

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>CORPORATE ACCOUNTABILITY LAB, 6214 N. Glenwood Ave., Chicago, IL 60660</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE HERSHEY COMPANY, 19 E. Chocolate Ave., Hershey PA, 17033 and; THE RAINFOREST ALLIANCE INC., 125 Broad Street, New York, NY 10004,</p> <p style="text-align: right;">Defendants.</p>	<p>Case No. _____</p> <p><u>COMPLAINT</u></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
---	---

On behalf of itself and the general public, and in the interest of consumers, Corporate Accountability Lab (“CAL”) brings this action against Defendants The Hershey Company (“Hershey”) and The Rainforest Alliance Inc. (“Rainforest Alliance”) concerning their false and deceptive marketing representations of Hershey’s Rainforest Alliance certified chocolate products as “sustainable” and “responsible” when in fact the supply and production of these products contributes to the grievous and unsustainable labor abuses that are endemic in the cocoa industry. Reasonable consumers seeking to buy ethically and sustainably produced chocolate products are misled both by Rainforest Alliance’s independent representations that its certification “provide[s] the highest level of assurance” regarding the product’s sourcing standards and by Hershey’s advertising and marketing of its Rainforest Alliance certified products as unqualifiedly “sustainable.”

INTRODUCTION

1. The use of fair and sustainable labor practices is of growing concern to consumers.
2. Consumers increasingly seek out products that are made without the use of forced labor, child labor, or exploitative working conditions, especially in industries known for their use of such practices.
3. Cocoa farming is one such industry, with a well-publicized history of unfair labor practices in chocolate production.
4. Consumers who wish to purchase more ethical and sustainable alternatives rely on the products' packaging, marketing, advertising, and relevant certifications to purchase products that align with their values.
5. This is a consumer-protection case concerning deceptive marketing representations regarding Hershey's Rainforest Alliance certified chocolate products (the "Products").¹ This case is brought by CAL, a nonprofit, public interest organization dedicated to holding corporations accountable for human and environmental abuses and informing the public, including consumers, about the realities of these abuses.
6. Defendant Rainforest Alliance is an international non-governmental organization ("NGO") which, among other things, certifies products for their sustainability and represents that

¹ Hershey states that while it only sources "certified cocoa," it labels several of its products as specifically certified by Rainforest Alliance, including, in the U.S., its Brookside products. *See Cocoa Certification*, Hershey, https://www.thehersheycompany.com/en_us/home/sustainability/sustainability-focus-areas/cocoa.html (last visited Oct. 26, 2021); *Certified Product: Brookside*, Rainforest Alliance, (Dec. 18, 2019); <https://www.rainforest-alliance.org/find-certified/brookside/>.

However, discovery may reveal that additional Hershey products are labelled as Rainforest Alliance certified and should be included within the scope of the allegations in this Complaint, and Plaintiff reserves the right to add such products.

their certification “is a symbol of environmental, social, and economic sustainability”² and that “addressing human rights abuses in agriculture and forestry is a key focus of [their] work.”³

7. Defendant Hershey is one of the largest chocolate manufacturers in the world⁴ and claims to have “achieved 100 percent certified and sustainable cocoa” in part by sourcing through Rainforest Alliance certified cocoa farms.⁵

8. Defendants market the Products as “grown and harvested on farms and forests that follow sustainable practices,”⁶ that they employ “responsible sourcing” in producing the Products,⁷ and that these cocoa Products are unqualifiedly “sustainable.”⁸

9. In reality, far from “meet[ing] rigorous environmental and social standards”⁹ and achieving “100 percent . . . sustainable cocoa,”¹⁰ Hershey’s Rainforest Alliance certified Products have a well-documented connection to child labor and other exploitive labor practices, and the certification does little to guarantee sustainability in the cocoa supply chain.

10. Thus, Hershey and Rainforest Alliance’s combined advertising—which suggests that Hershey’s Rainforest Alliance certified chocolate is sustainable and free from unfair labor practices—is false and misleading.

² *Find Certified Products*, Rainforest Alliance, <https://www.rainforest-alliance.org/find-certified> (last visited Oct. 26, 2021).

³ *Human Rights*, Rainforest Alliance, <https://www.rainforest-alliance.org/issues/human-rights> (last visited Oct. 26, 2021).

⁴ Nils-Gerrit Wunsch, *Market Share of the Leading Chocolate Companies in the United States in 2018*, (May 6, 2021) <https://www.statista.com/statistics/238794/market-share-of-the-leading-chocolate-companies-in-the-us/>.

⁵ *Sustainability: Cocoa*, The Hershey Company, https://www.thehersheycompany.com/en_us/home/sustainability/sustainability-focus-areas/cocoa.html (last visited Oct. 26, 2021).

⁶ *Certified Product: Hershey’s*, The Rainforest Alliance, <https://www.rainforest-alliance.org/find-certified/hersheys/> (last visited Oct. 26, 2021); *Certified Product: Brookside*, Rainforest Alliance, <https://www.rainforest-alliance.org/find-certified/brookside> (last visited Oct. 26, 2021).

⁷ Beatrice Moulianitaki, *Going Beyond ‘Fair Trade’ with Hershey’s Sustainable Cocoa Strategy*, https://www.thehersheycompany.com/en_us/home/newsroom/blog/blog-detail.html?guid=54d10aacf78d7e48341f928615f894ba (last visited Oct. 26, 2021).

⁸ *Id.*

⁹ *Certified Product: Hershey’s*, *supra* note 6.

¹⁰ *Sustainability: Cocoa*, *supra* note 5.

STATUTORY FRAMEWORK

11. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

12. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead;
or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

13. A violation occurs regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

14. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). It “shall be construed and applied liberally to promote its purpose.” *Id.*

15. Under the statute, a “merchant” is defined as “a person, whether organized or operating for profit or for a nonprofit purpose, who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a

person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice” *Id.* § 28-3901(a)(3).

16. Because CAL is a public-interest organization, it may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

17. A public-interest organization may act on behalf of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has a “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 79-81, Plaintiff CAL’s work involves educating the general public, including consumers in the District of Columbia, about exploitive corporate practices that occur across supply chains, and work to redress such harms. CAL thus has a sufficient nexus to D.C. consumers to adequately represent their interests.

18. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by CAL on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

19. This action does not seek damages. Instead, CAL seeks to end the unlawful conduct directed at D.C. consumers. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice.” *Id.* § 28-3905(k)(2)(D). CAL also seeks declaratory relief in the form of an order holding Defendants’ conduct to be unlawful.

FACT ALLEGATIONS

I. Defendants Represent That the Certified Chocolate Products are Responsibly Sourced and Sustainable.

20. Hershey represents that it is “Deeply Committed to Responsible Cocoa”¹¹ and that it has “achieved 100 percent certified and sustainable cocoa.”¹²

21. Hershey evidences this commitment to responsible sourcing in the cocoa industry by the fact that it is certified by Rainforest Alliance:¹³

Responsible Sourcing Commitments

Cocoa



By 2020, source 100% certified and sustainable Mass Balance cocoa through:

- Fair Trade USA
- Rainforest Alliance (UTZ)
- Suppliers' standards meeting the international ISO/CEN criteria

22. The Products' Rainforest Alliance certification is also used by Hershey to validate its “comprehensive approach to human rights due diligence in cocoa” that includes “farm-level risk assessments through our certification partnerships like Rainforest Alliance.”¹⁴

23. Similarly, Rainforest Alliance advertises that its certification “provides the highest level of assurance regarding the origins and conditions under which certified cocoa is produced.”¹⁵

24. Rainforest Alliance also represents that “[f]arms, forest communities, and businesses that participate in our certification program are audited against rigorous sustainability standards based on the triple bottom line: environment, economic, and social well-being.”¹⁶

¹¹ *Goodness in Action: 2020 Sustainability Report*, The Hershey Company, <https://bit.ly/30YjG0l> (last visited Oct. 26, 2021).

¹² *Sustainability: Cocoa*, *supra* note 5.

¹³ *Goodness in Action*, *supra* note 11.

¹⁴ *Id.*

¹⁵ *The Rainforest Alliance Launches Cocoa Assurance Plan in West Africa*, Rainforest Alliance (Apr. 29, 2019), <https://www.rainforest-alliance.org/articles/rainforest-alliance-launches-cocoa-assurance-plan-in-west-africa>.

¹⁶ *Our Approach*, Rainforest Alliance, <https://www.rainforest-alliance.org/approach> (last visited Oct. 26, 2021).

25. Specifically, Rainforest Alliance states that its certified Hershey Products “are grown and harvested on farms and forests that follow sustainable practices.”¹⁷



26. Endorsing this narrative, Hershey assures consumers that it is “[c]reating sustainable solutions” by “sourc[ing] exclusively from cocoa suppliers certified by organizations such as . . . Rainforest Alliance.”¹⁸

27. According to Hershey, this “ensures we’re only working with farmer groups empowered with the resources, administrative systems, and local infrastructures necessary to meet the high standards of certification.”¹⁹

A. Hershey Represents that its Rainforest Alliance Certified Products are “100 Percent Sustainable”

28. Throughout its online advertising and social media, Hershey advertises that it “has achieved 100 percent certified and sustainable cocoa.”²⁰

29. In the company’s “Sustainability Report,” Hershey represents to consumers that its priorities . . . [are] “sourcing priority ingredients responsibly and sustainably” and “respecting human rights”²¹

¹⁷ *Certified Product: Hershey’s*, *supra* note 6.

¹⁸ Moulitanitaki, *Going Beyond ‘Fair Trade’* *supra* note 7.

¹⁹ *Id.*

²⁰ See e.g., *Sustainability: Cocoa*, *supra* note 5; The Hershey Company (@HersheyCompany), Twitter (July 6, 2020 10:43 AM), <https://twitter.com/hersheycompany/status/1280150322296602625?lang=en>.

²¹ *Goodness in Action*, *supra* note 11.



30. Hershey claims that it “does not tolerate child labor or forced labor in [its] operations and in [its] value chain.”²²

31. Continuing these promises, Hershey represents to consumers that they can “rest assured that the chocolate [they’re] enjoying is sustainably sourced.”²³



B. Rainforest Alliance Represents that its Certification of Hershey Products Means These Products Meet “Rigorous Sustainability Standards.”

32. Rainforest Alliance claims that its “little green frog is a symbol of environmental, social, and economic sustainability”²⁴

²² *Embedding Responsible Recruitment and Employment*, The Hershey Company, <https://bit.ly/3BiADzc> (last visited Oct. 26, 2021).

²³ @HersheyCompany, Twitter, *supra* note 20.

²⁴ *Find Certified Products*, *supra* note 2.

33. Rainforest Alliance represents that “[f]arms, forest communities, and businesses that participate in our certification program are audited against rigorous sustainability standards based on the triple bottom line: environment, economic, and social well-being.”²⁵

34. The “little green frog” symbol was updated specifically to include “People & Nature” to represent that the products certified by Rainforest Alliance met high human rights as well as environmental standards.²⁶



35. Rainforest Alliance advertises that it is “creating a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and forest communities.”²⁷

II. Hershey’s Rainforest Alliance Certified Products are Unsustainable and Not Responsibly Sourced.

A. Hershey Has a History of Sourcing Cocoa From Farms With Unfair Labor Conditions.

36. Contrary to Defendants’ representations, Hershey’s Rainforest Alliance Certified Chocolate Products are neither responsibly sourced nor sustainable.

37. The sourcing and production of these Products have been linked to child labor and exploitive working conditions.

²⁵ *Our Approach*, *supra* note 16.

²⁶ *Using Our Logo and Seal*, Rainforest Alliance, <https://www.rainforest-alliance.org/business/marketing-sustainability/using-our-logo-and-seal/> (last visited Oct. 26, 2021).

²⁷ *Our Approach*, *supra* note 16.

38. For example, a recent report by the *Washington Post* revealed that about two-thirds of the world’s cocoa supply, including Hershey’s, comes from West Africa,²⁸ where, according to a Department of Labor funded NORC Report, more than 1.56 million children work in the cocoa sector, including 1.48 million children who have been “exposed to at least one component of hazardous child labor in cocoa production.”²⁹

39. As recently as 2018, Hershey itself identified over 4,000 children doing “inappropriate” work on the cocoa farms that it sources from.³⁰

40. And in spring 2019, Hershey admitted that it “could not guarantee that any of their chocolates were produced without child labor.”³¹

41. Despite Hershey’s promise that it “has achieved 100 percent certified and sustainable cocoa,” reports as recent as December 2020 show that the company can trace *less than half* of its cocoa back to any specific farm.³²

42. Furthermore, farmers on typical Ivorian and Ghanaian cocoa farms, from which Hershey sources some of its cocoa,³³ live well below what the World Bank defines as poverty, earning less than a dollar a day.³⁴

²⁸ Peter Whoriskey & Rachel Siegel, *Cocoa’s child laborers*, *Washington Post* (June 5, 2019), <https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/>.

²⁹ *NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Cote d’Ivoire and Ghana*, NORC (October 19, 2020), https://www.norc.org/PDFs/Cocoa%20Report/NORC%202020%20Cocoa%20Report_English.pdf.

³⁰ Christian Peña, *The war on Cocoa: Hershey Co. accused of not upholding sustainability efforts in West Africa*, *NBC News*, (Dec. 12, 2020), <https://www.nbcnews.com/business/business-news/war-cocoa-hershey-co-accused-not-upholding-sustainability-efforts-west-n1250798>.

³¹ Whoriskey, et al., *Cocoa’s child laborers*, *supra* note 28.

³² *Id.*

³³ *Hershey Cocoa For Good: 2020 Farmer Groups (89) supplying Hershey’s under Cocoa For Good*, The Hershey Company, <https://bit.ly/2XNkkMZ> (last visited Oct. 26, 2021).

³⁴ Whoriskey, et al., *Cocoa’s child laborers*, *supra* note 28; Antoine C. Fountain & Friedel Huetz-Adams, *2020 Cocoa Barometer*, Voice Network, <https://www.voicenetwork.eu/wp-content/uploads/2021/03/2020-Cocoa-Barometer-EN.pdf> (last visited Oct. 26, 2021).

43. The price that Hershey pays for cocoa from Cote d'Ivoire and Ghana is less than half of the Living Income Price,³⁵ making it all but impossible for farmers to produce cocoa sustainably when they do not earn enough to cover their basic needs.³⁶

44. Hershey has also been accused of manipulating the futures market to purchase cocoa beans anonymously in an attempt to avoid payment of the Living Income Differential (LID), which requires chocolate companies to pay an extra \$400 per ton of cocoa purchased to support impoverished cocoa farmers.³⁷

B. Rainforest Alliance's Certification Does Not Guarantee that the Products have been Responsibly and Sustainably Sourced.

45. Marking Hershey's Products as "certified" by Rainforest Alliance does little to alleviate these exploitive labor issues because Rainforest Alliance's auditing and certification processes consistently fail to prevent human rights abuses.

46. For example, an investigation by Repórter Brasil published in December 2016 found problematic labor conditions and environmental practices in violation of Rainforest Alliance's standards at one of its "certified" farms.³⁸

47. Additionally, a 2015 joint investigation by Radio 4's File and BBC News in Assam, India into the working conditions at plantations that Rainforest Alliance had certified found that workers experienced "dangerous and degrading living and working conditions."³⁹

³⁵ *Necessary Farmgate Prices for a Living Income*, Voice Network, (January 2020), <https://www.voicenetwork.eu/wp-content/uploads/2020/01/200113-Necessary-Farm-Gate-Prices-for-a-Living-Income-Definitive.pdf>.

³⁶ *2020 Cocoa Barometer*, *supra* note 35.

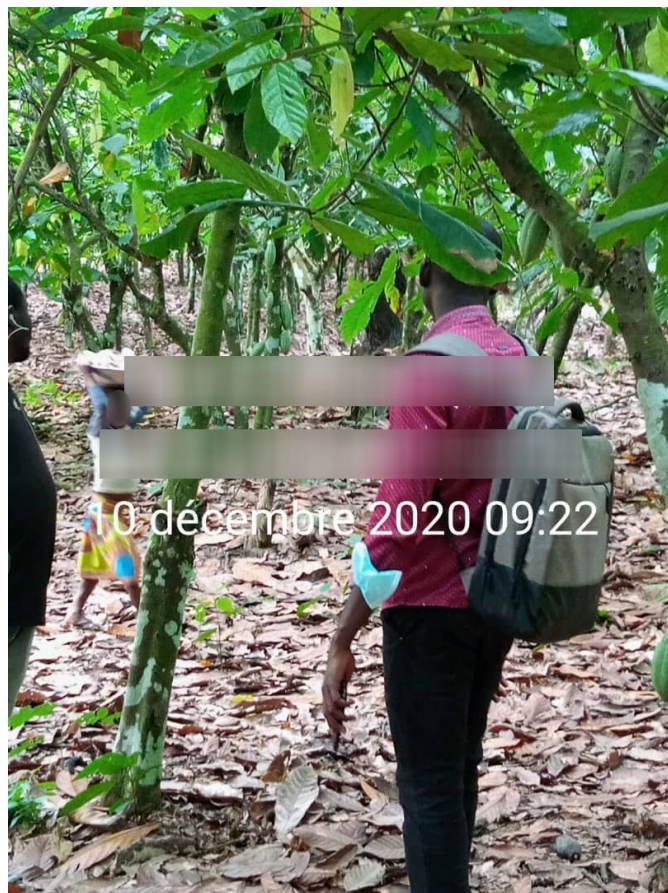
³⁷ *The war on Cocoa*, *supra* note 31.

³⁸ *Certified Coffee, Rightless Workers*, Repórter Brasil (Dec. 2016), https://reporterbrasil.org.br/wp-content/uploads/2016/12/Cafe%CC%81_ING_Web.pdf.

³⁹ Justin Rowlett & Jane Deith, *The bitter story behind the UK's national drink*, BBC (Sept. 8, 2015), <https://www.bbc.com/news/world-asia-india-34173532>.

48. CAL's own investigations have found evidence of unsustainable wages and young children working on farms that are selling their cocoa to certified cooperatives, including on Rainforest Alliance certified farms.⁴⁰

49. In December 2020, investigators took a picture of a very young child working on a cocoa farm with her family.⁴¹ The family informed the investigators that they sell to the CNEK cooperative (Coopérative Nouvel Esprit de Ketesso (CNEK)-SCA) which is certified by Rainforest Alliance.⁴²



⁴⁰ Allie Brudney, *CAL Finds Evidence of Child Labor on Rainforest Alliance Certified Farms*, Corporate Accountability Lab, (Oct. 25, 2021), <https://corpaccountabilitylab.org/calblog/2021/10/25/cal-finds-evidence-of-child-labor-on-rainforest-alliance-certified-farms>.

⁴¹ *Id.*

⁴² *List of Certified Farms and Groups*, Rainforest Alliance, <https://www.rainforest-alliance.org/wp-content/uploads/2019/06/Certified-Farms-CoC-Operations-May2019.pdf> (last visited Oct. 26, 2021).

50. Investigators also witnessed a young boy carrying a heavy load of cocoa pods on a farm that sells to the cooperative Farmers Hope,⁴³ which is certified through September 30, 2021 by UTZ, which merged with Rainforest Alliance in 2018.⁴⁴



51. During an investigation in August 2021, farmers at another Rainforest Alliance certified cocoa producer, the NECAAYO cooperative,⁴⁵ explained to the investigators that children had to work on the farms because they were not getting paid enough to live on and that they were paid under the farm gate price, or the price that reflects the net value of a product when it leaves a farm.⁴⁶

52. As one of these farmers stated, “They tell us that children are not supposed to work but they are the ones who help me feed the family. Children work in the plantations because the

⁴³ *CAL Finds Evidence of Child Labor on Rainforest Alliance Certified Farms*, supra note 41.

⁴⁴ *List of UTZ certified cocoa producers*, UTZ, (Aug. 25, 2021), <https://utz.org/wp-content/uploads/2017/05/List-of-UTZ-certified-cocoa-producers.pdf>.

⁴⁵ *Id.*

⁴⁶ *CAL Finds Evidence of Child Labor on Rainforest Alliance Certified Farms*, supra note 41.

cooperatives and companies treat us so badly that we need to make children work on the plantations.”⁴⁷

53. Thus, while claiming to stand for “people and nature,” Rainforest Alliance’s certifications are far from a guarantee that the products they certify have been ethically and sustainably sourced and instead demonstrate that issues such as unlivable working conditions and child labor persist at these farms.

C. Rainforest Alliance’s Certification System is Inherently Inadequate.

54. As demonstrated by the specific evidence of Rainforest Alliance Certified farms employing exploitive labor practices, including child labor, *supra* Section II.B, Rainforest Alliance fails to provide the necessary mechanisms and procedures to ensure its certified products are responsibly and ethically sourced and produced.

55. This is in part due to the fact that certifying companies like Rainforest Alliance provide their own standards for assessing working conditions and do not “explicitly require compliance with international human rights or international labor standards”⁴⁸

56. Seemingly admitting to the inadequacy of their existing standards, in 2021, Rainforest Alliance adopted an “assess-and-address” framework, stating that “Sustainability is a journey, not an end in itself.”⁴⁹

⁴⁷ *Id.*

⁴⁸ *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance*, MSI Integrity (July 2020), https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL_.pdf.

⁴⁹ *Rainforest Alliance Sustainable Agricultural Standard: Introduction*, Rainforest Alliance, https://www.rainforest-alliance.org/wp-content/uploads/2020/06/2020-Sustainable-Agriculture-Standard_Introduction.pdf (last visited Oct. 26, 2021).

57. Under this framework, Rainforest Alliance permits farms on which instances of child labor, forced labor, discrimination, and workplace violence and harassment are found to continue to be certified.⁵⁰

58. Lack of enforcement and thorough oversight also contribute to the fallibility of Rainforest Certified products' ethical guarantees.

59. For example, the third-party inspectors who work for these companies are only required to visit about *10 percent* of the cocoa farms that companies such as Hershey source from.⁵¹

60. Industry experts, including the International Cocoa Initiative, have found that this kind of occasional audit check is insufficient to identify labor issues.⁵²

61. Even more problematically, Rainforest Alliance's audit system does little to guarantee farms are being actively and sufficiently monitored.

62. For example, from July 1, 2021 to June 30, 2022, Rainforest Alliance is permitting all audits to be done remotely, with no auditor physically present at the farms.⁵³

63. Due to such lax monitoring, farmers in Ghana and Cote d'Ivoire often do not even know if their farms are certified.

⁵⁰ *What's in Our 2020 Certification program? Assess-and-Address*, Rainforest Alliance, (June 2020), <https://www.rainforest-alliance.org/wp-content/uploads/2020/06/2020-program-assess-address.pdf>; *Rainforest Alliance Sustainable Agriculture Standard: Farm Requirements*, https://www.rainforest-alliance.org/wp-content/uploads/2020/06/2020-Sustainable-Agriculture-Standard_Farm-Requirements_Rainforest-Alliance.pdf (last visited Oct. 26, 2021).

⁵¹ Whoriskey, et al., *Cocoa's child laborers*, *supra* note 28.

⁵² Oliver Nieburg, *Fair game: How effective is cocoa certification?* Confectionary News (Dec. 20, 2017), <https://www.confectionarynews.com/Article/2017/12/20/Fair-trade-How-effective-is-cocoa-certification> ("If you're trying to use that light and occasional coverage to check for the occurrence of something that happens from one day to the next . . . you're not really going to be picking up on the issue.")

⁵³ *Rainforest Alliance Policy on Remote Audits*, Rainforest Alliance, (May 2021), <https://www.rainforest-alliance.org/wp-content/uploads/2021/07/policy-on-remote-audits.pdf>.

64. A 2018 study on certified tea and cocoa farms found that certification had little to no impact on labor conditions on cocoa farms.⁵⁴

65. Indeed, that study found that 95 percent of cocoa farmers in Ghana did not know whether their farms were certified.⁵⁵

66. Moreover, farmers that sold their cocoa to certified cooperatives were often unable to explain what labor standards they were supposed to be complying with and how these standards differed from the standards for non-certified cooperatives.⁵⁶

67. One cooperative representative also explained that “they were unsure which farms were covered [by certification] since this changed year to year, and it is up to farmers to decide if they want to sell their beans as certified or not.”⁵⁷

68. As evidenced by the findings of exploitive and child labor practices at Rainforest Alliance’s certified farms, it is clear that the practices and processes of Rainforest Alliance’s certification do not “meet rigorous sustainability standards.”

69. Because Hershey markets its products as sustainable and utilizes its Rainforest Alliance certification to evidence its responsible sourcing practices when in fact this certification does not guarantee responsible sourcing and Hershey continues to use unsustainable and irresponsible production practices such as child labor, Defendants’ marketing and advertising of the Products are misleading to reasonable consumers.

⁵⁴ Genevieve LeBaron, *The Global Business of Forced Labor: Report of Findings*, SPERI & University of Sheffield (2018), <http://globalbusinessofforcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

III. Defendants' Representations are Material and Misleading to Consumers.

70. Defendants' false and misleading representations that Hershey's Rainforest Alliance certified Products are "sustainable," are "100 percent certified and sustainable," are "responsibly sourced," meet "rigorous sustainability standards," and are certified with "the highest level of assurance" are material to consumers.

71. Consumers care deeply about exploitive labor practices in supply chains. A national survey found that 60 percent of consumers would stop using a product if they knew that human trafficking or forced labor was used to create it.⁵⁸

72. A majority of consumers would stop buying from brands that they believe are unethical. Moreover, 35 percent of consumers would stop buying from brands they perceive as unethical even if there is no substitute available.⁵⁹ Additionally, 63 percent of consumers feel that ethical issues are becoming more important.⁶⁰

73. A survey of 5,000 consumers showed that significant segments of the national consumer base prioritize "more transparency from food producers and retailers," "accountability and transparency through the entire food supply chain," and "fair treatment of workers."⁶¹

74. Because there have been many documented instances of Rainforest Alliance's certification failing to ensure fair labor conditions and Hershey's failure to guarantee that its Rainforest Alliance certified Products are in fact "sustainable," "100 percent certified and sustainable," "responsibly sourced," and meet "rigorous sustainability standards" under "the

⁵⁸ *Even If Consumers Aren't Aware of Human Trafficking, Companies Need to Be*, Enterra Solutions, (Mar. 6, 2020), <https://enterrasolutions.com/blog/even-if-consumers-arent-aware-of-human-trafficking-companies-need-to-be/>.

⁵⁹ *56% of Americans Stop Buying From Brands They Believe Are Unethical*, Mintel (Nov. 18, 2015), <https://bit.ly/3Edz0oa>.

⁶⁰ *Id.*

⁶¹ *Consumer Survey Shows Changing Definition of Food Safety*, Food Safety News, <https://www.foodsafetynews.com/2016/02/123246/> (last visited Oct. 26, 2021).

highest level of assurance” (*see supra* Section II), Defendants’ marketing of the products as responsibly sourced and sustainable are misleading to reasonable consumers.

PARTIES

75. Defendant The Hershey Company is headquartered in Hershey, Pennsylvania. Hershey is a confectionary company and the largest producer of chocolate products in North America.

76. Hershey’s Products are available in a wide variety of national supermarket chains, regional stores, and other retail outlets, including stores in the District.

77. Defendant The Rainforest Alliance Inc. maintains a principal place of business in New York, New York.

78. Rainforest Alliance is an international organization whose stated mission is to create a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and forest communities.

79. Plaintiff Corporate Accountability Lab is a § 501(c)(3) nonprofit public-interest organization dedicated to exposing human and labor rights violations and holding corporations accountable for those violations. CAL focuses on addressing the crisis of widespread corporate abuse of human and worker rights.

80. Part of CAL’s work involves educating the general public, including consumers, about these rampant abuses in the supply chain and the failures of groups like Rainforest Alliance to substantiate their certification promises.

81. CAL does this through outreach like public facing reports, articles, and blog posts. Many of these publications, such as CAL’s 2021 blog post “*Fair Trade USA & the Failures of*

Eco-Social Certification,”⁶² seek to educate the general public about the same sorts of issues inherent in this Complaint.

JURISDICTION AND VENUE

82. This court has personal jurisdiction over the parties in this case. Plaintiff CAL, by filing this Complaint, consents to this Court having personal jurisdiction over it.

83. This Court has personal jurisdiction over Defendants Hershey and Rainforest Alliance pursuant to D.C. Code § 13-423. Defendants have sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Defendants are engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avail themselves of the laws of this District through their marketing and sales of their products and services in this District.

84. The Court has subject matter jurisdiction over this action under the CPPA, D.C. § 28-3901, *et seq.*

85. Venue is proper in this Court because Defendants aim their marketing and advertising material at consumers within the District. Defendants’ internet advertising is accessible in the District. Hershey’s Rainforest Alliance certified Products can be, and are, purchased in the District by District consumers.

CAUSE OF ACTION

Violations of the District of Columbia Consumers Protection Procedures Act

86. CAL incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

⁶² Avery Kelly, *Fair Trade USA & the Failures of Eco-Social Certification*, Corporate Accountability Lab, (May 20, 2021), <https://corpaccountabilitylab.org/calblog/2021/5/20/fair-trade-usa-amp-the-failures-of-eco-social-certificationnbspl/>.

87. CAL is a nonprofit, public interest organization that brings these claims on behalf of the general public and District consumers. *See* D.C. Code § 28-3905(k)(1)(C), (D)(i).

88. Through § 28-3905(k)(1)(C), the DC CPPA allows for nonprofit organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of Constitutional standing under Article III.

89. Through § 28-3905(k)(1)(D)(i), the DC CPPA explicitly allows for public-interest organizational standing even beyond that which is afforded pursuant to § 28-3905(k)(1)(C) and allows a public-interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

90. Hershey is a “person” and a “merchant” that provides “goods” within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

91. Rainforest Alliance is also a “person” and a “merchant” within the meaning of the CPPA, due to its connection with the marketing and supply side of the Products.

92. Defendants have advertised and market the Products with phrases such as “100 percent certified and sustainable” and “responsibly sourced,” when, in fact, Hershey sells Rainforest Alliance certified Products that are sourced from exploitive cocoa farms. Thus, Defendants have violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

93. Plaintiff CAL hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff CAL prays for judgment against Defendants and requests the following relief:

- a. A declaration that Defendants' conduct is in violation of the CPPA;
- b. An order enjoining Defendants' conduct found to be in violation of the CPPA; and
- c. An order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

DATED: October 27, 2021

RICHMAN LAW & POLICY



Kim E. Richman (D.C. Bar No. 1022978)
1 Bridge Street, Suite 83
Irvington, NY 10533
T: (718) 705-4579
krichman@richmanlawpolicy.com

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

CORPORATE ACCOUNTABILITY LAB

Case Number: _____

vs

THE HERSHEY COMPANY and
THE RAINFOREST ALLIANCE INC.

Date: 10/27/21

One of the defendants is being sued
in their official capacity.

Name: <i>(Please Print)</i> Kim E. Richman	Relationship to Lawsuit
Firm Name: RICHMAN LAW & POLICY	<input type="checkbox"/> Attorney for Plaintiff
Telephone No.: (718) 705-4579	<input type="checkbox"/> Self (Pro Se)
Six digit Unified Bar No.: 1022978	<input type="checkbox"/> Other: _____

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
Demand: \$ _____ Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

COLLECTION CASES

- | | | |
|---|--|---|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation | <input type="checkbox"/> 26 Insurance/Subrogation |
| <input type="checkbox"/> 07 Personal Property | Over \$25,000 Pltf. Grants Consent | Over \$25,000 Consent Denied |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation | <input type="checkbox"/> 34 Insurance/Subrogation |
| <input type="checkbox"/> 15 Special Education Fees | Under \$25,000 Pltf. Grants Consent | Under \$25,000 Consent Denied |
| | <input type="checkbox"/> 28 Motion to Confirm Arbitration
Award (Collection Cases Only) | |

B. PROPERTY TORTS

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|---|--|---|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile,
Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile,
Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature

10/27/21

Date