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## Clarins Must Face Deceptive Ad Suit Over Beauty Products

By **Caroline Simson**

Law360, New York (September 08, 2014, 5:42 PM ET) -- A Florida federal judge on Friday kept intact part of a proposed class action accusing Clarins USA Inc. of duping consumers into purchasing expensive beauty-enhancing products, saying that statements the plaintiff cited in her complaint backed claims that the company's marketing campaigns were misleading.

U.S. District Judge Paul C. Huck denied Clarins' bid to toss a claim accusing the cosmetics company of violating the Florida Deceptive and Unfair Trade Practices Act by touting scientific studies in its advertising campaigns that were supposedly based on flawed data. Judge Huck rejected Clarins' argument that the plaintiff's allegations merely took issue with the quality of the studies included in the campaigns, which Clarins said would not have met the pleading standard under the Florida statute at issue.

The complaint included statements from the Mayo Clinic and the National Institutes of Health noting that no existing topical creams could be shown to get rid of cellulite or wrinkles, which Judge Huck said directly contradicted Clarins' claims that its products' proven beauty-enhancing results were based on scientific studies.

"Although the statements by the Mayo Clinic and the NIH do not specifically mention Clarins products or their ingredients ... those statements are sufficient at this stage in the proceedings to encompass Clarins products," Judge Huck stated. "There is more here than just plaintiff's own uninvestigated belief that defendants' marketing statements are false."

However, he did dismiss claims related to products in the Vital Light and Body Lift collections that the plaintiff hadn't actually bought herself, saying she lacked standing because she couldn't allege to have suffered any injury from those products.

Judge Huck also dismissed a claim for breach of express warranty, stating that the plaintiff didn't notify Clarins prior to filing the complaint that she believed the company had breached the warranty, as is required under Florida law. He declined the plaintiff's invitation to find an exception to the law because Clarins would not have been able to cure the alleged defects even if she had notified the company, saying the court had no authority to create exceptions to clearly written statutes.

Judge Huck did give the plaintiff permission to amend her complaint with regard to the breach of warranty claims. He declined to strike class allegations from the suit, saying that it's too early to consider such a motion because the plaintiff hadn't yet filed a motion for class certification.

The complaint, filed in April by Elisa Garcia, accused Clarins and affiliated entities of deceiving consumers into believing the products would achieve unheard-of results, with an intricate marketing plan that included the Internet, print media and in-store sales personnel. But that campaign highlighted purported scientific studies and clinical trials that included results from trials that had too few participants to be effective, or were based on participants who were cherry-picked to yield specific results, the suit claimed.

Among the benefits trumpeted in the company's marketing campaigns was that certain plant extracts contained in one of the \$90 products named in the suit, Body Lift Cellulite Control cream, could help release trapped fatty deposits on hips and thighs with its patent-pending formula, according to the complaint. The company also claimed that plant extracts contained in its \$90 Vital Light Night Revitalizing Anti-Ageing cream would "reorganize weak collagen into a resilient cushion that beams light up to the skin's surface," the complaint stated.

The suit alleged that Clarins compared its products to pharmaceutical products in an effort to imply that they would affect the structure or function of the human body, and trained its salespeople to tout that its products were approved by the U.S. Food and Drug Administration when they were not.

Neither the plaintiffs nor the defendants immediately responded to a request for comment on Monday.

Clarins and the affiliated companies are represented by Jonathan E. Perlman and Aaron S. Blynn of Genovese Joblove & Battista PA.

The plaintiffs are represented by Adam M. Schachter and Freddy Funes of Gelber Schachter & Greenberg PA, James E. Cecchi, Caroline F. Bartlett, and Zachary S. Bower of Carella Byrne Cecchi Olstein Brody & Agnello PC and Brian H. Brick of Napoli Bern Ripka Shkolnik LLP.

The case is Garcia v. Clarins USA Inc. et al., case number 1:14-cv-21249, in the U.S. District Court of the Southern District of Florida.

--Editing by Stephen Berg.

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