

# Class Action Monitor

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*\*Associate Ian Hawkes assisted with  
drafting this alert*

## Class Action Honors



## Spotlight on Recent Decision Regarding “Sustainably Sourced” Labeling and Consumer Deception

*By Drew Tulumello and Arianna Scavetti\**

In recent years, corporate attention to marketing related to Environmental, Social and Governance (“ESG”) efforts and initiatives has become imperative. Companies are confronting increased litigation under consumer protection statutes based on claims that ESG marketing and labeling of products are “misleading,” resulting in liability and reputational harm. Courts may be hesitant to dismiss these cases at the outset, and companies must be mindful of developing case law in this space when considering whether and how to share information about their initiatives designed to identify and remediate ESG challenges in the supply chain.

In a recent decision in [Walker v. Nestlé USA](#), No. 3:19-cv-00723, a court in the Southern District of California declined to dismiss a case alleging that consumers have been misled into buying Nestlé chocolate products by references on the label to the “Nestlé Cocoa Plan,” a company initiative aimed at combating child labor in the West African cocoa supply chain. The label described the products as “sustainably sourced” through the Nestlé Cocoa Plan, which “help[s] improve the lives of the cocoa farmers.” The court held that the plaintiff plausibly alleged that the statements were false and misleading because the cocoa is allegedly sourced from farms reliant on child labor. The court emphasized the complaint’s reference to statistics allegedly showing that child labor in

West Africa has gotten worse since the inception of the Cocoa Plan, notwithstanding the Cocoa Plan's efforts to make a positive impact on the communities in the supply chain. The company's efforts to scale up the Cocoa Plan and expand its reach ultimately worked against it in this case because they identified more child laborers—which the court held was inconsistent with their product labeling.

Some key takeaways food and beverage manufacturers should keep in mind when making ESG claims in product labels and advertising:

- **The scope and limitations of ESG initiatives should be fairly reflected in marketing materials:** Where possible, descriptions of ESG initiatives should be specific and they should accurately describe the efforts and progress of the initiative. Companies should be cautious around marketing that broadly highlights positive progress, without accounting for ongoing challenges. The labeling at issue in *Walker* referred broadly to “improv[ing] the lives of farmers,” and the court held that was misleading because the child labor problem appeared to have grown more severe. The court was not persuaded that consumers would understand the labeling to refer to the positive impacts of the Cocoa Plan, such as tutoring or the refurbishing of local schools.
- **Buzzwords such as “sustainable” should be contextualized:** Companies should strive to make clear what references to “sustainability” mean in the context of their ESG efforts and should avoid overstatement. Here, the company labeled its product as “sustainably sourced” and was not able to secure dismissal at the pleading stage, while a different company in another case was able to secure dismissal by stating on its label that it “*supports* sustainably sourced cocoa.” See *Myers v. Starbucks Corp.*, No. 20-cv-0335, Slip Op., ECF No. 63 (C.D. Cal. July 29, 2020).
- **Clear guidelines for marketing and labeling are critical:** The labeling in *Walker* referred to the Cocoa Plan's website, so the information on that website was fair game for representations on which the plaintiff could base her claims. This highlights the importance of coordination between legal teams, marketing teams, and product development teams with clear guidelines and alignment on what representations should and should not be made with respect to ESG initiatives.

The ongoing monitoring of consumer protection litigation and labeling, particularly in the ESG space, will be critical to mitigating risk. Weil has broad capabilities to help monitor these developments, implement labeling guidelines, and defend against related litigation.

# About Weil's Class Action Practice

Weil offers an integrated, cross-disciplinary class action defense group comprising lawyers with expertise across our top-rated practices and hailing from our eight offices across the U.S.

Whether our clients face a nationwide class action in one court or statewide class actions in courts across the country, we develop tailored litigation strategies based on our clients' near- and long-term business objectives, and guided by our ability to exert leverage at all phases of the case – especially at trial. Our principal focus is to navigate our clients to the earliest possible favorable resolution, saving them time and money, while minimizing risk and allowing them to focus on what truly matters—their businesses.

For more information on Weil's class action practice please visit our [website](#).

## Class Action Honors (cont.)

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— *The American Lawyer*

**Ranked among the top 5 firms nationally for Consumer Class Actions.**

— *Chambers USA, 2021*

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If you have questions concerning the contents of this issue of Class Action Monitor, or would like more information about Weil's Class Action practice, please speak to your regular contact at Weil or to the editors listed below:

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