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Rawlings Bat False Ad Suit Gets Two Strikes, But Not Out

By **Mike Curley**

Law360 (May 9, 2019, 7:47 PM EDT) -- A California federal judge has ruled that a proposed class of baseball bat buyers can take a swing at Rawlings over claims that the company's bats are heavier than advertised, finding that four out of six counts in the suit can go forward.

U.S. District Judge George H. Wu on Wednesday dismissed breach of implied contract and unjust enrichment claims brought by Richard Sotelo against Rawlings Sporting Goods Co., while the bulk of his state law false advertising and competition claims survived the baseball equipment company's **bid to dismiss**.

"The Court's decision was a step forward for young athletes and their families," David R. Shoop of Shoop PC, representing Sotelo, told Law360 in an email Thursday. "We are very pleased."

In his **October complaint**, Sotelo claimed Missouri-based Rawlings is routinely selling children's baseball bats that are 2 to 3 ounces heavier than their advertised weight, a difference he said is significant enough to render the bats unusable and potentially unsafe.

He claimed that in November 2017 he purchased a 1-pound 2018 Rawlings Youth 5150 USA-model baseball bat for his 8-year-old son that proved to be 2.6 ounces heavier than advertised, and that his son cannot use it. Additionally, he said, a bat that is too heavy can risk muscle strains and be dangerous to other players and bystanders.

While Rawlings argued that Sotelo didn't show that he relied on Rawlings' representations in buying the bat or that Rawlings should have known about the misrepresentations, Judge Wu wrote that Sotelo's allegations were clear in alleging how and where he saw and relied on Rawlings' statements about the bats.

In the complaint, Sotelo alleged that Rawlings put the bats' advertised weights both on their label and on the website from which he bought the bat, and that he relied on that information in making the purchase.

And under California law, the judge wrote, an allegation that a company fraudulently misrepresented its products can survive the dismissal stage without proving intent.

The court did trim one count of the state law complaints, saying that although Sotelo and the class sought damages for multiple products, they only gave Rawlings notice that the specific model of bat he bought was falsely labeled. Under the state's Consumer Legal Remedies Act, Judge Wu wrote that Sotelo can't claim damages for products he didn't include in that notice. The claim will move forward, but with only with the model specified.

Judge Wu also allowed Sotelo's claim for breach of express warranty to go through, saying his complaint adequately alleged that the bats didn't meet the explicit specifications shown on their labels and advertising.

The judge dismissed the claim for unjust enrichment, saying under California law it can't stand on its own as a claim for relief, but must be pleaded in conjunction with another cause of action that allows

for it. The breach of implied warranty, however, was dismissed with leave to amend, with Judge Wu saying that Sotelo has only alleged that his son can't use the bat, but not that it is defective to the point that nobody could use it as a bat.

Representatives for Rawlings could not immediately be reached for comment Thursday.

Sotelo is represented by David R. Shoop of Shoop PC, Janine Pollack and Adam Gonnelli of The Sultzer Law Group PC, and Lee S. Shalov and Jason S. Giaimo of McLaughlin & Stern LLP.

Rawlings is represented by Eric Y. Kizirian of Lewis Brisbois Bisgaard & Smith LLP and Michael R. Annis and A. James Sprung of Husch Blackwell LLP.

The case is Richard Sotelo v. Rawlings Sporting Goods Co. Inc., case number 2:18-cv-09166, in the United States District Court for the Central District of California.

--Additional reporting by Rick Archer. Editing by Michael Watanabe.

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