SUPERIOR COURT OF NEW JERSEY

CIVIL DIVISION
ESSEX VICINAGE

Chambers of
James S. Rothschild, Jr., J.S.C.

Historic Courthouse
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Newark, New Jersey 07102

July 24, 2015

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Re: Carlson v. Samsung Electronics America, Inc.
Docket No. L-1571-15

Dear Counsel:

The court has before it defendant Samsung Electronics America, Inc.'s ("Samsung") motion to dismiss the Complaint. The plaintiff in this case, Kimberly Carlson ("Carlson"), has brought a class action suit alleging violations of the New Jersey Consumer Fraud Act ("CFA") by Samsung. Carlson purchased a television that was advertised on the box as an "LED TV." Plaintiff alleges that the label falsely advertised the television as such because, in actuality, it is a television with an LED light source behind what is still an LCD display, which is of a lesser quality than existing LED display technology.[1] The plaintiff asserts that these televisions were

[1] In contrast, plaintiff asserts that a true "LED TV" would utilize an LED display, rather than just an LED light source behind a different, lesser, method of display.

sold at a premium compared to other televisions properly advertised as "LCD TVs," and that consumers were misled into paying more under the mistaken belief that they are purchasing a device that utilizes LED display technology, rather than LCD display technology.

The plaintiff's Complaint details at length the history surrounding TV labeling as well as the technology behind various television components and the quality behind each. In support of its motion, Samsung argues that the plaintiff has overtly admitted that the TV she purchased was composed of LED technology, and that the advertising therefore could not be false. Rather, defendant argues that the plaintiff has failed to demonstrate how Samsung ever stated that the TVs in question utilized an LED display technology rather than as a lighting source.

The court believes that there is no room at this phase of the proceedings – during which it is mandated to view the pleadings in a most favorable light – to be parsing the plaintiff's allegations so thinly. To bring a CFA claim, a plaintiff must allege "1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss." Bosland v. Warnock Dodge Inc., 197 N.J. 543, 557 (2009). "Consumer fraud violations are divided broadly into three . . . categories: affirmative acts, knowing omissions, and regulatory violations." Int'l Union of Operating Eng'rs. Local No. 68 Welfare Fund v. Merck & Co., 192 N.J. 372, 389 (2007) (internal quotation omitted).

The court finds that in the case at hand, Carlson has sufficiently pled unlawful conduct in alleging at length throughout the Complaint that "Samsung (1) affirmatively misrepresented LCD TVs as 'LED TVs' and (2) intentionally omitted material information necessary to prevent its 'LED TV' label from misleading consumers, namely that 'LED TV' meant an LCD TV with LED-*backlighting* and was not a 'new species' of television at all or something fundamentally different from an LCD TV." Pl.'s Opp. at 2.

The court also finds that the plaintiff has sufficiently pled the existence of an ascertainable loss. The case law in New Jersey establishes that a CFA claim should survive a motion to dismiss when the plaintiff alleges facts demonstrating that he or she has been damaged. See Lamont v. OPTA Corp., 2006 N.J. Super. Unpub. LEXIS 1081, 18-19 (App. Div., June 16, 2006), Thiedmann v. Mercedes-Benz USA, 183 N.J. 234 (2005). Here, the injury pled is quantifiable, and damages have therefore been sufficiently pled.

Samsung also argues that the plaintiff does not have proper standing to bring claims for the TV models that she did not purchase, but that she alleges also contained LCD displays and were advertised as "LED TVs." The District Court's recent analysis of the class action standing issue in Burke v. Weight Watchers Int'l, Inc., 983 F. Supp. 2d 478 (D.N.J. 2013) was as follows:

> It is clear that [plaintiff] Burke has standing to bring claims relating to the Diet Bars she actually purchased, namely the Ice Cream Candy Bar and the GIANT Fudge Bar. What is less clear is whether Burke also has standing to bring a class action based on alleged false labels on Diet Bars she did not purchase (e.g., the Divine Triple Chocolate Bar). Courts in this District are split on the issue. Some hold that class action plaintiffs lack standing to recover for injuries associated with products they neither purchased nor used. *See, e.g., Lieberson v. Johnson & Johnson Consumer Cos., Inc.*, 865 F. Supp. 2d 529, 537 (D.N.J. 2011). Other courts take a different approach. For these courts, a class action plaintiff's standing to pursue claims based on products she neither purchased nor used is "an issue that is not yet ripe" to decide at the motion to dismiss stage." *Kuzian v. Electrolux Home Products, Inc.*, 937 F. Supp. 2d 599, 2013 U.S. Dist. LEXIS 44050, 2013 WL 1314722, at *2-3 (D.N.J. March 28, 2013). Instead, the standing issue becomes ripe only in the context of a motion for class certification. *See id.* ("[C]lass certification issues are 'logically antecedent to the existence of Article III issues,' and it is appropriate to reach the class action issues first, since the standing issues would not exist but for the class action certification.") (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 612-13, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997)).
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> One case that subscribes generally to the latter approach is *Stewart v. Smart Balance, Inc.*, No. 11-6174, 2012 U.S. Dist. LEXIS 138454, 2012 WL 4168584, at *16 (D.N.J. June 26, 2012). At issue in *Stewart* was the deceptive labeling of three different "Fat Free Enhanced Milk Products" sold under the Smart Balance name. Plaintiffs purchased the "Fat Free Milk and Omega-3" product, but they did

> not purchase the "Lactose-Free Fat Free Milk and Omega-3s" or the "HeartRight Fat Free Milk and Omega-3s & Natural Plant Sterols" products. Still, plaintiffs brought class action claims alleging labeling improprieties in each of the three products. On standing grounds, defendants moved to dismiss claims relating to the milk products that plaintiffs did not purchase. The *Stewart* court denied the motion. Finding that "the basis for each of the claims relating to the [three milk products] is the same, the products are closely related, and the Defendants are the same," 2012 U.S. Dist. LEXIS 138454, [WL] at *16, the *Stewart* court held that class certification was the proper time to determine standing. This Court is persuaded by *Stewart's* approach.
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> Here, though Burke purchased only two kinds of Weight Watchers Diet Bars, she seeks to bring class action claims that cover the entire line of Diet Bars. The basis for Burke's claims is the same with respect to all of the Diet Bars, the Diet Bars are closely related because they belong to the same product line, and the Defendants are the same. Applying *Stewart*, the Court will **DENY** Burke's motion to dismiss for lack of standing.

983 F. Supp. 2d 478, 482 (D.N.J. 2013). Similarly to the plaintiff's situation in Burke, the basis for the plaintiff's claims here is idential with respect to all of the TV models listed in the Complaint, and the different models listed in the Complaint are closely related because they were all marketed in the same way by the same defendant. As a result, the plaintiff has standing to bring claims regarding the various models listed in the Complaint.

Samsung's motion to dismiss is therefore denied. The appropriate order is enclosed.

Very truly yours,

JSR:kfb

JAMES S. ROTHSCHILD, JR., JSC