

Class Certification Denied in Printer Litigation

September 21, 2011 by [Sean Wajert](#)

A federal court recently denied class certification in a case brought on behalf of consumers accusing Epson America Inc. of misrepresenting how its NX series of printers functioned with ink cartridges. [Christopher O'Shea et al. v. Epson America Inc. et al.](#), No. 09-cv-08063 C.D. Cal.). Readers may [recall our post](#) that the court earlier dismissed many of the plaintiffs' claims on the basis that a manufacturer is not required under consumer protection laws to denigrate its own product and broadcast that its product may not perform as well as its competition.

In May 2009, plaintiff Rogers purchased a "Stylus NX 200" inkjet printer manufactured by defendants. Her decision to purchase this printer was allegedly based, in part, on a statement on the printer box that read: "Replace only the color you need with individual ink cartridges." Plaintiff allegedly understood this statement to mean that the printer would only require a black cartridge to print black text. In actuality, plaintiff alleged, the Epson NX 200 printer requires all cartridges to function. She subsequently filed suit against Epson claiming that Epson failed to disclose and affirmatively misrepresented the features of the printer.

Plaintiff moved for class certification. The interesting part of the court's analysis relates to the predominance issue under Rule 23(b)(3). Even though individualized questions of reliance and materiality were diminished under some of the plaintiff's theories because the consumer fraud claims are governed by the "reasonable consumer" test, which requires plaintiff to show that members of the public are likely to be deceived, *Williams v. Gerber Products Co.*, 523 F.3d 934, 938 (9th Cir. 2008), the notions of reliance and injury still impacted class certification. Specifically, the court was not convinced that members of the putative class had *standing* to pursue their claims in federal court. To have standing under Article III, a plaintiff must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged action; and redressable by a favorable ruling.

In the context of Rule 23(b)(3), questions of Article III standing amount to an inquiry as to whether individual issues of injury-in-fact and causation predominate over common issues. While case law suggested that absent class members need not establish standing under the requirements of California's consumer laws, there is a distinct requirement of Article III standing in federal court. Statutory interpretations cannot permit a federal class action to proceed where class members lack Article III standing. The requirement that all members of the class have Article III standing makes sense. If that were not the rule, a class could include members who could not themselves bring suit to recover, thus permitting a windfall to those class members and allowing Rule 23 to enlarge substantive rights. The court therefore held that absent class members must satisfy the requirements of Article III.

Satisfaction of Article III's requirements in turn raised individualized issues that defeated certification under Rule 23(b)(3) in this case. Article III requires some showing of injury and causation for a plaintiff to recover. Even if the alleged failure to disseminate truthful information about the product would be subject to common proof, whether each class member was

entitled to recover was not susceptible to proof on a class-wide basis because, to establish standing under Article III, each class member was required to show that they suffered some injury as a result of using or buying the product. Plaintiff therefore must show that all persons in the United States who purchased an Epson NX series printer during the class period suffered an injury which was caused by Epson's alleged misrepresentation, and which was likely to be redressed by a decision in plaintiff's favor. The record contained evidence indicating that the injury purportedly suffered by some members of the putative class could not fairly be traced to Epson's allegedly deceptive representation. Those individuals who purchased printers from certain third-party on-line sources, such as Amazon.com, were not exposed to the allegedly deceptive representation before they purchased their printers. Not all consumers who purchased an NX200 printer bought it at a retail store. Nor could standing be established by plaintiff's (unsupported) assertion that the misrepresentation was on every box of the subclass, since some individuals purchased class printers without ever having been exposed to the allegedly deceptive representation. The fact that these individuals may have subsequently seen the misrepresentation when the package arrived in the mail was beside the point. There cannot be a causal connection between the consumer's injury (the money spent on the printer) and Epson's alleged misconduct (the purportedly deceptive advertising) because these consumers purchased the printers without ever seeing the purported misrepresentation.

Based on the foregoing, the court found that individualized issues of injury and causation permeated the class claims. The proposed class failed to satisfy Rule 23(b)(3)'s requirement that common issues predominate.