

Coke, Pepsi Diet Drinks Can Add Weight, False Ad Suits Say

By [Bonnie Eslinger](#)

Law360, San Jose (October 17, 2017, 5:06 PM EDT) -- The Coca-Cola Co., Pepsi-Cola Co. and Dr Pepper Snapple Group Inc. mislead customers with “diet” drinks containing aspartame because the artificial sweetener can lead to weight gain, according to putative class actions filed in New York federal court Monday.

The three lawsuits allege consumers are duped into believing that because the companies’ “diet” beverages have no calories, the products will assist in weight loss or management.

“Scientific evidence demonstrates this is wrong because non-nutritive sweeteners like aspartame interfere with the body’s ability to properly metabolize calories, leading to weight gain and increased risk of metabolic disease, diabetes and cardiovascular disease,” each complaint says.

Accordingly, marketing the products as “diet” is false, misleading and unlawful, the suits claim.

The three lawsuits have different plaintiffs but share similar language and are brought by the same trio of law firms, led by Manhattan-based Derek Smith Law Group PLLC. They each allege violations of New York laws barring false advertising and deceptive business practices, as well as negligent and intentional misrepresentation and breach of express and implied warranty.

Each of the 18-page complaints claims that aspartame is likely to cause weight gain.

The suits note a dozen studies and review articles in support of that claim, including a study released in August by Yale University researcher Dana Small that purportedly shows that the low-calorie drinks that taste sweet due to an artificial sweetener throw off the body’s metabolism.

“In sum, calories consumed in a mismatched condition, such as when a person drinks a Diet Coke while eating food, are not efficiently metabolized at the time of ingestion, and may

therefore be processed later, or stored, which can drive weight gain and further interfere with metabolism,” the suit against Coca-Cola says. “In addition, some research has shown that sweetness — whether from sugar or noncaloric, artificial sources, increases appetite, which can lead to weight gain.”

The suit against Coca-Cola is brought by Evan Geffner of New Jersey and Ivan Babsin of New York. The suit against Pepsi is brought by Elizabeth Manuel and Vivien Grossman of New York. The suit against Dr Pepper Snapple Group and Dr Pepper/Seven Up Inc. is brought by Yasmin Excevarria and Joette Phoenix of New York. Each complaint says the plaintiffs “struggled with obesity for many years,” purchased the diet soda at issue and consumed it based in large part on the respective company’s advertising the product as “diet,” believing it would “contribute to healthy weight management” and, due to its lack of calories, wouldn’t cause weight gain.

The suits ask the court to certify proposed classes of people in New York who on or after Oct. 16, 2011, bought the diet beverages produced by the respective companies, and they seek to recover restitution and damages for the class. The suits also ask the court to prevent the companies from marketing their drinks as “diet” as long as they are sweetened with a “non-nutritive artificial sweetener” and seek an order requiring the soda makers to conduct a “corrective advertising campaign.”

The litigation against Pepsi differs in that Diet Pepsi is sweetened with aspartame as well as acesulfame-potassium and sucralose, according to the complaint.

Representatives for the soda makers did not immediately respond to requests for comment Tuesday.

An attorney for the plaintiffs, Derek Smith of the Derek Smith Law Group PLLC, called the diet drinks “one of the biggest consumer scams in the last 50 years.”

“I mean here we have Diet Coke, Diet Pepsi, Diet Dr Pepper holding themselves out to be diet drinks ... but study after study after study may show that people don’t lose weight and in fact many people may even gain weight by drinking diet soda,” Smith said.

Plaintiffs in the cases are represented by Derek T. Smith and Abraham Z. Melamed of the Derek Smith Law Group PLLC, Jack Fitzgerald, Trevor M. Flynn and Melanie Persinger

of The Law Office of Jack Fitzgerald PC, and Andrew Sacks and John Weston of Sacks Weston Diamond LLC.

Counsel information for the soda companies wasn't immediately available.

The cases are Excevarria et al. v. Dr Pepper Snapple Group Inc. et al., case number 1:17-cv-07957, Geffner et al. v. The Coca-Cola Co., case number 17-cv-07952, and Manuel et al. v. Pepsi-Cola Co., case number 17-cv-07955, in the U.S. District Court for the Southern District of New York.

<https://www.law360.com/articles/975083/coke-pepsi-diet-drinks-can-add-weight-false-ad-suits-say>