



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Power Balance Cuts \$57M Deal In False Ad Action

By **Erin Coe**

Law360, New York (March 30, 2011) -- Power Balance LLC on Friday agreed to pay more than \$57 million to settle a proposed class action in California claiming it falsely advertised that its accessories improve consumers' strength by using holograms that react to the body's natural energy field.

Laguna Niguel, Calif.-based Power Balance entered into an agreement to resolve the proposed class action filed by Andre Batungbacal in the U.S. District Court for the Central District of California, and the parties asked the court for preliminary approval of the settlement.

Under the deal, the company would provide full refunds in addition to shipping and handling costs to dissatisfied customers who join the nationwide class.

Power Balance, which denies any wrongdoing, would also make certain changes to product claims and the way it advertises and markets its products.

The plaintiff's counsel said that about 1.7 million Power Balance products were sold in the U.S., and the value of the proposed deal of more than \$57 million was \$29 million more than the largest possible recovery had the plaintiff gone to trial and obtained an award for restitution only.

Power Balance says it expects a series of related suits to be resolved as a result of the settlement.

At a hearing in San Diego on Wednesday, the Judicial Panel on Multidistrict Litigation considered whether to centralize Batungbacal's case with 16 similar pending actions in California, Alabama and Florida.

Most of the plaintiffs' attorneys asked that the cases be concentrated in the Central District of California, but Power Balance attorney Michael Avenatti argued that it no longer made sense for centralization in light of the proposed settlement.

He said that judicial economy and saving resources would not be accomplished by centralizing the cases and that Power Balance would not object if the plaintiffs in the other suits sought to intervene in the Batungbacal case to respond to the proposed settlement.

Filippo Marchino, an attorney for Batungbacal, agreed that centralization at this point was unnecessary.

"Given the fact that we have obtained a full refund and full settlement ... there's no need to

waste resources of MDL-ing something that has been resolved," he said.

Other plaintiffs' attorneys at the hearing contended that despite the proposed settlement, parties would be better off centralizing the cases because it could help if a settlement was not approved and if any discovery still needed to be taken.

But Judge W. Royal Furgeson Jr., one of the seven judges on the panel, said an MDL could slow down the procedure, whereas having the plaintiffs simply intervene in the Batungbacal case would "cut through the morass."

Batungbacal filed a class action against Power Balance and several individual defendants in January, alleging deceptive and misleading conduct in advertising its wristbands, bracelets, pendants, necklaces and other jewelry with holograms that "are embedded with frequencies that react positively with your body's natural energy field to improve balance, strength and flexibility," according to the suit.

His suit, along with others, were filed after the company came under investigation by the Australian Competition and Consumer Commission and admitted in December that there was no credible scientific evidence supporting its claims that Power Balance wristbands improved one's strength, balance and flexibility.

However, the company allegedly continued to mislead U.S. consumers regarding the benefits of wearing a Power Balance accessory, and consumers would never have bought the product had they known it did not have any benefit, according to the suit.

Batungbacal is represented by the X Law Group PC and Panish Shea & Boyle LLP.

The defendants are represented by Eagan Avenatti LLP.

The case is Andre Batungbacal v. Power Balance LLC et al., case number 8:11-cv-00018, in the U.S. District Court for the Central District of California.

--Editing by Andrew Park.