of the Product was
3 and continues to be “unlawful” because it violates the CLRA, the FAL, and other applicable laws
4 as described herein. As a result of Defendants’ unlawful business acts and practices, Defendants
5 have unlawfully obtained money from Plaintiff and members of the proposed California Class.

6 56. Under the UCL, a business act or practice is “unfair” if its conduct is substantially
7 injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and
8 unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity
9 of the harm to the alleged victims. Defendants’ conduct was and continues to be of no benefit to
10 purchasers of the Product, as it is misleading, unfair, unlawful, and is injurious to consumers who
11 rely on the labeling. Deceiving unsuspecting consumers into believing the Product is a premium
12 truffle product from France is of no benefit to consumers. Therefore, Defendants’ conduct was and
13 continues to be “unfair.” As a result of Defendants’ unfair business acts and practices, Defendants
14 have and continue to unfairly obtain money from Plaintiff and members of the proposed California
15 Class.

16 57. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or
17 is likely to deceive members of the consuming public. Defendants’ conduct here was and
18 continues to be fraudulent because it has the effect of deceiving consumers into believing the
19 Product is made in France when it is not. Because Defendants misled Plaintiff and members of the
20 California Class, Defendants’ conduct was “fraudulent.” As a result of Defendants’ fraudulent
21 business acts and practices, Defendants have and continue to fraudulently obtain money from
22 Plaintiff and members of the California Class.

23 58. Plaintiff requests that the Court cause Defendants to restore this unlawfully,
24 unfairly, and fraudulently obtained money to her, and members of the proposed California Class,
25 to disgorge the profits Defendants made on these transactions, and to enjoin Defendants from
26 violating the UCL or violating it in the same fashion in the future as discussed herein. Otherwise,
27 Plaintiff and members of the proposed California Class may be irreparably harmed and/or denied
28 an effective and complete remedy.

1 impliedly warranted by Defendants to be merchantable. Therefore, the Product is not merchantable
2 under California law and Defendants have breached their implied warranty of merchantability in
3 regard to the Product.

4 74. If Plaintiff and members of the California Class had known that the Product's
5 French representations were false and misleading, they would not have been willing to pay the
6 premium price associated with it. Therefore, as a direct and/or indirect result of Defendants'
7 breach, Plaintiff and members of the California Class have suffered injury and deserve to recover
8 all damages afforded under the law.

9 75. On or around September 2022, Plaintiff discovered this breach of implied warranty,
10 and on September 21, 2022, Plaintiff sent a notice letter by certified mail to Defendants, notifying
11 Defendants of the breach.

12 **SIXTH CLAIM FOR RELIEF**

13 **Quasi Contract/Unjust Enrichment/Restitution**

14 ***(for the Nationwide Class; alternative, for the California Class)***

15 76. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
16 forth herein.

17 77. Plaintiff brings this claim individually and on behalf of the members of the
18 proposed Nationwide Class against Defendants. Alternatively, Plaintiff brings this claim
19 individually and on behalf of the members of the proposed California Class against Defendants.

20 78. As alleged herein, Defendants have intentionally and recklessly made misleading
21 representations to Plaintiff and members of the Classes to induce them to purchase the Product.
22 Plaintiff and members of the Classes have reasonably relied on the misleading representations and
23 have not received all of the benefits promised by Defendants through the Product's
24 representations. Plaintiff and members of the proposed Classes have therefore been induced by
25 Defendants' misleading and deceptive representations about the Product, and paid more money to
26 Defendants for the Product than they otherwise would and/or should have paid.

27 79. Plaintiff and members of the proposed Classes have conferred a benefit upon
28 Defendants as Defendants have retained monies paid to them by Plaintiff and members of the
proposed Classes.

1 I. An award to Plaintiff and the proposed Classes of pre and post-judgment interest,
2 to the extent allowable; and

3 J. For such further relief that the Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, on behalf of herself and the proposed Classes, hereby demands a jury trial with
6 respect to all issues triable of right by jury.

7
8 DATED: November 7, 2022

TREEHOUSE LAW, LLP

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10 By:  _____

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