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Smuckers Subsidiary Sued Over Drug In Dog Food

By **Rick Archer**

Law360 (March 16, 2018, 8:47 PM EDT) -- A New York dog owner filed a putative class action in federal court on Friday against the Smucker's-owned company that make Kibbles 'n Bits dog food, claiming the food was falsely touted as safe even though it was contaminated with a drug used to euthanize animals.

In her complaint, Rosmarie Schirripa said despite statements from J.M. Smucker Co. subsidiary Big Heart Pet Brands Inc. touting the safety and quality of its products, tests last month found pentobarbital in samples of Big Heart's Kibbles 'n Bits canned dog food.

"Pentobarbital is a Class II controlled substance and there is no safe or set level for pentobarbital in pet food. If it is present, the food is adulterated," she said.

Schirripa said in her complaint that on Feb. 8, Washington, D.C.-based television station WJLA aired a report saying that tests at two laboratories had found pentobarbital in multiple varieties of Kibbles 'n Bits canned dog food.

Pentobarbital is routinely used to euthanize animals, both domestic pets and livestock, and survives the rendering process, she said.

She argued the package labeling contains no mention of contamination and that Big Heart has put out statements claiming to have "strict" safety and quality control procedures, and that its food will be "pure, wholesome and safe for pets."

"Defendants' material omissions are false, misleading, and reasonably likely to deceive the public. This is true especially in light of the long-standing campaign by defendants to market all their products, including the contaminated dog food and 'providing safe, healthy and high-quality food' with the as healthy and safe with the 'purest ingredients,'" she said.

Big Heart issued a voluntary recall of the named products last month. In a posting on its website, Big Heart said the amount of drug found did not pose a danger to pets. It said the contamination had been traced back to cow, pig and chicken fat from a particular supplier — which it said it would not name due to potential litigation — and that it would now test its products for the drug and "enhance" its supplier oversight.

Schirripa said she was seeking to bring both federal and New York law claims on behalf of any New York residents who purchased the food at issue between February 2012 and the present.

"We think the clients who have contacted us are very concerned," Anne Andrews, one of the counsel for Schirripa, said in a phone interview Friday. "Had they known this, they

would not have supported these products."

Smuckers declined to comment.

Schirripa is represented by Paul B. Maslo and Salvatore C. Badala of Napoli Shkolnik PLLC and Anne Andrews of Andrews & Thornton.

Counsel information for Big Heart and Smuckers was not immediately available Friday.

The case is Rosemarie Schirripa v. Big Heart Pet Brands Inc. et al., case number 1:18-cv-02345, in the U.S. District Court for the Southern District of New York.

--Editing by Kelly Duncan.

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