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Celebrity-Endorsed Lip Balm Maker Settles Blister Suits

By Jody Godoy

Law360, New York (January 28, 2016, 4:14 PM ET) -- A company that makes a brand of lip balm touted by celebrities including Kim Kardashian told Law360 on Thursday it has settled five proposed class actions claiming the product causes rashes and blisters, agreeing to warn consumers that some users may be sensitive to the product.

EOS Products LLC and California attorney Mark Geragos announced the proposed class settlement that has yet to be filed in federal court. The terms of the deal will include a warning on packaging and the company's website and will allow users who have suffered adverse effects to file a claim for undisclosed levels of compensation, according to company representatives.

"Our products are safe — and this settlement confirms that," EOS said in its statement via a public relations representative who was not authorized to be named.

Geragos issued a statement calling the settlement "a testament to EOS being responsive to the concerns of their consumers" and said "the company is doing the right thing by adding more information about their lip balm products on packaging so that buyers can make informed choices."

According to EOS, the egg-shaped, flavored lip balms are tested by dermatologists and contain ingredients approved by the U.S. Food and Drug Administration and the Cosmetic Ingredient Review Board, an independent panel funded by the industry.

EOS users started posting photos of their excessively dry or blistered lips on Facebook in mid-January after Rachel Cronin filed the first of the suits in California federal court.

Some users claimed in the social media posts that they had used the product before without any negative effects and suggested the company had changed ingredients in its lip balms.

EOS confirmed on Thursday through its representative that it had not changed the product's formula.

The company says that in December it sold several million lip balms in the U.S. and received complaints from 40 users — 35 who accepted a coupon for a free replacement and five who never followed up on their claim.

In her suit, Cronin alleged EOS knew about the potential health effects of its flavored lip balm but failed to warn consumers in violation of state statutes. Geragos' firm filed that suit and then four more in New York, Illinois, Florida and Ohio federal courts.

Cronin claimed her lips became rough after using EOS lip balm and that as she used more they started to crack and bleed and that she developed a rash prompting her to seek medical help.

She said she wouldn't have bought the EOS, or "Evolution of Smooth," product at all had she been

warned instead of led to believe the product was "healthy" and "organic" as the company claimed.

Her suit and the others filed by Geragos & Geragos APC claim EOS violated the states' unfair business laws, breached warranties and committed fraud on consumers and asked the court to order EOS to warn consumers of the risks of using the products.

Another firm filed a sixth suit in Florida federal court on behalf of a parent who claims her daughter was injured by the product. The settlement does not yet encompass those claims.

EOS is represented by Shon Morgan of Quinn Emanuel Urquhart & Sullivan LLP.

The consumers in the five actions are represented by Mark J. Geragos, Ben J. Meiselas, Frida Hjort and Tina Glandian of Geragos & Geragos APC.

The Florida parent is represented by Joshua H. Eggnatz and Michael J. Pascucci of Eggnatz Lopatin & Pascucci LLP.

The settling cases are Rachael Cronin v. EOS Products LLC, case number 2:16-cv-00235, in U.S. District Court for the Central District of California; Caggiano v. EOS Products LLC, case number 1:16-cv-00408, in U.S. District Court for the Southern District of New York; Tipirneni v. EOS Products LLC, case number 2:16-cv-02022, in U.S. District Court for the Central District of Illinois; Everett v. EOS Products LLC et al., case number 8:16-cv-00140, in U.S. District Court for the Middle District of Florida and Bevins v. EOS Products LLC, case number 2:16-cv-00066, in U.S. District Court for the Southern District of Ohio.

The Florida parent's case is Menz v. EOS Products LLC, case number 8:16-cv-00128, in U.S. District Court for the Middle District of Florida.

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