

# Damages in Product Mislabeling Cases

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# Damages

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1. Background on Damages in Product Mislabeling Cases
2. The Economics of Change in Fair Market Value
3. Analyses Using Real-World/Revealed-Preference Data
4. Analyses Using Conjoint-Survey/Stated-Preference Data
5. Conclusion



## Background

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In consumer class actions involving product mislabeling, damages are frequently quantified in terms of “Benefit of the Bargain (BOB) damages”

BOB damages have been measured as the difference in **fair market value** with and without correct labeling/disclosure

**Fair market value** refers to the **market equilibrium price** of the product at issue.



## Measuring the Difference (If Any) in Fair Market Value

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The difference in **fair market value** is the difference between:

The market price for the product in the “**as-is**” world (in which the product was sold **without** correct labeling or disclosure)

The market price for the product in the “**but-for**” world (in which the product is sold **with** correct labeling or disclosure)

For damages, there must be a reliable way to measure the difference (if any) in price **without and with** correct labeling/disclosure.

# The Economics of Differences in Fair Market Value



## Single-use coffee pods Hypothetical

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Consider a market with 3 different firms that each produce single-use coffee pods that are marketed as 100% recyclable: *A*, *B*, and *C*

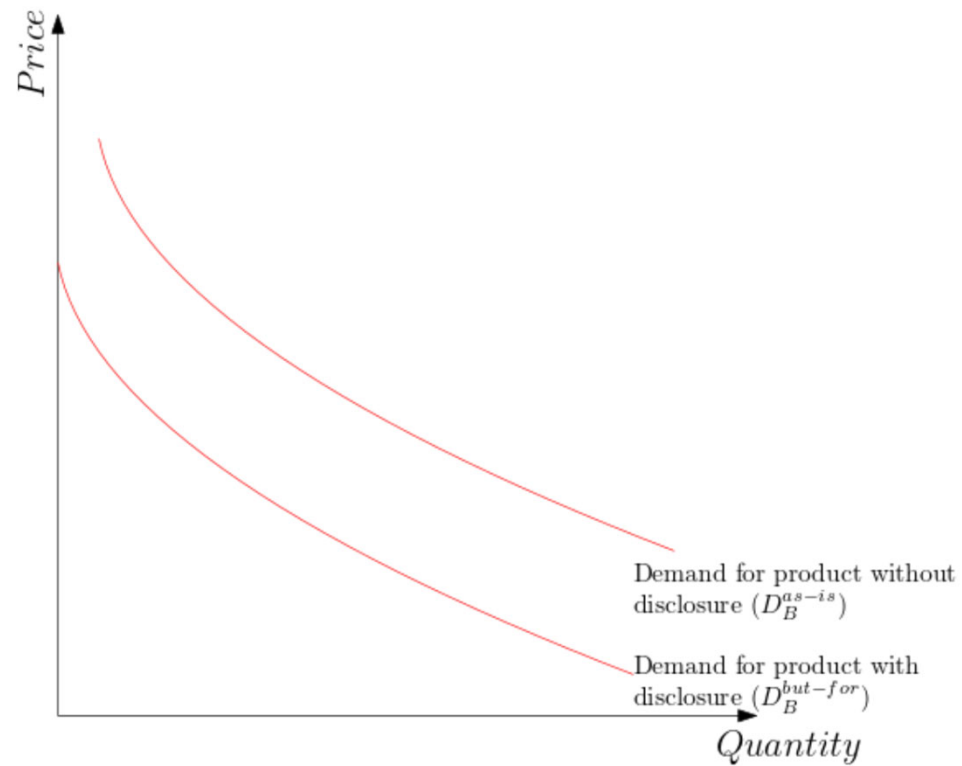
- Suppose that after being in the market for a few years, it is disclosed that *B*'s coffee pods were not recyclable.
- Plaintiffs allege that because the labeling of no recyclability was not disclosed at the time of purchase, the buyers overpaid for *B*'s coffee pods.

### **Key Issue:**

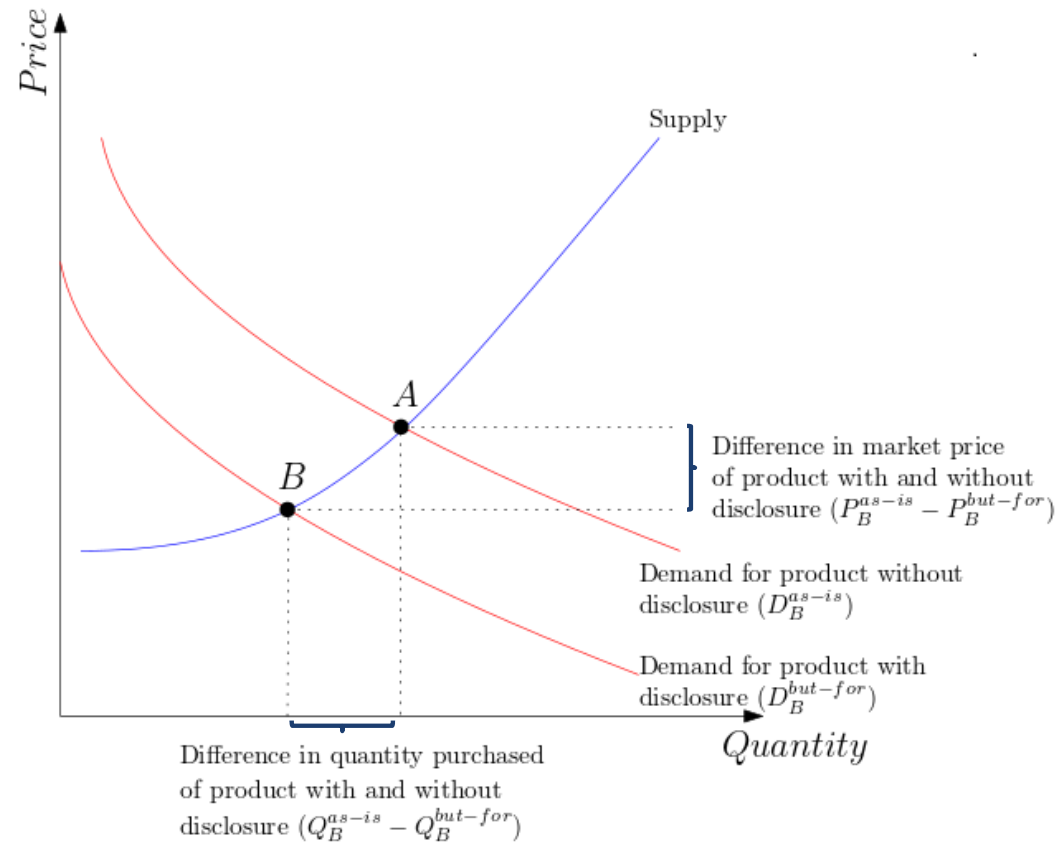
Identify the change (if any) in the market price of *B* associated with correct disclosure of the coffee pods recyclability at the point of purchase

# Hypothetical decline in demand for $B$ from alleged mislabeling

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# Market Prices for coffee pods B in As-Is and But-For Worlds Determined by Interaction of Willing Buyers and Willing Sellers



The economic expert's role is to quantify the difference in market prices of product B with and without the disclosure of no-recyclability.



# **Analyses Using Real-World/Revealed-Preference Data**



## Computing Fair Market Value/Market Price Difference: Using Real-World Data

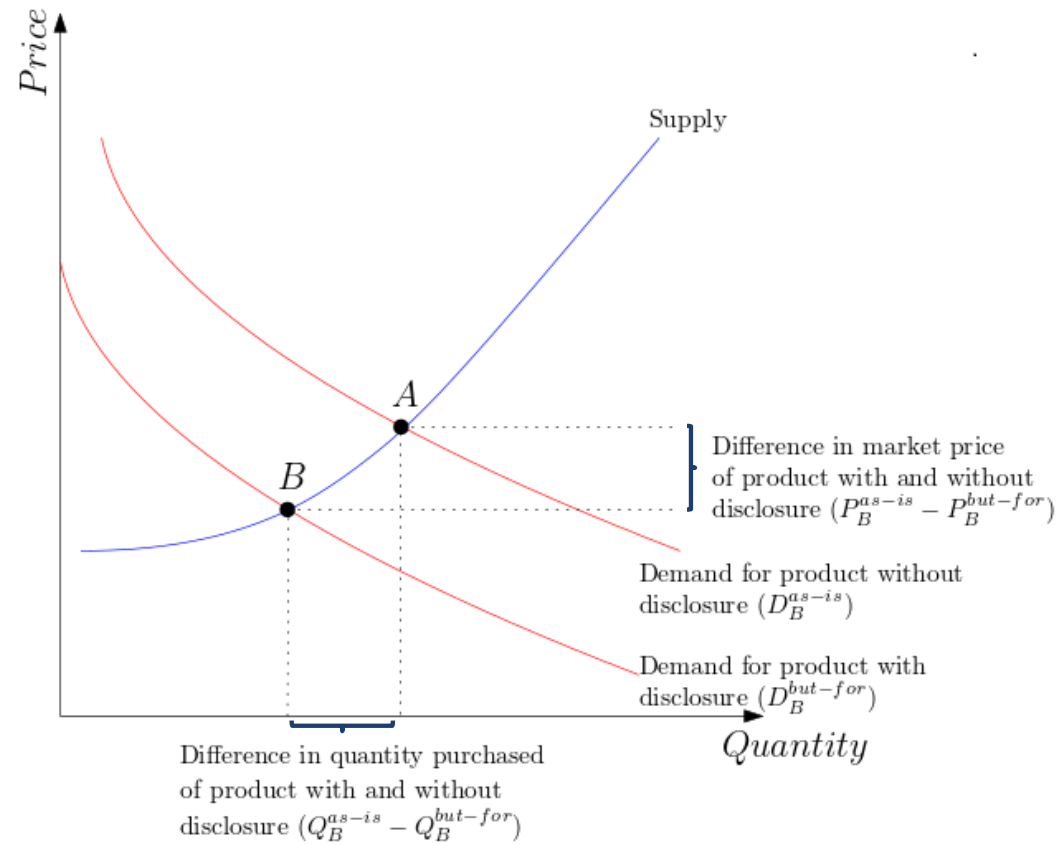
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Need reliable way to measure difference (if any) between price of product with and without correct disclosure

- Suppose that the recyclability of the coffee pods changed over time and/or the alleged non-recyclability was eventually disclosed to the market
- If there were sufficient data available before and after the disclosure, we could use the market data and econometric analysis to determine the at-issue product's price with the correct disclosure (“but-for” market price)
- To do this we could use a number of techniques, such as difference-in-differences (diff-in-diffs), synthetic control methods, or hedonic regressions
  - Although they differ in their implementation, their goal is the same: they use market data to predict equilibrium market prices in the but-for world

# Appropriate Application of Diff-in-Diffs Using Real-World Data Can Estimate the Difference in Market Equilibrium Prices



## Analyses Using Real-World Data: Issues

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- Economists prefer analyses using real-world data rather than survey data
- In the Consumer Package Goods Industry (CPG), there are several datasets potentially available for analyses using real-world data:
  - AC Nielsen data
  - IRI data
- Estimating but-for prices with disclosure often requires very granular real-world data, an event, and benchmark products that sometimes are not available or do not exist
- When such analyses are not feasible, some experts have turned to surveys, in particular choice-based conjoint survey



# **Analyses Using Conjoint-Survey/ Stated-Preference Data**



## Computing Fair Market Value/Market Price Difference: Using Survey Data

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- Some experts have attempted to quantify the change in equilibrium prices from the disclosure of a mislabeled attribute using choice-based conjoint surveys
- In a conjoint survey, products are broken down into common attributes (e.g., price, brand, recyclability of pod, bean type, roast type, etc.)
- Different levels of these common attributes are mixed and matched to create hypothetical product profiles. Respondent's in the survey face a number of choice tasks where they choose among a set of hypothetical product profiles
- If implemented correctly, the results of the survey can, in principle, be used to estimate the demand curve for the relevant products in the as-is and but-for world and the associated “willingness to pay” for attribute levels

# Example of Hypothetical Survey Choice Tasks



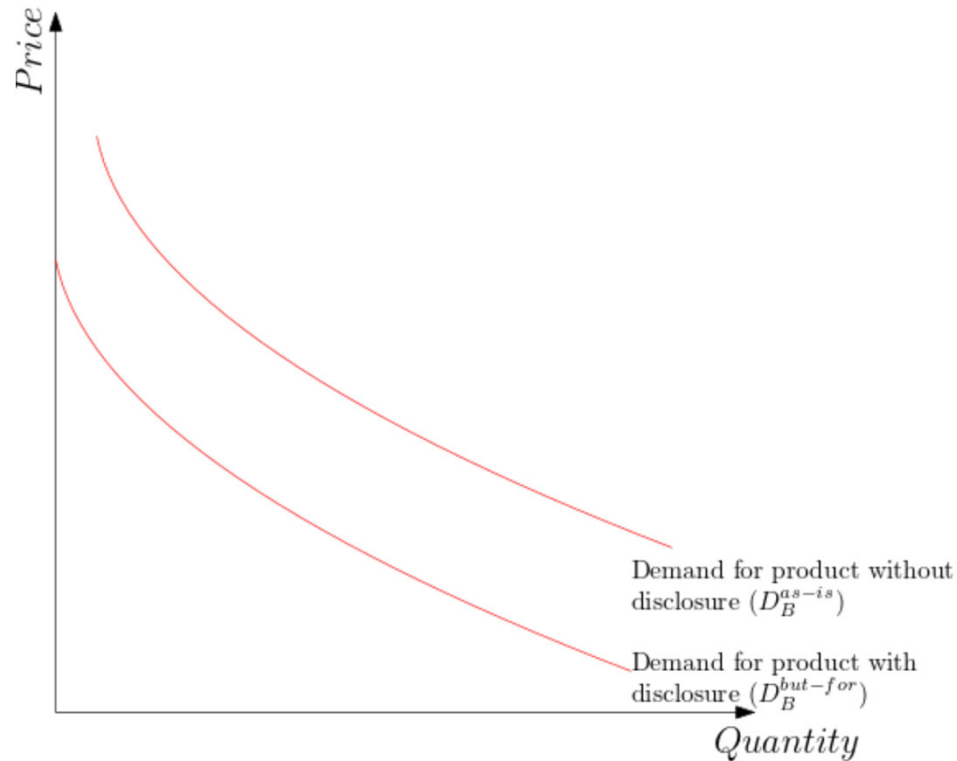
## Part 1 of Choice Task

Attribute	Profile 1	Profile 2	Profile 3	Profile 4
Brand	A	B	A	C
Price-per-pod	\$0.45	\$0.60	\$0.65	\$0.55
Recyclable	No	Yes	Yes	No
Coffee Bean	Robusta	Arabica	Robusta	Arabica
Roast Type	Light	Dark	Medium	Light
Origin	Latin America	Africa	Africa	South East Asia
Which Product Would You Choose?				

## Part 2 of Choice Task

	Yes	No
Would You Buy the Chosen Product?		

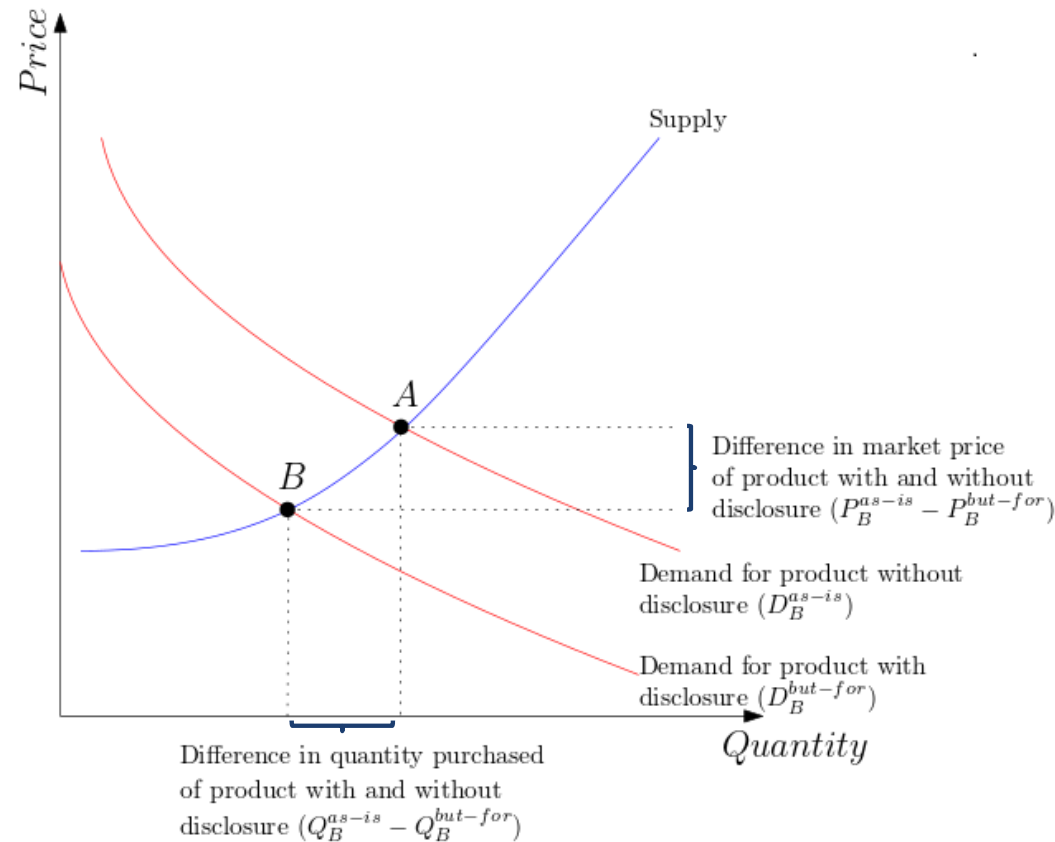
## At Best, Conjoint Data Only Provides Estimates of Demand (Willingness to Pay) for coffee pods B in the “As-Is” and “But-For” World



Assume hypothetical analysis finds that disclosure lowers demand for B in the “but-for” world relative to observed demand in the “as-is” world.



## Experts Use their Estimates of Demand with Model and Data of Supply to Determine the Market Equilibrium Price



The economic expert's combines the conjoint-based estimate of demand with cost data and a model of supply to conduct "market simulations"

## Analyses Using Survey Data: Issues

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- Estimating damages using survey data requires the solution of a complex market equilibrium model of demand and supply which is difficult to implement even assuming that the conjoint survey can reliably estimate demand
- Some experts have attempted to circumvent this complexity by
  - Using the demand-side Willingness-to-Pay measure for damages
  - Assuming that the supply in the but-for world is “fixed as a matter of history” to the level in the as-is world
- Both methods are inconsistent with sound economic fundamentals as they disregard the supply side of the market and tend to overestimate damages
  - Courts have recently rejected these methods (e.g., In re GM Ignition Switch)
- In cases where the at-issue attribute is a defect, reliably estimating preferences for a defect (as opposed to a positive product attribute) using conjoint has been contested

## Conclusions

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- In consumer class actions involving product mislabeling, BOB damages has been measured as:
  - The difference in fair market value with and without the correct labeling/disclosure
- Two types of analyses have been proffered to measure the change in market value:
  - Analyses using real world data
  - Analyses based on conjoint survey data
- Economists view analyses using real world data as the preferred option
- Conjoint surveys have been proposed as an alternative to real-world data.
- To estimate market equilibrium prices, conjoint surveys need to be augmented with “market simulation” that takes into account the supply side of the market. Courts are rejecting “market simulations” based on conjoint alone or in which supply is held fixed.
- In product defect cases, the ability of conjoint surveys to estimate consumer preferences for a defect has been contested.