

# Dark Chocolate Manufacturers Face Wave of Heavy Metal Exposure Litigation

JANUARY 24, 2023

## Key Takeaways:

- Lawsuits claiming exposure to harmful levels of heavy metals in dark chocolate have flooded the courts early in 2023.
- This trend seems to arise from a December 2022 *Consumer Reports* article that found that some dark chocolate bars contain potentially harmful amounts of heavy metals such as cadmium and lead.

Dark chocolate is a beloved treat for many, known for its rich flavor and potential health benefits. However, a slew of new lawsuits allege that some dark chocolate products may contain elevated levels of heavy metals, such as lead and cadmium, which can be potentially harmful to human health, particularly for children and pregnant women.

Among other brands, The Hershey Company has been targeted in at least two federal lawsuits alleging its dark chocolate products contain dangerous levels of lead and cadmium. The first was filed last month in New York, and the second was filed just days ago in California. In both instances, plaintiffs' claims are based on the theory that Hershey's marketing is false and deceptive because it does not disclose the high levels of lead and cadmium on its products' packaging. Plaintiffs allege that they relied on Hershey's alleged misrepresentations and omissions that the products contained "only dark chocolate ingredients" and that they would not have bought or would not have been willing to pay a premium for Hershey's dark chocolate products if Hershey had disclosed the heavy metal content of those products. Neither of these are personal injury cases; they seek strictly economic damages.

Hershey is not alone. Other putative class actions have been filed against Trader Joe's, Lindt & Sprungli (North America) Inc., Alter Eco Americas Inc., Equal Exchange, and Mondelez Global LLC, among others, similarly claiming that they failed to disclose the presence of heavy metals in their products and allegedly failed to remedy their production process to limit heavy metals in their chocolate.

The lawsuits claim that these companies engaged in deceptive and misleading marketing by failing to disclose on their products' packaging the presence of lead and cadmium. This latest suit against Hershey goes on to claim the confectionary giant was put on notice that its products contained heavy metals in 2017, when independent experts provided Hershey and several other dark chocolate manufacturers with certificates of merit noting the presence of

these heavy metals. Hershey nevertheless failed to warn consumers of the presence of these substances, the complaint alleges. Had Hershey done so, consumers would not have purchased the products, allegedly.

These heavy metals in chocolate cases have sprung up in the wake of a report published in [Consumer Reports](#) last month revealing that, of 28 chocolate bars tested, 23 were found to contain “unsafe levels of lead and cadmium.” According to the report, consuming just an ounce a day of these bars—which, in addition to Hershey, were produced by manufacturers like Lindt, Equal Exchange, and Alter Eco, among others—could be harmful.

The presence of heavy metals is not a novel basis for false advertising class action claims. In recent years, baby food, wine, and dietary supplements makers have faced similar lawsuits. In at least some of those cases, courts found that mere exposure to potentially toxic substances in consumer products, without more, is insufficient to establish Article III standing. *In re Plum Baby Food Litig.*, No. 21-CV-02417, 2022 WL 16552786 (D.N.J. Oct. 31, 2022); *In re Gerber Prods. Co. Heavy Metals Baby Food Litig.*, No. 21-CV-269, 2022 WL 10197651 (E.D. Va. Oct. 17, 2022). It will be interesting to see how courts across the country will view and analyze plaintiffs’ legal theories in these new dark chocolate heavy metals cases.

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