

Colgate-Palmolive Must Sweat Out Limited Claims in Deodorant False Advertising Case

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September 18, 2020

In *Huskey v. Colgate-Palmolive Company*, No. 4:19-cv-02710-JAR (E.D. Mo.), plaintiffs Drew Huskey and Jamie Richard (Plaintiffs) claimed that Colgate-Palmolive Company (Colgate) falsely advertised that its Speed Stick Stainguard antiperspirant products (Speed Stick) fight yellow stains and white marks on clothing. Plaintiffs claimed that they purchased Speed Stick, but continued to experience marks and stains on their clothing. The Complaint asserted claims for breach of implied warranty, breach of implied contract, unjust enrichment and injunctive relief on behalf of themselves and a nationwide class, as well as violation of the Missouri Merchandising Practices Act (MMPA) on behalf of a Missouri subclass. Colgate moved to dismiss the complaint in its entirety, or, in the alternative, to strike the nationwide class action allegations from the complaint.

While Missouri is generally a plaintiff-friendly jurisdiction in the class action arena, United States District Judge John A. Ross found that a majority of Plaintiffs' claims (breach of warranty, breach of contract, and claim for injunctive relief) could not stand and dismissed them without prejudice. The Court dismissed the breach of warranty claim because Plaintiffs failed to provide the requisite pre-suit notice to Colgate. Judge Ross rejected Plaintiffs' argument that the filing of the original complaint should suffice as notice as "interesting," but "unconvincing and not rooted in any analogous caselaw." The Court also dismissed the contract claim because Plaintiffs failed to respond to Colgate's arguments, and the standalone claim for injunctive relief both because Plaintiffs did not allege an intent to continue purchasing Speed Stick in the future and because "injunctive relief is a remedy and not an independent cause of action."

However, the Court permitted the MMPA and unjust enrichment claims to proceed into discovery, rejecting Colgate's argument that the challenged advertising would not deceive a reasonable consumer because it is "common sense" that a product that claims to fight stains does not mean that it would prevent stains altogether. Judge Ross was "unpersuaded, at this early stage of the proceeding," and found Plaintiffs' allegations that they believed that stains would be prevented was sufficient.

Finally, the Court denied Colgate's motion to strike the nationwide class allegations in connection with the unjust enrichment claim, finding that while "it has serious doubts as to whether Plaintiffs will be able to satisfy [Rule 23's] predominance requirement" based on the variations in state law, that decision should be made after affording the parties time to conduct discovery.

While Colgate will be required to proceed with discovery on two claims, this decision shows that motions to dismiss in Missouri are not a lost cause, and should be considered when there is an opportunity to narrow the scope of the case.

