

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

BEVERLY MITCHELL,	)	CASE NO. A0404929
	)	
Plaintiff,	)	
	)	JUDGE DAVID P. DAVIS
	)	
v.	)	
	)	
INTERNATIONAL FLAVORS &	)	
FRAGRANCES, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	


**GIVAUDAN FLAVORS CORPORATION'S MOTION FOR SUMMARY JUDGMENT,  
INCLUDING ATTACHED INTERROGATORY RESPONSES AND AFFIDAVITS OF  
PATRICIA WEHRUNG AND DAVE BRATTON**

Pursuant to Rule 56 of the Ohio Rules of Civil Procedure, Givaudan Flavors Corporation ("Givaudan") hereby moves this Court for an order granting summary judgment in favor of Givaudan on all claims against it set forth in the First Amended Complaint of Plaintiff Beverly Mitchell.

Plaintiff alleges personal injuries due to claimed occupational exposures to butter flavorings containing the chemical diacetyl. Specifically, Plaintiff contends that while working at Gold Medal Products Company ("Gold Medal") she was exposed to butter flavoring products that contained diacetyl and, as a result, developed respiratory injury. Plaintiff's claims against Givaudan fail because the butter flavoring supplied by Givaudan's predecessor, Tastemaker, did not contain diacetyl.

Accordingly, as against Givaudan, there is no genuine issue of material fact: neither Givaudan nor Tastemaker supplied butter flavoring to Gold Medal containing diacetyl, the chemical that Beverly Mitchell alleges caused her injury. For this reason, as more fully explained in the memorandum accompanying this motion, which is hereby incorporated by reference, Givaudan Flavors Corporation is entitled to judgment as a matter of law.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF GIVAUDAN FLAVORS CORPORATION'S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Beverly Mitchell works for the Gold Medal Products Company ("Gold Medal"), which, among other things, manufactures popcorn popping machines for use at concession stands. (First Am. Compl. at ¶ 13.) Plaintiff began her employment with Gold Medal in 1990 and, throughout the course of her employment, she has worked in the assembly and flavoring departments building and testing concession machines. (First Am. Compl. at ¶ 15; Plaintiff's Response to Givaudan's Interrogatory No. 1 (Exhibit A hereto).) While working at Gold Medal's plant in Cincinnati, Ohio, Plaintiff alleges that she was exposed to the chemical diacetyl contained in butter flavoring products supplied by the various defendants. (First Am. Compl. at ¶¶ 1 & 16.) As a result of this alleged exposure to butter flavoring products containing diacetyl, Plaintiff alleges she sustained respiratory injuries. (First Am. Compl. at ¶¶ 3 & 22.)

Plaintiff's complaint alleges that the cause of her claimed injuries is the diacetyl contained in butter flavoring. However, Plaintiff cannot point to any evidence that Tastemaker or Givaudan Flavors Corporation ("Givaudan")<sup>1</sup> supplied any butter flavoring products containing diacetyl to Gold Medal during Plaintiff's employment with Gold Medal, or at any other time. Because Tastemaker did not design, manufacture or sell the diacetyl-containing butter flavoring products that Plaintiff alleges caused her respiratory injuries, summary judgment should be granted in favor of Givaudan.

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<sup>1</sup>During the years Plaintiff claimed she was exposed to butter flavoring products containing diacetyl at Gold Medal, a company called Tastemaker supplied non-diacetyl containing flavor to Gold Medal. Tastemaker was later purchased by Roche, and the successor in interest is Givaudan Flavors Corporation.

## LAW AND ARGUMENT

Pursuant to Civ. R. 56, summary judgment is proper when the moving party demonstrates that: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Westfield Ins. Co. v. Huls Am., Inc.* (1998), 128 Ohio App.3d 270, 280, quoting *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. The moving party bears the initial burden of affirmatively demonstrating that the non-moving party has no evidence to support her claim. *Westfield Ins. Co.*, 128 Ohio App.3d at 280; *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. Once the moving party satisfies its initial burden, the non-moving party must not simply resist the allegations in the motion, but must respond with specific evidence showing that a genuine issue of material fact does exist. *Dresher*, 75 Ohio St.3d at 293; *Baughn v. Reynoldsburg* (1992), 78 Ohio App. 3d 561, 563. A “motion for summary judgment forces the non[-]moving party to produce evidence on any issue for which that party bears the burden of production at trial.” *Westfield Ins. Co.*, 128 Ohio App.3d at 280, quoting *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, 111.

### **A. Each of Plaintiff’s Alleged Causes of Action is Predicated on Exposure to Products Containing Diacetyl.**

Plaintiff’s First Amended Complaint alleges that there were butter-flavoring products supplied by Givaudan that contained diacetyl, that she was exposed to these butter-flavoring products, and that her exposure to these products containing diacetyl

was the cause of her injuries. (First Am. Compl., ¶¶ 14, 16, 17, 18, 19 and 22.)

Specifically, Plaintiff alleges:

- “Givaudan . . . designed, manufactured and sold butter flavoring products **containing the chemical diacetyl** to which [Plaintiff] was exposed.” (First Am. Compl. at ¶ 2 (emphasis added).)
- “Exposure to butter flavoring **containing the chemical diacetyl** causes severe respiratory illnesses.” (First Am. Compl. at ¶ 2 (emphasis added).)
- “Butter flavoring products designed, manufactured and sold by the defendants **containing diacetyl** . . . caused harm to [Plaintiff].” (First Am. Compl. at ¶ 3 (emphasis added).)
- “The defendants are liable to [Plaintiff] for common law negligence design of butter flavoring products **containing diacetyl**, defective design and formulation in violation of Ohio Rev. Code § 2307.75, and § 2307.76 and the common law.” (First Am. Compl. at ¶ 4 (emphasis added).)
- [Each of the defendants, including Givaudan] substantially participated in the design, manufacture, and sale of butter flavoring products **containing diacetyl.**” (First Am. Compl. at ¶¶ 7 – 12 (emphasis added).)

In short, the allegations of the First Amended Complaint depend entirely upon the claimed health effects resulting from exposure to “diacetyl-containing products.” (First Am. Compl. at ¶¶ 14, 16, 18, 19 & 22.) Each of the alleged causes of action in Plaintiff’s First Amended Complaint is predicated on the presence of diacetyl. (First Am. Compl. at ¶¶ 25, 31, 34 & 38.)

**B. Summary Judgment Is Proper Because the Butter Flavoring that Tastemaker Supplied to Gold Medal Did Not Contain Diacetyl.**

The record evidence demonstrates that Tastemaker and Givaudan did not supply Gold Medal with butter flavorings containing diacetyl. Specifically, the only butter flavoring that Tastemaker supplied to Gold Medal was a butter flavor with sales number 219253. (See Affidavit of P. Wehrung at ¶ 3 (Exhibit B hereto)); Affidavit of D. Bratton at ¶ 4 (Exhibit C hereto).) The formula for butter flavor 219253 does not contain diacetyl. (See Affidavit of D. Bratton at ¶ 5.)

As shown above, Plaintiff's claims are predicated on her allegation that the chemical diacetyl is responsible for the respiratory injuries she claims to have sustained while working at the Gold Medal plant. Plaintiff can point to no evidence that a genuine issue of material fact exists with respect to whether Givaudan or Tastemaker supplied a butter flavoring product containing diacetyl that allegedly caused Plaintiff's injuries. Therefore, reasonable minds can only conclude that Plaintiff cannot establish the essential elements of her claims as against Givaudan. Accordingly, Givaudan is entitled to judgment as a matter of law.

**CONCLUSION**

For the foregoing reasons, Givaudan respectfully requests that this Court enter an order granting summary judgment in Givaudan's favor on all claims asserted by Plaintiff Beverly Mitchell in her First Amended Complaint, and such other relief as the Court deems just and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Givaudan Flavors Corporation's Motion for Summary Judgment was served upon the following by first-class U.S. mail, postage prepaid this 20th day of June 2006:

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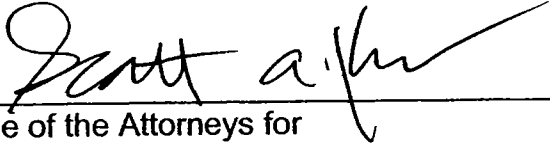
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**A**



**INTERROGATORY NO. 2:**

Fully identify in as much detail as possible all facts, documents, and witnesses that support your claim that you came into contact with or were exposed to any Givaudan natural or artificial butter flavoring or any other Givaudan product.

**RESPONSE TO INTERROGATORY NO. 2:**

This interrogatory is untimely and will be supplemented when further discovery has been completed. Without waiving this objection, Beverly Mitchell was exposed to butter flavoring products from 1990-1997. In her work testing popcorn popping machines, she was required to handle butter flavoring. She was regularly exposed to butter flavoring in the assembly and flavoring department. Make Flanagan was her supervisor and foreman of the flavoring department. Any documents regarding the sale of products to Gold Medal during that time period are Givaudan's own internal company documents, which Ms. Mitchell has requested Givaudan produce.

**INTERROGATORY NO. 3:**

Fully identify, in as much detail as possible, each and every specific chemical, compound, or other substance manufactured or supplied by Givaudan or by anyone else to which you claim you were exposed while at the Gold Medal plant which you claim has caused you any injury; and separately for each such chemical, compound or substance state the specific dates you claim you were exposed, the concentration of the substance to which you claim you were exposed on each such date, the length of time you claim you were exposed on each such date, the location at the Gold Medal plant where you claim you were exposed on each such date; and identify each document and witness that you claim supports each of your contentions.

**RESPONSE TO INTERROGATORY NO. 3:**

Objection, this contention interrogatory is untimely and will be supplemented when further discovery has been completed. Without waiving this objection, Ms. Mitchell had daily exposure to butter flavoring from 1990-1997. Any documents identifying the specific chemical compound or substance are Givaudan's own internal documents.

