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Nestle Can't Ditch Child Slave Labor Labeling Suit

By **Lauren Berg**

Law360 (March 29, 2022, 9:19 PM EDT) -- A California federal judge on Monday refused to toss a proposed class action accusing Nestlé USA of deceptively marketing its chocolate products as sustainably sourced despite getting cocoa from farms reliant on child slave labor.

In a seven-page order, U.S. District Judge M. James Lorenz denied Nestle's motion to dismiss, saying plaintiff Renee Walker plausibly alleged the food giant deceived customers with labeling on its chocolate chips and hot cocoa mix suggesting the cocoa was sourced in a way to help improve farmers' lives.

However, data referenced in the complaint shows the number of children working on the farms from 2017 to 2019 nearly doubled, according to the order.

"The statements on [Nestle]'s products that the cocoa is 'sustainably sourced' based on the 'Nestlé Cocoa Plan,' which is said to 'help improve' the lives of farmers and 'support' them, are at odds with the fact that the child labor problem the Nestlé Cocoa Plan is said to address has

grown more, and not less, severe," Judge Lorenz said.

In her initial **complaint filed in 2019**, Walker alleged Nestlé gets cocoa from West African farms that use child slave labor, while claiming on its packaging that its products are "sustainably sourced."

According to the suit, the company has known for more than a decade its supply chain is tainted with child labor, but its use of seals claiming its cocoa is sustainably sourced sways consumers into believing its products follow socially and environmentally responsible standards.

Walker wants to represent a nationwide class of people who bought Nestlé products marked with the "Nestlé Cocoa Plan," "UTZ" certification seals, "sustainably sourced" or "improving the lives of farmers."

Nestlé moved to strike the claims, arguing Walker's complaint implicated its right to free speech under the First Amendment, as its statements on its efforts to improve the lives of farmers are a matter of public interest.

But Judge Lorenz in June 2020 **shot down** Nestlé's bid to strike those claims, finding the case focuses on alleged deceptions on the product labels, not statements on the company's website that Nestle argued are protected as free speech.

Nestlé then renewed its bid to dismiss the suit a month later, arguing Walker didn't allege which products she purchased, what labels she saw and why she relied on them. Judge Lorenz last March **granted Nestlé's motion**, but allowed Walker to rework her complaint.

Nestlé filed its current motion to dismiss in May 2021.

In his Monday order, Judge Lorenz also rejected Nestlé's

argument that Walker lacks standing to assert her claims on behalf of the proposed class members for the types of products she didn't purchase, saying the definition of the proposed class isn't limited to the hot cocoa mix and chocolate chip products Walker bought.

Walker alleges she bought Nestlé's products in reliance on the packaging statements and wouldn't have bought them had she known the statements were false, according to the order.

She also alleged she would like to buy the products in the future "if and when they are produced as advertised," but she can't rely on the accuracy of the representations, the order states.

"[Walker] has alleged sufficient facts in support of Article III standing," Judge Lorenz said. "This is all [Walker] has to do to allege standing as a putative class representative."

The judge added Nestlé's objection to the alleged class definition would be more appropriate at the class certification stage.

A Nestlé spokesperson told Law360 in a statement Tuesday the ruling is "purely procedural" and that Walker's allegations remain unproven.

"To be clear, child labor is unacceptable and we remain unwavering in our dedication to combating child labor in the cocoa industry and to our ongoing work with partners in government, NGOs and industry to tackle this complex, global issue," the spokesperson said.

"Access to education, and enhancing farming methods and livelihoods are crucial to fighting child labor in cocoa production," the spokesperson said. "Addressing the root causes of child labor is part of the Nestlé Cocoa Plan and

will continue to be the focus of our efforts in the future."

Helen Zeldes of Schonbrun Seplow Harris Hoffman & Zeldes LLP, an attorney for Walker, told Law360 on Tuesday that Judge Lorenz's decision is a "significant victory" for consumers.

"California consumer protection laws can be powerful tools in stopping deceptive practices and we look forward to litigating these claims on the merits," Zeldes said.

Walker and the proposed class are represented by Helen I. Zeldes, Paul L. Hoffman, John C. Washington, Catherine Sweetser and Joshua Fields of Schonbrun Seplow Harris Hoffman & Zeldes LLP, and Michael R. Reese, George V. Granade II and Carlos F. Ramirez of Reese LLP.

Nestlé is represented by Theodore J. Boutrous Jr., Christopher Chorba, Perlette Jura and Timothy W. Loose of Gibson Dunn & Crutcher LLP.

The case is Renee Walker v. Nestlé USA Inc., case number 3:19-cv-00723, in the U.S. District Court for the Southern District of California.

--Additional reporting by Emily Field and Mike Curley.
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