



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Blue Buffalo Strikes Record \$32M Pet Food False Ad Deal

By **Kat Greene**

Law360, Los Angeles (December 10, 2015, 9:31 PM ET) -- Blue Buffalo agreed on Thursday to pay \$32 million to settle multidistrict litigation in Missouri filed by consumers accusing the pet food maker of lying about the ingredients in its kibble, in a deal that rival Nestle Purina says is the largest one ever over pet food.



Blue Buffalo was sued over its True Blue Promise label, which claims the pet food is healthy and made with the best ingredients, specifically sans poultry byproducts and artificial preservatives. (Credit: Law360).

The agreement would pay consumers tied up in the class action proportionate to how much they spent on Blue Buffalo Co.'s products. The company had claimed its products were free of poultry byproducts, which was **challenged in 13 class actions** and in a false advertising suit filed by rival Nestle Purina PetCare Co.

Blue Buffalo said it wasn't admitting any wrongdoing in striking a deal and that the class attorneys' fees would come out of the settlement fund. The impurities in its pet food were the fault of a supplier, the company said.

"While we will continue to pursue our claims against [a supplier and broker], we decided that it is in the best interest of our pet parents and our company to resolve the class actions now," Blue Buffalo founder Bill Bishop said in the statement. "All of us at Blue Buffalo continue to work tirelessly to make pet food with the finest natural ingredients for our furry family members."

The **suits all struck** at the premium pet food brand's True Blue Promise label, which claims the food is healthy and made with the best ingredients, specifically sans poultry byproducts and artificial preservatives. The plaintiffs cited testing done by Purina that allegedly shows the

byproducts comprise up to a quarter of Blue Buffalo's kibble.

Purina, meanwhile, filed its own false advertising suit, which is still pending, lodging essentially the same claims against its rival and contending that independent laboratory studies found often significant amounts of chicken or poultry byproducts in Blue Buffalo products.

The highest amounts were in the brand's Life Protection Indoor Health Chicken & Brown Rice product, which contained about 25 percent chicken by-products, the suit claimed. Most other products had less, between about 2 percent and 10 percent in kibble or LifeSource Bits, according to the suit.

Purina also alleged that Blue Buffalo's products, though they claim to be grain-free, contain up to 3 percent grain and disputed the company's claim that its food is human food-grade. Blue Buffalo **filed counterclaims** against its rival, contending that the pictures of fruits and vegetables on Purina pet food products would mislead consumers into thinking those were ingredients of the food, court records show.

Purina's suit and the class actions sought damages from the company and injunctions forbidding Blue Buffalo from continuing to make alleged false statements in its marketing materials and labeling. Purina also seeks to force Blue Buffalo to account for all of its gains and profits resulting from the alleged false advertising and to pay restitution to Purina.

Purina took note of Blue Buffalo's proposed class settlement Thursday, saying in a statement the deal comes seven months after the company admitted it was mislabeling products.

"Purina is pleased Blue Buffalo is beginning to accept responsibility for its false advertising and mislabeling," the company said.

The consumers are represented by the Simon Law Firm PC, Donovan Rose Nester PC, Carlson Lynch Ltd. and Faruqi & Faruqi LLP, among other firms.

Blue Buffalo is represented by Martin Flumenbaum and Robert A. Atkins of Paul Weiss Rifkind Wharton & Garrison LLP and Steven A. Zalesin, Adeel A. Mangi and Sean H. Murray of Patterson Belknap Webb & Tyler LLP.

Purina is represented by Carmine R. Zarlenga, Richard M. Assmus and Kristine M. Young of Mayer Brown LLP and David A. Roodman of Bryan Cave LLP.

The case is In re: Blue Buffalo Company Ltd., Marketing and Sales Practices Litigation, MDL No. 2562, in the U.S. Judicial Panel on Multidistrict Litigation.

--Additional reporting by Brandon Lowrey and Joe Van Acker. Edited by Christine Chun.

All Content © 2003-2015, Portfolio Media, Inc.