GIBSON DUNN

District Judge Denies Class Certification in Three Putative Class Actions Against Gibson Dunn Client Energizer and Co-Defendant Walmart

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Northern District of California Judge P. Casey Pitts denied class certification in three consolidated putative class actions against our client Energizer and co-defendant Walmart. The plaintiffs alleged that beginning in September 2019, Energizer and Walmart conspired to stop online retailers from undercutting Walmart on battery prices.

The motions came down to a single methodological choice by the plaintiffs' experts and the Gibson Dunn team made that choice the centerpiece of our opposition. To show that the alleged conspiracy raised prices for everyone in the class, both experts ran a difference-in-differences regression, which compares how battery prices moved after September 2019 against how prices for a supposedly unaffected product moved over the same period and treats the gap as the overcharge. Both experts chose Energizer headlamps and lighting products as the control product. A difference-in-differences regression only works if lighting products are a fair benchmark, meaning battery prices would have moved in parallel with them had the alleged conspiracy never occurred.

Working with Dr. Catherine Tucker, our team showed that lighting products were never a fair benchmark: the two product lines had not moved together even before the alleged agreement and they are driven by entirely different costs. The Court agreed, holding that the failure of the "parallel trends assumption" that rests at the foundation of a difference-in-differences model "fatally undermines the reliability of the overcharge models at issue." The Court relied heavily on the reports and testimony of Dr. Tucker and on the plaintiffs' experts' own charts, which clearly showed that battery and lighting products did not move in parallel. The Court declined to consider either expert's backup before-during regression model, which plaintiffs had originally presented as a so-called "robustness check" and raised as an independent theory only on reply. The denials are without prejudice to renewed motions on a different evidentiary record.

Partner Ted Boutrous argued the motion for Energizer. The Energizer team was led by partner Chris Dusseault and included partners Sam Liversidge and Joe Edmonds and associates Sarah Kushner, Courtney Spears, John Zens, Brent Gutkowski, Cameron Silbar, Albert Tian, and Jake Hoskins.

Related People

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Related Capabilities

Antitrust and Competition

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