

## Corporate & Financial Weekly Digest

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### Motion to Dismiss Consumer Protection Claims Denied

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Plaintiffs brought claims against defendant, a satellite digital audio radio service provider (SDARS), alleging that the 2008 merger of defendant's predecessors created a monopoly in the surviving company and violated federal antitrust laws and various state consumer protection laws, among other things.

The complaint alleges that defendant now controls 100% of the market for SDARS and that there is no economically viable alternative product that is interchangeable with that provided by defendant. The complaint further alleges that the merger was a willful attempt to exert monopolistic control over the SDARS market since the merged companies had been the only SDARS providers, and entry into the SDARS market is prohibitively costly. Plaintiffs assert that defendant's allegedly monopolistic actions resulted in artificially inflated, noncompetitive prices, thereby harming plaintiffs, who are defendant's subscribers, and all others similarly situated.

Defendant moved to dismiss the state consumer protection claims, asserting that plaintiffs do not have standing to bring claims under the consumer protection statutes of states in which no plaintiff resides. The court denied the motion, reasoning that the claims should be allowed to go forward until the pending motion on class certification is decided. The court further noted that plaintiffs in a proposed class action commonly bring claims under consumer protection laws of states where they do not reside in order to preserve those claims in anticipation of eventually being joined by class members who do reside in the states for which claims have been asserted. (*Blessing v. Sirius XM Radio Inc.*, No. 09 Civ. 10035, 2010 WL 4642607 (S.D.N.Y. Nov. 17, 2010))

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