

Red Bull Puts Up \$13M To Settle False Advertising Suit

By **David Siegel**

Law360, New York (August 01, 2014, 12:18 PM ET) -- [Red Bull GmbH](#) agreed Thursday to pay over \$13 million to settle a proposed class action in New York federal court accusing the Austria-based beverage company and its U.S. subsidiaries of falsely advertising its energy drinks as providing more benefit to a consumer than a cup of coffee.

The settlement, which could potentially include millions of individuals who purchased at least one Red Bull over a period of more than 10 years, would provide class members with the option of a \$10 cash reimbursement, or two free Red Bull products with an approximate retail value of \$15, with Red Bull agreeing to cover the shipping costs, according to a plaintiffs' motion seeking court approval of the agreed-upon settlement terms.

The motion asks the court to certify the proposed class for settlement purposes only. If the proposed settlement is approved, Red Bull would be required to make a \$6.5 million cash payment within seven days.

The cash or product options would be covered by a \$13 million settlement fund, which would also be used to pay for the efforts of [Garden City Group Inc.](#), a class action settlement administrator, in addition to paying for efforts to ensure that potential settlement class members are fully notified through a variety of media as to the existence of the settlement and their related rights and responsibilities.

Plaintiff Benjamin Careathers, who has been drinking Red Bull since 2002, [filed suit in 2013](#), saying the company spends millions of dollars misleading customers about the superiority of the "functional beverage" and its ability to "give you wings," while ignoring reports by [The New York Times](#), the European Food Safety Authority and scientific journal Nutrition Reviews that found energy drinks like Red Bull to have the same benefit as the average dose of caffeine consumed in coffee.

Red Bull's ad campaign promised that the drink will increase performance, concentration and reaction speed, allowing the company to charge and get a substantial premium for their products over readily available and much lower priced sources of caffeine that provide the same results, the suit says.

The allegedly misleading ads were intended to induce unsuspecting consumers into purchasing, at a premium price, millions of dollars worth of Red Bull energy drinks, according to the complaint.

Plaintiffs David Wolf and Miguel Almaraz made similar allegations in a lawsuit originally filed in California federal court and later transferred to New York.

The plaintiffs' motion urges the court to approve the settlement, claiming a voluntary commitment from Red Bull to discontinue the allegedly false advertisements provides all of the injunctive relief that the settlement class could hope to obtain through litigation.

"Beyond monetary relief, although Red Bull denies wrongdoing and believes that its marketing materials and advertising have always been truthful and accurate, it has voluntarily withdrawn or revised the marketing claims challenged by plaintiffs, and will confirm that all future claims about the functional benefits from consuming its products will be medically and/or scientifically supported," the plaintiffs' motion states.

As part of the proposed settlement, Red Bull has also agreed to cover class counsel fees of an amount not to exceed \$4.75 million and to be paid separately from the settlement fund.

"After independent, thorough analyses of the potential risks and rewards of litigating this case through discovery, dispositive motion practice, potential interlocutory appeals, and trial all parties concluded that the stipulation sets forth acceptable terms and recommend the settlement for approval," the motion states.

Attorneys for the parties did not immediately respond to a request for comment.

The plaintiffs are represented by Benedict Morelli, David Ratner, Adam Deutsch, Jeremy Alters and Matthew Moore of [Morelli Alters Ratner LLP](#) and Frederic Fox, Justin Farar, Laurence King and Linda Fong of [Kaplan Fox & Kilsheimer LLP](#).

The defendants are represented by Kenneth Plevan, Jordan Feirman, Jason Russell and Hillary Hamilton of [Skadden Arps Slate Meagher & Flom LLP](#).

The cases are Benjamin Careathers v. Red Bull North America Inc., case number [1:13-cv-00369](#), and David Wolf et al. v. Red Bull GmbH, case number [1:13-cv-08008](#), both in the U.S. District Court for the Southern District of New York.

--Additional reporting by David McAfee. Editing by Katherine Rautenberg.