Two Class Actions Take a ShOt at Substantiation for Lemme's GLP-1 Daily Supplement

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Two new class action complaints, both captioned *Robins v. Lemme Inc.*, were filed in in California Superior Court and the Southern District of New York on February 19 and March 9, respectively. The complaints bring parallel causes of action under the California and New York consumer fraud statutes against Kourtney Kardashian's "Lemme GLP-1 Daily," a GLP-1 weight-loss supplement we discussed here that claims to boost the body's production of GLP-1 by up to 17%. Lemme's website says that the product will "Support GLP-1: Promote your body's GLP-1 production (the 'un-hunger' hormone), reduce hunger & cravings, promote fat reduction and support healthy weight management with 3 clinically-studied ingredients."

Glucagon-Like Peptide-1 (GLP-1) is a natural hormone in the body that is released in the gut after eating and acts to suppress appetite. Popular and effective injectable drugs like Ozempic, Wegovy, and Mounjaro contain semaglutide, a GLP-1 receptor agonist. Some weight loss supplements, like Lemme, have capitalized on the success of these drugs and, although they may have "GLP-1" in their names, they are not the same as the prescription medications containing semaglutide.

Lemme's GLP-1 Daily product is one of them. It contains Eriomin® Lemon Fruit Extract, Supresa® Saffron Extract, and Morosil™ Red Orange Fruit Extract. According to the complaints, Lemme claims that "clinical studies show that the lemon extract (trademarked Eriomin), increases the amount of naturally occurring GLP-1 in the body by 17 percent." Lemme cited to a number of studies on the individual fruit extract ingredients in the product and their purported effect on caloric consumption, BMI, and weight loss. The complaints allege that Lemme's studies do not actually demonstrate any discernable effect on weight loss, and the results measured by the studies are negligible compared to the naturally occurring fluctuations in the body's GLP-1 levels after activities such as eating. The complaints also allege that the touted studies are on individual ingredients and do not actually measure the extracts together in a single supplement, so that "while they claim to have clinical support for the components of Lemme GLP-1 Daily, they did not study the combination of those extracts in a single supplement—meaning that the supplement has not been clinically tested."

Many courts, including those in New York and California, preclude private individuals from challenging advertising based on the advertiser lacking adequate substantiation for their claims, as the plaintiffs have done in the Lemme complaints. Courts have reasoned that challenging substantiation is best left for state agencies and the Federal Trade Commission, so private individuals must actually allege the existence of extrinsic evidence, such as conflicting studies, that would show that the challenged statement is false or misleading. Many of the courts, however, allow for an exception when it comes to "establishment claims"—claims that the product is "clinically proven" or "clinically shown" to offer the stated benefit—finding that the claim could itself be

misleading and actionable if the product is not backed by the claimed clinical test or study. In other words, if the advertiser claims to have a specific level of support (e.g., clinical studies), then the complaint may still challenge the claims as lacking adequate substantiation.

Lemme claims that the product acts to “promote GLP-1 production,” reduce hunger and cravings,” “promote fat reduction and healthy weight management” on the basis of “three clinically-studied ingredients.” If Lemme argues in a motion to dismiss or its Answer that the case should be barred because a private consumer cannot bring a lawsuit based on lack of adequate substantiation, the plaintiffs may argue that “clinically studied” implies “clinically proven” or “clinically shown” and, therefore, may convey that the product has the level of support touted in the advertising. It remains to be seen whether this uptick in consumer class action complaints will spark additional litigation, competitive challenges before the NAD, or state enforcement actions. Whatever the outcome, any precedent or enforcement in this space may have far-reaching consequences for companies marketing similar “Ozempic dupes.”