Little League Parents Whiff in Suit Claiming False Advertising of Bats

By Charles Toutant

Parents who bought high-powered composite bats they claim were mislabeled and falsely advertised for youth baseball use have struck out with their federal putative class-action suit, though the game isn't over yet.

The suit's claims of consumer fraud, breach of warranty, unjust enrichment and negligence were not supported by the pleadings, District Judge Mary Cooper in Trenton said in dismissing the case, *Pappalardo v. Combat Sports, Inc.*, 11-cv-1320.

Still, the plaintiffs may be able to correct the lack of specificity. They may move for leave to file a second amended complaint within 45 days but will have to address "why such amendment would not be futile in light of this Memorandum Opinion," Cooper said on Dec. 23.

The suit was brought on behalf of buyers of aluminum bats with graphite centers that propel a baseball farther and faster than traditional wooden or metal bats. Parents bought the composite bats for as much as $300 each, only to see them banned by Little League International and the Babe Ruth League.

The bats were labeled with a bat performance factor (BPF) of 1.15 — no more than 15 percent faster than wooden bats, the maximum permitted in youth baseball leagues. Some were sold with the endorsement of the Babe Ruth League and Little League International, the suit said.

But in 2010, Little League, after commissioning a study of composite bats that revealed a BPF higher than 1.15, enacted a ban in efforts to minimize injuries to players. Babe Ruth did likewise but later reversed its ban.

The suit names as defendants 10 bat manufacturers that allegedly advertised

NO HARM, NO FOUL: Judge Mary Cooper called the breach of warranty claims against the bat manufacturers 'the type of unadorned, the-defendant-unlawfully-harmed-me accusation that will not pass muster under the applicable pleading standard.'

their composite bats as complying with the 1.15 standard without disclosing that they would not remain in compliance once placed in use. Composite bats tend to become more powerful after they have had some use, the suit says.

Also named as defendants are the Little League and Babe Ruth leagues, whose endorsement and approval of the composite bats suggested they were suitable for baseball in their organizations, the plaintiffs allege.

The plaintiffs claimed their loss includes the amount paid for each composite bat.

The defendants moved to dismiss for failure to state a claim upon which relief can be granted. Cooper agreed, dismissing the consumer fraud claims without prejudice against the manufacturers and league defendants. She dismissed the breach of warranty claims against the manufacturers without prejudice and against the league defendants with prejudice. And she dismissed the claims of unjust enrichment and negligence against the manufacturers and league defendants with prejudice.

On the consumer fraud claim against the manufacturers, the plaintiffs failed "to provide the requisite specificity—who, what, where—to sustain a cause of action," Cooper ruled. She cited the complaint's references to the "manufacturer defendants" without distinguishing the actions or omissions of one from those of another. Furthermore, allegations of the allegedly misleading advertising or marketing state only that the bats were stamped as having a 1.15 BPF, Cooper said. What's more, the complaint fails to support its "bare allegation" that the class suffered an ascertainable loss in the amount of the purchase price. And Cooper found "no support" for the plaintiffs' claim that the manufacturers' conduct rendered the bats unusable.

The consumer fraud claim against the league defendants fails because of the lack of "substantial aggravating circumstances" to elevate it from a breach of warranty claim, Cooper said.

Breach of warranty claims against the manufacturer defendants were dismissed without prejudice because they contained "the type of unadorned, the-defendant-unlawfully-harmed-me accusation that will not pass muster under the applicable pleading standard," which "utterly lacked factual support," Cooper said. Breach of warranty claims against the league defendants failed because the leagues do not meet the definition of "seller" under N.J.S.A. 12A:2-313, which governs express warranties, Cooper said.

Cooper struck down the plaintiff's unjust enrichment claims against the manufacturer because some of the bats were bought from manufacturers' websites while others were bought from retailers. A claim of unjust enrichment "requires that the plaintiff allege a sufficiently direct relationship with the defendant to support the claim," Cooper ruled. For the same reason, the unjust enrichment claims against the league defendants were dismissed, because they were paid by the manufacturer defendants, not the plaintiffs.

Cooper dismissed negligence claims against both the manufacturers and the league defendants under the economic loss doctrine. That doctrine precludes a buyer of a product seeking damages for economic loss from asserting a negligence or strict liability claim.

The lawyer who filed the suit, Flemington solo William Metcalf, did not return messages left by a reporter at his office and on his mobile phone. Most of the defense lawyers in the case either did not return calls or declined to comment. One defense lawyer, Thomas Borncamp of Yukevich, Calfo & Cavanaugh in Los Angeles, representing bat manufacturer Easton-Bell Sports Inc. of Van Nuys, Calif., said he believed the plaintiff's lawyer would have difficulty meeting the heightened pleading requirements spelled out by the court. ■

Obituary