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Nordstrom Wants False Outlet Pricing Suit Tossed

By Lisa Ryan

Law360, New York (November 17, 2014, 6:07 PM ET) -- Nordstrom Inc. on Friday urged a California federal court to toss a putative class action alleging it tricks consumers into believing they are purchasing heavily discounted products at its Nordstrom Rack outlet stores, saying the complaint doesn't provide examples of the false advertising that allegedly misled the lead plaintiff.

The retailer says the complaint "suffers several fatal flaws," including a failure to state any actual facts that would prove the claim that Nordstrom purports to offer discounts on fabricated former prices at its Nordstrom Rack stores despite knowing full well that the products were exclusively manufactured for the outlet store.

"Plaintiff admits that he does not know whether Nordstrom Rack's pricing practices violate any statute, but yet he still proceeds to file this purported class action on the off-chance that he may be able to prove some violation at some point. The Federal Rules, however, do not provide for a 'maybe' standard of pleading and do not condone the waste of judicial resources to pursue frivolous allegations," the motion said.

Filed in September, lead plaintiff Kevin Branca **claims in his suit** he purchased three items from a Nordstrom Rack store in southern California in July 2013 after seeing the goods advertised with price tags that represented "compare at" prices that were directly on top of prices drastically reduced by a percentage amount.

With the idea that he was paying significantly less than the prices charged at other retailers, Branca ended up buying several items, including a pair of cargo shorts with a "compare at" price of \$49.50 and an actual price of \$29.97, the suit says.

"In reality, Nordstrom never intended, nor did it ever, sell the cargo shorts at the represented 'compare at' price. Thus, plaintiff was deceived by the false price comparison into making a full retail purchase with no discount," the complaint said.

Though such retail outlet stores were "traditionally" used to maintain an inventory of defective and excess merchandise, major retailers like Nordstrom have begun using company-owned outlet stores to sell made-for-outlet goods that were never intended to be sold at nonoutlet stores, in an effort to increase profits, according to the complaint.

The suit claims retailers create the "illusion" of traditional outlet discounts and bargains by offering the made-for-outlet products at prices reduced from "fabricated, arbitrary and false" prices.

But in its motion to dismiss, Nordstrom slammed the allegations, saying the complaint offers no proof of any false advertising or fraudulent behavior. The retailer also said that it has an "unrelenting practice" to put customers first and even told the plaintiff that it would provide full refunds to any customer not satisfied with their cost savings.

Hassan A. Zavareei of Tycko & Zavareei LLP, an attorney for the plaintiff, told Law360 on Monday that the suit is "firmly grounded in law and fact."

"The conduct at issue violates California law and we do not believe this motion will be successful," Zavareei said.

Representatives for Nordstrom didn't immediately respond to requests for comment Monday.

Nordstrom is represented by Kathleen M. Waters and Joseph Duffy of Morgan Lewis & Bockius LLP.

The plaintiff is represented by Wayne S. Kreger of the Law Offices of Wayne S. Kreger, by Hassan A. Zavareei of Tycko & Zavareei LLP and by Jeffrey M. Ostrow of Kopelowitz Ostrow PA.

The suit is *Branca v. Nordstrom, Inc.*, case number 3:14-cv-02062, in the U.S. District Court for the Southern District of California.

--Editing by Emily Kokoll.

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