

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

Class Actions

Court Denies Class Certification in Price Discrimination Case Against the Maker of 5-Hour Energy

A California federal court has denied class certification to two proposed classes of small wholesalers alleging that Living Essentials, LLC, the maker of 5-hour Energy, engaged in price discrimination. *ABC Distrib., Inc. v. Living Essentials LLC*, 2017 WL 2603311 (N.D. Cal. Apr. 7, 2017). The plaintiffs, who were three small wholesale distribution companies in California, alleged that Living Essentials sold 5-Hour Energy to wholesalers at different prices, discriminating against small wholesalers in violation of the Robinson-Patman Act and California law. The court found that, while the plaintiffs satisfied the requirement of numerosity under Federal Rule of Civil Procedure 23(a)(1), the articulated classes could not satisfy the other 23(a) requirements, which include common questions of law or fact, typicality, and adequacy of representation.

In particular, the court noted that a “Robinson-Patman case is not well suited for class certification because its analysis is singularly individualistic.” If the matter went to trial, each plaintiff would have to prove that its inventory was sold in interstate commerce, that the customers who were sold 5-Hour Energy were of “like grade and quality,” that the defendant discriminated in price between the plaintiffs and other purchasers of 5-Hour Energy, and that the effects of said discrimination “may be . . . to injure, destroy, or prevent competition.” Each plaintiff would also have to individually prove that it was in competition with the favored purchaser of 5-Hour Energy, Costco. While there was evidence that Living Essentials treated categories of wholesalers differently, and that Costco was receiving a price advantage, that evidence could not cure the underlying problem with the proposed classes: that the elements of succeeding on the claims were so individualistic. Although the court denied certification, the named plaintiffs were permitted to proceed with their claims.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com