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Calif. Court Allows Steroid Class Action Against GNC

By **James Armstrong**

Law360, New York (January 21, 2010, 7:38 PM ET) -- A California appeals court ruled Thursday to allow a class action against General Nutrition Stores Inc., which allegedly sold consumers products containing anabolic steroids without a prescription in violation of state law.

The California Court of Appeal for the Second Appellate District reversed a trial court's decision denying certification for a class action against GNC for violating the state's unfair-competition law and its Consumer Legal Remedies Act.

Timothy Cohelan, an attorney with Cohelan Khoury & Singer, which represents the consumers in the case, said he agrees with the decision and believes the case has significant merit.

GNC allegedly sold over-the-counter products containing androstenediol, which California law defines as a Schedule III controlled substance.

The company did not require a prescription for the products and did not notify consumers that the products contained a controlled substance, according to the complaint in the matter.

Several users of the products allegedly suffered injury and lost money by spending thousands of dollars on products they would not have bought had they known the products were illegal without a prescription.

In 2003 California's attorney general sent a letter to GNC informing the company that androstenediol is identified under the California Uniform Controlled Substances Act as an anabolic steroid and that the possession, import or sale of it is a criminal offense.

GNC allegedly continued to sell androstenediol products until the end of March 2004.

The plaintiffs tried to certify a class of all persons who purchased products containing androstenediol in California between Feb. 17, 2000, and April 1, 2004.

A class is ascertainable because membership is based on objective criteria, joinder would be impracticable and common issues predominate, the plaintiffs argued.

The trial court denied certification, finding that common issues did not predominate because class members would be required to individually litigate issues of causation and injury.

There is little evidence that consumers cared whether or not the products were restricted, so the issue of causation would vary from consumer to consumer, the trial court said.

Individualized proof of causation or injury is required under California's Proposition 64, which passed in 2004. The California Supreme Court clarified Prop 64 in its Tobacco II decision last year, which the appeals court cited in its decision.

Guided by Tobacco II, the court said the issue was if a reasonable person would find it important when determining whether to purchase a product that it is unlawful to sell or possess that product.

“It requires no stretch to conclude that the proper answer is 'yes,’” the court said.

David Markham, an attorney with Clark & Markham LLP, which also represents consumers in the case, said it was the unlawfulness of GNC's action that set this case apart from other class actions that often claim misleading advertising.

Cohelan Khoury & Singer and Clark & Markham LLP represent the consumers in the case.

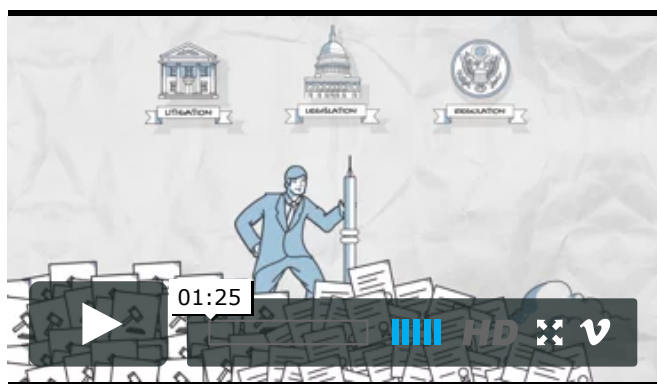
[Orrick Herrington & Sutcliffe LLP](#) and [McGuireWoods LLP](#) represent GNC.

The case is Steroid Hormone Product Cases, case number B211968, in the Court of Appeal of the State of California for the Second Appellate District.

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