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Nestle Still Can't Defeat Child, Slave Labor Claims, Judge Told

By **Madeline Lyskawa**

Law360 (October 20, 2022, 7:34 PM EDT) -- Nestle USA Inc. customers asked a California federal judge to once again reject the company's efforts to dodge a lawsuit accusing it of marketing its chocolate products as sustainably sourced despite relying on cocoa from farms that allegedly use child and slave labor, saying their lightly amended claims have already withstood judicial scrutiny.

The proposed class, now led by class representative Marie Falcone, filed a **brief** on Wednesday responding to Nestle's motion to dismiss its third amended complaint, saying the company can't rely on its "Cocoa Plan" label to put a Band-Aid on the "rampant" issue of child and slave labor in its supply chain, and that the court should once again rule in its favor.

"This is Nestlé USA, Inc.'s fifth bite at the apple — repeating the same arguments that this court already rejected. For all the reasons its prior pleading challenges failed, this attempt fails too," the proposed class said.

In defending itself, Nestlé has relied on its Cocoa Plan, which it claims has dedicated hundreds of millions of dollars to make cocoa farming more sustainable and to help improve farmers' and children's lives.

But the proposed class contended that the plan doesn't actually improve farmers' lives, saying Nestlé has made no commitment to paying farmers a fair price and that it doesn't have a plan to secure farmers a living income. The customers also said Nestlé's claims that it has put money into addressing child labor is not the same as not utilizing child and slave free labor.

The proposed class therefore reiterated that the existence of Nestlé's "Cocoa Plan" isn't enough to shield its practice of "profiteering off child and slave labor" — which it has thus failed to refute.

"Notably, in spite of all its subterfuge, not once does Nestlé dispute the ultimate facts underlying plaintiff's claims: that its supply chain is rife with child and slave labor," the proposed class said. "Calling its products 'sustainably sourced' or 'supporting farmers' who are enslaved child laborers is abhorrent."

The vast majority of Nestlé's cocoa is sourced from farms where child slave labor is common, the proposed class said, arguing that Nestlé has even perpetuated and funded the child slavery industry in order to continue acquiring cheap cocoa supplies. The proposed class further asserted that Nestlé's own data showed that child labor has grown since the Cocoa Plan began in 2009.

Nestlé's latest dismissal motion was filed in late September after U.S. District Judge M. James Lorenz rejected its prior motion at the end of March. In his order, Judge Lorenz said the customers plausibly alleged their deceptive labeling claims in their second amended complaint.

Given that the third amended complaint includes few changes, the proposed class said Nestlé's repeated claims can't strike it down. The main difference between the two complaints is the replacement of class representative Renee Walker with Marie Falcone, after Walker dropped her individual claims in September.

Like Walker, Falcone is seeking to represent a nationwide class of Nestlé customers who bought products marked with the "Nestle Cocoa Plan," "UTZ" certification seals that are meant to indicate

sustainable farming, "sustainably sourced" or "improving the lives of farmers."

In re-addressing Nestle's defenses, the proposed class said in its brief that the company argues "without basis" that its product labels contain Nestlé's "truthful aspirations" to combat the challenges of sourcing from West Africa. But this assertion is dishonest, the proposed class said, and that even if it were true, California courts have held that aspirational statements are not immune from liability under false advertising law.

The customers also rejected Nestlé's contention that their complaint stems from a broader frustration with the global cocoa supply chain as a whole, saying their claims are clear and direct in pointing out a discrepancy between Nestlé's "sustainably sourced" labeling and its own cocoa supply chain practices.

Simply put, the proposed class said, to a reasonable consumer no definition of "sustainable" would include slavery or economic devastation. Instead, the company's current labeling is merely intended to prop up sales, the customers said.

"Nestlé's false and deceptive labeling is plainly intended to capitalize on the lucrative ethical consumer market — chocolate products with sustainability claims on their labels outperform those without them more than 3 to 1," the proposed class said.

Representatives for the parties were not immediately available for comment on Thursday.

Falcone is represented by Helen I. Zeldes, Paul L. Hoffman, John C. Washington, Catherine Sweetser, Aya Dardari and Joshua Fields of Schonbrun Seplow Harris Hoffman & Zeldes LLP, and Michael R. Reese and George V. Granade II of Reese LLP.

Nestle 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. Nestle USA Inc., case number 3:19-cv-00723, in the U.S. District Court for the Southern District of California.

--Editing by Michael Watanabe.