

Winston Wins Denial of Class Certification Motion on Behalf of Spin Master Ltd.

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Winston & Strawn this week won the denial of a class certification motion brought on behalf of purchasers of a toy arts and crafts bead called Aqua Dots and against the firm's client, Spin Master Ltd., one of the largest toy manufacturers and distributors in the world, as well as Wal-Mart and clients Target and Toys 'R Us. The beads were recalled by the Consumer Product Safety Commission in November 2007 after it was discovered that the beads' contents were not as represented by the factory that made them and that a child became sedated after ingesting them. The factory had secretly replaced one of the components of the beads with a chemical that, if swallowed, metabolized into GHB, also known as the date rape drug. The recall caused headlines in *The New York Times*, *The Wall Street Journal* and several other national papers, as well as a segment on the morning news show *Good Morning America*.

Ten nationwide federal class actions were filed, which the Winston team gathered together into a single MDL proceeding in Chicago. Upon considering the firm's pleadings and arguments, the presiding judge was impressed that its clients had instituted a recall program that refunded cash or replacement product to any purchaser who asked for it, thereby taking care of 45% of all purchasers. Because the main relief sought by the named plaintiffs was a refund of the purchase price for those consumers who never returned the beads, the judge reasoned that a class action would not meet the requirement of FRCP 23(b) that a class action be "superior to other available methods for fairly adjudicating the controversy" because the existing and available recall remedy of returning the product to the retail stores was working. The court's ruling went so far as to recognize that the only people who would be better off through a class procedure would be plaintiffs' counsel who were seeking a fee, and that plaintiffs' counsel's interests thus were in conflict with the interests of the class they proposed.

The Winston team consisted of Chicago partner Ron Rothstein.

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