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Smucker's sued over alleged euthanasia drug in dog food

Tina Bellon | March 19, 2018

(Reuters) - The J.M. Smucker Company and its Big Hearts Pet Brands subsidiary have been hit with a proposed consumers class action lawsuit alleging that some of their dog food contains a drug commonly used to euthanize animals and pets in violation of state and federal laws.

The complaint filed in Manhattan federal court on Friday comes just weeks after the companies issued a voluntary recall of some of their canned wet dog food following the discovery of low levels of pentobarbital in animal fat used in the products.

In her Friday lawsuit, New York resident Rosemarie Schirripa alleges that Smucker's violated state and federal consumer protection laws by negligently misrepresenting the dog food's ingredients.

Schirripa fed the company's Kibbles 'n Bits brand to her dog Otto, saying she relied on the product's advertising in "providing safe, healthy, and high-quality food" to her canine.

Schirripa said the pentobarbital content pointed to Smucker's use of "non-slaughtered" animals in their dog food, using tissue from animals that have been euthanized.

According to an investigation by broadcaster WJLA that was cited in the lawsuit, the company's dog food tested positive for pentobarbital, a

short-acting barbituate that is a sedative and hypnotic agent, which in high doses causes death by respiratory arrest and is frequently used to euthanize animals.

The investigation by the TV station, which aired on Feb. 8, had two different labs test 62 samples of dog food by various brands, but only Smucker's products stood out as testing positive for pentobarbital in 60 percent of the cases.

Following the report, Smucker's issued a press release on Feb. 23, confirming a "single source of extremely low levels of pentobarbital in specific shipments" of its Gravy Train, Kibbles 'n Bits, Ol' Roy and Skippy brands.

The company said it completed a voluntary withdrawal of the products and advised retailers to remove affected shipments from their supply. Smucker's said it was also working with the U.S. Food and Drug Administration to remove the products under an official recall process.

"While veterinary experts have confirmed that extremely low levels of pentobarbital do not pose a threat to pet safety, this substance simply should not have been in our products," Smucker's said in a statement.

The company said that it could not speak to the specifics of the lawsuit but added that its focus was on the "enhanced quality assurance protocols" it says it has enacted in response.

Schirripa in her complaint said the company had violated the U.S. Food, Drug and Cosmetic Act, which does not permit so-called "adulterated food" that contains any poisonous or deleterious substance, as well as New York's Deceptive Acts and Practices & False Advertising laws.

She said Smucker's website made allegedly misleading statements about meeting federal regulatory food safety standards, causing consumers to rely on the company's advertising and labeling in making their purchasing

decisions.

Schirripa said Smucker's breached its duty to the class of consumers, failed to use reasonable care and unjustly enriched itself by not disclosing the drug.

She called on the court to issue an order enjoining Smucker's from selling the contaminated dog food until the pentobarbital is removed and asked for compensatory, as well as punitive damages.

The case is Rosemarie Schirripa et al v. Big Heart Pet Brands, Inc, U.S. District Court for the Southern District of New York, No. 18-cv-02345.

For plaintiff: Paul Maslo and Salvatore Badala of Napoli Shkolnik, Anne Andrews of Andrews & Thornton

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Language: EN

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Keywords: health; products; fedlit (OCC:OLRTXT)Keywords:

Word Count: 590

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