

Not Mint Condition

By Reg P. Wydeven
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When we were kids, my buddy, Pearl, and I loved to go to the movies. Back then we could buy our ticket, some candy and a soda for \$5. I would usually buy Milk Duds, but Pearl favored Junior Mints. Because we were huge Milwaukee Bucks fans, Pearl would bring a pen to the theater and write “Bridge” on the box so it read Junior Bridge Mints, a play on the name of the Bucks’ all-time leader in games played, Junior Bridgeman.

We would usually tear into our candy and have it gone before the coming attractions were over. I thought we were gluttonous, but according to a recent lawsuit, it may not have been our fault.

Paige Stemm filed a consumer fraud lawsuit against Tootsie Roll Industries, the maker of Junior Mints, claiming the company uses deceptive packaging. The suit alleges that there is as much air in the box as there is candy. According to Stemm’s attorney, Christopher Moon, “They have created this oversized theater box and it misleads consumers because consumers believe they’re getting more candy when they purchase a box of Junior Mints than they’re actually getting.” He believes, “The size of the actual packaging is itself a misrepresentation.”

Stemm filed the suit in federal court in Chicago and seeks class action status. She considered suing after she bought a box of Junior Mints at a Walgreen’s for about \$1. Hers is the most recent example of a string of lawsuits against food manufacturers for allegedly deceptive and unnecessary empty space in packaging. Known as “slack fill,” the FDA defines it as “the difference between the actual capacity of a container and the volume of product contained therein.”

Most of the time, slack fill is necessary to provide an air cushion for the food inside, such as preventing potato chips from turning into crumbs. Moon asserts, however, “In a situation like Junior Mints, that empty space actually can increase the chances that the candies will be damaged because they move around quite a bit inside the hard cardboard box.”

Last year, Biola Daniel filed a class action lawsuit in federal court in Manhattan against Tootsie Roll echoing the same complaints about the slack fill in Junior Mints boxes. Moon’s law firm filed a similar lawsuit against Ferrara Candy, which makes Lemonheads, Jujufruits, Chuckles and other candies that allegedly have too much empty space in their packaging. According to the American Bar Association, the number of federal class-action lawsuits related to slack fill in food packaging increased from 20 in 2008 to more than 110 in 2015.

Moon said that Stemm is seeking undisclosed damages and an order that Tootsie Roll repackage its Junior Mints so that “they either fill the box more or reduce the size of the packaging to reduce the unlawful slack fill.”

Junior Mints were introduced in 1949, but were bought by Tootsie Roll in 1993. Coincidentally, that’s the same year of the “Seinfeld” episode “The Junior Mint,” where Kramer accidentally drops one of the mints from a hospital observation gallery into the chest cavity of a patient on the operating table. “Who’s going to turn down a Junior Mint?” Kramer asks, arguing, “it’s chocolate, it’s peppermint, it’s delicious!”

If Stemm gets her way, boxes of Junior Mints will have more chocolate and peppermint and less empty cavity.

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