

Federal Court Dismisses Multiple Claims in Ongoing Class Action Against LifeVantage

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Last month, the District Court of Utah dismissed all but one claim filed against LifeVantage Corporation in a pending class action lawsuit. LifeVantage is a direct-sales company that distributes dietary supplements, including Protandim—a supplement consisting of a blend of five herbal ingredients. Plaintiffs in the purported class action brought claims for securities fraud, sale of unregistered securities, antitrust violations, and unjust enrichment. Represented by Winston & Strawn, LifeVantage achieved dismissal of all but one of those claims—including Plaintiffs’ *Walker Process* antitrust claim based on alleged fraud on the United States Patent Office.

The Court first addressed Plaintiffs’ securities fraud claim under Section 10(b) of the Securities Exchange Act. In evaluating the Plaintiffs’ “near puzzle pleading” the Court noted that the “Complaint goes on at length without directly setting forth the statements made by Defendants.” As a result, and agreeing with the Defendants’ Motion to Dismiss, the Court concluded Plaintiffs did not allege a securities fraud claim under Section 10(b) based on misleading statements or omissions. However, despite the faults with Plaintiffs’ complaint, the Court concluded that Plaintiffs’ had alleged a claim under a theory of “scheme liability.” Notably, the Court’s holding was limited to the fact that the Plaintiffs had met their minimal burden to simply allege this one claim; the Plaintiffs are still far away from being able to prove such a claim.

All of the remaining claims brought by the Plaintiffs were dismissed. A central allegation in Plaintiffs’ complaint was that LifeVantage procured patents by fraud and used those patents to price one of LifeVantage’s signature products substantially above the competitive level. In so alleging, Plaintiffs attempted to fashion a *Walker Process* antitrust claim. In *Walker Process*, the Supreme Court held that attempting to enforce a patent obtained by fraud can create antitrust liability. Dismissing the Plaintiffs’ theory, the Court concluded that because Plaintiffs offered “speculation and the inference of motivation on behalf of the Defendants,” Plaintiffs failed to sufficiently allege that LifeVantage committed a fraud on the United States Patent Office.

The Court also focused on the insufficiency of Plaintiffs’ allegations regarding the alleged intent of LifeVantage, finding that the conclusory allegations relied on by Plaintiffs did not meet the heightened standard necessary to establish a *Walker Process* claim. As argued in Defendants’ Motion to Dismiss, the Plaintiffs’ focus on the alleged “misattribution of inventorship” of LifeVantage’s product did not give rise to a *Walker Process* claim. In fact, the Court specifically noted that Plaintiffs’ focus on whether the correct inventor of the patent was identified—as an indicator of fraud on the USPTO—was a misunderstanding of the law. The Court also noted that Plaintiffs’ antitrust claims

could not stand because, as Defendants' Motion to Dismiss made clear, Plaintiffs failed to allege necessary facts to support the remainder of their antitrust claim, including defining a relevant market or that the Defendants had market power.

In addition to dismissing the Plaintiffs' antitrust claim, the Court also dismissed Plaintiffs' claim for unjust enrichment and claim for the sale of unregistered securities. First, in dismissing the Plaintiffs' securities claim, the Court noted that Plaintiffs relied predominately on legal conclusions and alleged no facts in support of these conclusions. The same was true of Plaintiffs' unjust enrichment claim and it was likewise dismissed. Following the Court's order, Plaintiffs filed an amended complaint, in which they did not re-plead claims sounding under Section 10b-5(b) based on omissions or representations, nor did they raise a claim for antitrust violations.

This latest win follows other setbacks for the Plaintiffs' case. Earlier, Winston achieved dismissal of Plaintiffs' RICO claims and transfer of the case to the District of Utah. The Winston team representing LifeVantage includes partners John Sanders, Rex Mann, and Katrina Eash.

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