

MAR 09 2020



No. **S-202785**  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**SCOTT LEAF**

Plaintiff

AND:

**HERSHEY CANADA INC., THE HERSHEY COMPANY and  
HERSHEY CHOCOLATE & CONFECTIONARY CORPORATION**

Defendants

**NOTICE OF CIVIL CLAIM**

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFF

### **Part 1: — Statement of Facts**

#### **OVERVIEW**

1. This action concerns the Defendants' use of child labour and slavery – including child slavery - in the manufacture of goods sold throughout Canada. The child labour and slavery prevalent in the Defendants' supply chain are so abhorrent, that failure to disclose these practices amounts to a misrepresentation to Canadian consumers.
2. Canada's largest and most profitable companies should not tolerate child labour and slavery in their supply chains.
3. The Defendants consistently represent to Canadian consumers that they act in a socially and ethically responsible manner. The Defendants consistently represent to Canadian consumers that they oppose the use of child labour and slavery. Contrary to these representations, the Defendants permit, encourage and benefit from child labour and slavery in their supply chains.
4. Canadian consumers would not purchase the Defendants' products as often, at all and/or pay the same price for these products, if they were aware of the child labour and slavery prevalent in the Defendants' supply chain.

#### **THE PARTIES**

5. Scott Leaf is a resident of the Port Coquitlam region, British Columbia. Mr. Leaf has purchased products manufactured and marketed by the Defendants at retail stores within British Columbia. At all material times, Mr. Leaf was unaware that the Defendants permit, encourage and benefit from child labour and slavery in their supply chain. Mr. Leaf would not have purchased the Defendants' products if the Defendants' product packaging, labelling and/or advertisements disclosed the truth about the child labour and slavery used in the Defendants' supply chain.
6. The Plaintiff seeks to represent a Class defined as:

All persons resident in Canada who:

- (i) purchased chocolate products manufactured and/or marketed by the Defendants;
- (ii) at the time that they purchased chocolate products manufactured and/or marketed by the Defendants were unaware of the use of child labour and slavery in the Defendants' supply chain; and,
- (iii) would not have purchased chocolate products manufactured and/or marketed by the Defendants as often or at all, or would not have paid as much for the chocolate products, if they had been aware of the use of child labour and slavery in the Defendants' supply chain.

7. The Defendant, The Hershey Company is a global chocolate food products company. The Hershey Company is incorporated in Delaware with its principal place of business in Hershey, Pennsylvania.

8. The Defendant, Hershey Chocolate & Confectionery Corporation is a wholly owned subsidiary of The Hershey Company. The Hershey Chocolate & Confectionary Corporation is incorporated in Delaware with its principal place of business in Robinson, Illinois.

9. The Defendant Hershey Canada Inc. is a wholly owned subsidiary of The Hershey Company. Hershey Canada Inc. is incorporated pursuant to the laws of Ontario, with its principal place of business in Mississauga.

## **FACTUAL BACKGROUND**

### **The Defendants Falsely Convey an Impression of Opposition to Child Labour and Slavery**

10. The Defendants have made numerous representations that create an impression that they oppose child labour and slavery. On October 3, 2012, the Defendants stated that they supported "programs to help eliminate child labor in the cocoa regions of West Africa."

11. In a 2014 Corporate Social Responsibility Report, the Defendants claimed that they were "actively involved in large-scale efforts that are committed to rooting out forced labor, especially forced child labor, in our cocoa supply chain."

12. The Defendants explicitly stated in a 2014 Corporate Social Responsibility Report that the Defendants have “zero tolerance for the worst forms of child labor in its supply chain (as defined by International Labor Organization Conventions 138 and 182).”

13. In their Supplier Code of Conduct, the Defendants affirm that they “are committed to the elimination of the ‘worst forms of child labor,’ as defined by International Labor Organization (ILO) Convention 138 & 182, from its supply chain.” The Defendants specifically claim that the following child labor practices are prohibited in their supply chain:

- (a) Children should not be kept from school to work on the farm.
- (b) Children should not carry heavy loads that harm their physical development.
- (c) Children should not be present on the farm while farm chemicals are applied.
- (d) Young children, generally considered to be under 14 years of age, should not use sharp implements.
- (e) Trafficking of children or forcing children to work are included among the Worst Forms of Child Labor (WFCL).
- (f) Suppliers must not utilize or benefit in any way from forced or compulsory labor, including any forms of slavery.
- (g) The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force, coercion or other means, for the purpose of exploiting them is prohibited.

14. In reality, the practices listed above, which the Defendants purport to prohibit, are rampant in the Defendants' supply chain.

#### **Child Labour and Slavery are Prevalent in the Defendants' Supply Chain**

15. Ivory Coast is the world's largest producer of cocoa, the raw ingredient that makes chocolate. For more than 50 years, the Defendants have been a major buyer of Ivory Coast cocoa beans. The Defendants list the Ivory Coast first in their listing of primary sourcing countries.

16. The Defendants purchase cocoa from Ivory Coast producers who use child labour and slavery. By purchasing cocoa produced using child labour and slavery, the Defendants both encourage and benefit from this slavery. As a direct result of the Defendants' actions, not only does child labour and slavery continue to be used in cocoa production, its prevalence is actually increasing.

17. In a recent report sponsored by the U.S. Department of Labor, it is noted that “the numbers of children working in cocoa production, in child labor in cocoa production, and in hazardous work in cocoa production have increased from 2008/09 to 2013/14.” The number of children doing hazardous work in cocoa production grew by 46% during that time period. During that same time period, the Defendants realized a profit in excess of \$15 billion.

18. The Department of Labour report found that during the time period from 2013 to 2014 over 1.1 million children in Ivory Coast were engaged in the Worst Forms of Child Labor, including hazardous work, the use of dangerous tools, transport of heavy loads, and exposure to dangerous pesticides. This was up from the 791,181 children engaged in such work at the time of the last survey in 2008 to 2009.

19. As the Food Empowerment Project describes in its article entitled "Child Labor and Slavery in the Chocolate Industry":

a child's workday typically begins at six in the morning and ends in the evening. Some of the children use chainsaws to clear the forests. Other children climb the cocoa trees to cut bean pods using a machete. These large, heavy, dangerous knives are the standard tools for children on the cocoa farms.... Once they cut the bean pods from the trees, the children pack the pods into sacks that weigh more than 100 pounds when full and drag them through the forest.

Aly Diabate, a former cocoa slave, said, 'Some of the bags were taller than me. It took two people to put the bag on my head. And when you didn't hurry, you were beaten.' Holding a single large pod in one hand, each child has to strike the pod with a machete and pry it open with the tip of the blade to expose the cocoa beans. Every strike of the machete has the potential to slice a child's flesh. The majority of children have scars on their hands, arms, legs or shoulders from the machetes. In addition to the hazards of using machetes, children are also exposed to agricultural chemicals on cocoa farms in Western Africa.”

Cases often involve acts of physical violence, such as being whipped for working slowly or trying to escape. Reporters have also documented cases where children

and adults were locked in at night to prevent them from escaping. Former cocoa slave Aly Diabate told reporters, ‘The beatings were a part of my life. I had seen others who tried to escape. When they tried, they were severely beaten.’ Drissa, a recently freed slave who had never even tasted chocolate, experienced similar circumstances. When asked what he would tell people who eat chocolate made from slave labor, he replied that they enjoyed something that he suffered to make, adding, ‘When people eat chocolate, they are eating my flesh.’”

20. As the U.S. Department of Labor reported in 2013, “children in Côte d’Ivoire continue to engage in the worst forms of child labor in agriculture, particularly on cocoa farms, sometimes under conditions of forced labor.” The U.S. Department of Labor further reported that “[c]hildren from neighboring West African countries are trafficked into Côte d’Ivoire for agricultural labor, especially in cocoa production.”

#### **The Defendants Fail to Disclose the Use of the Worst Forms of Child Labour in their Supply Chain**

21. At retail locations, Canadian consumers reviewing the packaging for the Defendants' products find no disclosure that the products were produced using child labour and slavery.

22. In the Defendants' advertisements, the Defendants omit the fact that they encourage and profit from child labour and slavery.

23. The Defendants' corporate reporting conveys an impression that the Defendants' prohibit and discourage child labour and slavery in their' supply chain. This impression that the Defendants have actively cultivated is demonstrably false.

#### **The Defendants' Use of the Worst Forms of Child Labour is Material to Consumers**

24. Consumers have become sensitive to the human cost behind the products that they buy. This sensitivity transcends industries and ranges from products as diverse as clothing to coffee.

25. A Harvard University study examined consumer willingness to pay a premium for coffee certified as Fair Trade on eBay. A Fair Trade certification requires, amongst other things, that the producer not use slave and child labor in the production of its coffee. The study found that consumers in online auctions were willing to pay an average of 23% more for coffee certified as Fair Trade.

26. A 2006 study by researchers at the University of Michigan analyzed consumer purchases to determine consumer willingness to pay a premium for athletic socks marked with a Good Working Conditions (“GWC”) label. The study concluded that 30% of consumers in a working class neighborhood of Detroit were willing to pay a 20% price premium (from \$1.00 to \$1.20) for GWC labeled socks compared to non-GWC labeled socks.

27. A 2011 study led by researchers at Harvard University studied consumer willingness to pay a premium for polo shirts sold with an SA8000 certification on eBay. The SA8000 certification prohibits the use of child labor and slave labor and discrimination based on race, gender, and religion. The code mandates that workers be allowed to organize and bargain collectively with their employers. The SA8000 code also requires that workplaces satisfy minimum health and safety standards, pay minimum (living) wages, and that overtime work is voluntary, limited, and paid at a premium. “On average, shoppers paid a 45% premium for labeled versus unlabeled shirts. The findings suggest that there is substantial consumer support for fair labor standards, even among price-sensitive eBay shoppers.”

28. Another survey by FishWise, a non-profit marine conservation organization, further elucidates consumer willingness to pay when there are human rights abuses in supply chains. Eighty-eight percent of consumers stated that they would stop buying a product if it was associated with human rights abuses. The survey further revealed that 70% percent of consumers would pay more for a product certified to be free of human rights abuses. FishWise noted that, “survey results indicate that human rights are important to seafood consumers and many of them are willing to avoid high risk products and pay more for those that are certified to be free of abuses.”

29. These surveys establish that the child and slave labor in Defendants’ supply chain is material to consumers, who are generally unaware, assume otherwise, and would not have purchased Defendants’ Chocolate Products had they known the truth.

30. Hershey is well aware of the consumer concern about human rights abuses in supply chains and has thus mounted its extensive public relations effort to position itself as a company that does not permit child and slave labor in its supply chain. Its hollow public relations statements mask the tragic truth that millions of African children are engaged in the Worst Forms

of Child Labor to produce the Defendants' product. Had consumers known the truth, they would not have purchased or paid as much for the Defendants' products.

**Part 2: — Relief Sought**

31. The Plaintiff, on behalf of the Class described herein, claims:
- (a) an order certifying this action as a class proceeding pursuant to s. 4 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and appointing the Plaintiff as the representative Plaintiff for the Class as defined herein;
  - (b) a declaration that the Defendants owed a duty of care to the Plaintiff and the Class;
  - (c) a declaration that the Defendants' representations and omissions collectively amount to untrue, inaccurate or misleading representations;
  - (d) a declaration that the Defendants' duty of care to the Plaintiff and the Class included a duty to warn the Plaintiff and the Class that the Defendants' products were produced using child labour and slavery;
  - (e) a declaration that the Defendants' representations and omissions with respect to the use of child labour and slavery constitute negligent misrepresentation;
  - (f) a declaration that the Plaintiff and the Class reasonably relied on the Defendants' misrepresentations, and suffered damages therefrom;
  - (g) a declaration that the Defendants breached section 52 of the *Competition Act*, R.S.C. 1985, c. C-34 ("*Competition Act*");
  - (h) a declaration that the Plaintiff and Class are entitled to recover damages pursuant to section 36 of the *Competition Act*;
  - (i) a declaration that the Defendants were unjustly enriched;
  - (j) an order for restitution flowing from the Defendants' unjust enrichment;
  - (k) pecuniary and non-pecuniary damages ;
  - (l) punitive damages;
  - (m) investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*;
  - (n) a reference to decide any issues not decided at the trial of the common issues;



- (o) prejudgment and postjudgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (p) such further and other relief as this Honourable Court may deem just.

### **Part 3: — Legal Basis**

#### **THE DEFENDANTS' NEGLIGENT MISREPRESENTATIONS**

32. The Defendants made material misrepresentations to Canadian consumers. These misrepresentations consist of both explicit misrepresentations and misrepresentations by omission.

33. Whether goods have been produced by child labour and/or slavery is material to Canadian consumers.

34. Through their assertions set out in paragraphs 11 – 14 herein, the Defendants represented to Canadian consumers that the Defendants' products are not produced through child labour and/or slavery. This representation was untrue, deceptive and misleading.

35. The Defendants' omission of any information regarding its use of child labour and slavery was a material misrepresentation.

36. As a direct result of the Defendants' misrepresentations, the Plaintiff and Class were deceived into believing that Defendants' products were not produced using child labour and slavery. As a direct result of the Defendants' misrepresentations, the Defendants' use of child labour and slavery was not discoverable by the Plaintiff and the Class until 2018.

#### **THE DEFENDANTS' VIOLATION OF THE *COMPETITION ACT***

37. The Defendants have, for the purpose of promoting the supply or use of their products, knowingly and/or recklessly made a representation to the public that is false and/or misleading in a material respect. These material misrepresentations, include, but are not limited to:

- (a) publishing reports that indicate that the Defendants oppose child labour and slavery, when in fact they encourage it and profit by it;

- (b) publishing reports that falsely claim that slavery is not permitted in the Defendants' supply chain, when in fact it is prevalent;
- (c) omitting any reference to the use of child labour and slavery in the manufacturing process from the Defendants' packaging and labelling;
- (d) omitting any reference to the use of child labour and slavery in the manufacturing process from the Defendants' advertisements;
- (e) publicly indicating that they do not support child labour and slavery when in fact, the Defendants encourage and benefit from it;
- (f) intentionally conveying an image or impression that the Defendants are ethically and socially responsible, while secretly encouraging and benefiting from child labour and slavery.

## **DAMAGES**

38. The Plaintiff and the Class were deceived into purchasing products that they would not otherwise have purchased, had they been aware of the Defendants' use of child labour and slavery. The Plaintiff, on behalf of the Class claims for the full price paid by each Class member for the Defendants' products. Alternatively, the Plaintiff and Class claim for the difference in the price that they paid for the Defendants' products, and the price that they would have paid if they had known that the Defendants' products were produced using child labour and slavery.

39. The Plaintiff and the Class suffered mental anguish and non-pecuniary losses flowing therefrom upon learning that their purchases had contributed to the use of child labour and slavery.

40. Further, or alternatively, the Plaintiff pleads and relies on the doctrines of waiver of tort, unjust enrichment and disgorgement and states that the Defendants' conduct constitutes tortious conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

Plaintiff's address for service:

**KOSKIE MINSKY LLP**  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3  
**Kirk M. Baert LSO #: 30942O**  
Tel: 416-595-2092  
Fax: 416-204-2889  
**Celeste Poltak LSO#: 46207A**  
Tel: 416-595-2700  
Fax: 416-204-2909  
**Adam Tanel LSO#: 61715D**  
Tel: 416-595-2072  
Fax: 416-204-4922

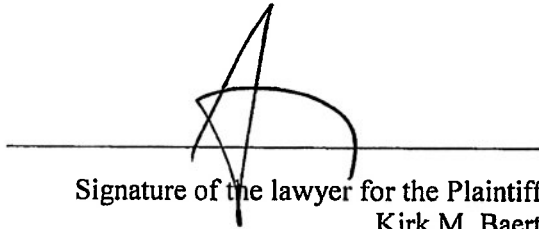
Place of trial:

Vancouver, British Columbia

The address of the registry is:

800 Smith Street, Vancouver, BC, V6Z 1E1

Date: March 9, 2020



Signature of the lawyer for the Plaintiff  
Kirk M. Baert  
Celeste Poltak  
Adam Tanel

Rule 7-1(1) of the *Supreme Court Civil Rules* states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE  
OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading/petition on the Defendants, outside British Columbia on the grounds that it concerns:

section 10(e)(i) “contractual obligations that, to a substantial extent, were to be performed in British Columbia”;

section 10(g) “a tort committed in British Columbia”;

section 10(h) “a business carried on in British Columbia”; and

section 10(i) “concerns a claim for an order for a party to do something in BC”

of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.

**Appendix**

**Part 1: — Concise Summary of Nature of Claim:**

1. This action concerns the Defendants' use of child labour and slavery – including child slavery - in the manufacture of goods sold throughout Canada.

**Part 2: — This Claim Arises From the Following:**

A dispute concerning:

a matter not listed here

**Part 3: — This Claim Involves:**

a class action

**Part 4 – List no more than 3 applicable enactments:**

*Class Proceedings Act*, R.S.B.C. 1996, c. 50  
*Competition Act*, R.S.C., 1985, c. C-34