

Response Magazine

Legal Review: New Jersey Attorney Targets Marketers In Putative Class Actions

9 Apr, 2010

By: [Andrew Lustigman](#), [Scott A. Shaffer, Esq](#)
Response

Harold Hoffman, a practicing attorney in New Jersey, has filed dozens of putative class action lawsuits during the past two years. His modus operandi is to name himself as the plaintiff, file the cases in New Jersey state court and target nationwide direct marketers for anything from product efficacy claims to shipping charges.

As New Jersey's Appellate Division noted in *Hoffman v. Asseenontv.com*, Hoffman's behavior allegedly is aimed at prompting defendants to settle under the threat of a potential class action certification, with settlement demands as high as \$100,000.

Typically, Hoffman has ordered a marketer's product and then files a complaint shortly thereafter, sometimes even before receiving the item. As noted by one court, Hoffman has reportedly made product purchases using false names and addresses.



The suits often appear to repeat the same allegations word for word. Because of the high cost of litigation, many marketers end up making confidential settlement payments in exchange for dropping the class actions. We are unaware of Hoffman ever successfully certifying a class or obtaining relief for anyone other than himself.

In a case that we worked on, Hoffman filed a claim against the marketer of a natural male enhancement product. Hoffman alleged the marketer violated the New Jersey Consumer Fraud Act through false representations and common law fraud through "unconscionable commercial practices and misrepresentations."

However, he filed his complaint only a day after placing his order, most likely before even receiving it. The trial court dismissed Hoffman's complaint with prejudice, on the grounds that he failed to be specific in his claims about the product or link those claims to his expectations of the product's efficacy based on the marketer's advertising. The trial court also stated that Hoffman could not claim loss based on his presumption that the ingredients in the marketer's product would not perform unless he actually tried the product. While an Appellate Court upheld most of the lower court's decision, he was allowed to amend and re-file his complaint. The defendant eventually decided to settle the case.

In another similar action against a male enhancement marketer, the defendant moved for summary judgment, and the trial court ruled in the marketer's favor. The Appellate Court affirmed the trial court's judgment, noting the plaintiff "did not submit competent proofs to demonstrate either plaintiff's personal unsatisfactory experience with the product, or medical or scientific proofs which may have demonstrated that the representations and promises made by the defendant regarding [the product] were false."

In a third case that went to the appellate level, Hoffman ordered a product and was to choose a free gift in addition to his purchase. The defendant's policy was that consumers had to pay regular shipping-and-handling fees for the gift, in addition to shipping charges for their order. Although this information was presented on the defendant's Web site, Hoffman claimed it was false and deceptive advertising under the New Jersey Consumer Fraud Act and New Jersey's common law.

However, Hoffman filed his complaint prior to receiving his order and the company wisely cancelled the order without ever shipping it out. The trial court dismissed Hoffman's complaint because he did not in fact sustain any loss when the defendant cancelled his order. The Appellate Court upheld the trial court's decision.

From a consumer protection standpoint, the most troubling aspect of Hoffman's behavior is that although he files the cases as class actions on behalf of New Jersey consumers, the lawsuits typically do not mention any victims other than Hoffman. Moreover, rather than obtain relief for the class that he purports to represent, generally only a private individual settlement is worked out.

Marketers should be aware that these lawsuits are not isolated occurrences. Besides asking themselves whether a sale to Hoffman is worth the potential headache that might ensue, marketers should review their marketing materials to make sure that claims about performance are true and that they clearly disclose any shipping charges, fees for gifts, or additional items. n