

Fighting Website Suit, Vita-Mix Points To Similar Dismissal

By **Cara Salvatore**

Law360, New York (October 19, 2016, 5:03 PM EDT) -- Counsel for blender maker Vita-Mix told a New Jersey federal judge on Wednesday that the recent dismissal of a similar suit by a judge citing the U.S. Supreme Court's Spokeo ruling casts a shadow on the class action against the company over its website terms of use.

Vita-Mix attorney David Kott of McCarter & English wrote to U.S. District Judge Michael Shipp, who's overseeing the Vita-Mix suit under the Truth In Consumer Contract, Warranty and Notice Act, to let him know of a colleague's recent decision.

On Oct. 12, that colleague, fellow New Jersey federal judge Peter Sheridan, dismissed a TCCWNA suit against Croscill Home LLC, finding that the grounds for the Croscill suit came up short, including its viability under Spokeo, a precedent that dealt with the level of injury plaintiffs must have for standing.

Kott argued that the same logic should apply to his client's suit, given the similarities in the two cases' claims and jurisdictions.

"The plaintiff's attorney in Russell submitted a supplemental brief on these two issues, arguing that the plaintiff had standing under Spokeo, and that the plaintiff qualified as an 'aggrieved consumer' under TCCWNA ... Judge Sheridan specifically rejected plaintiff's argument in Russell and held: 1. The plaintiff did not have standing under Spokeo; and 2. The plaintiff was not an 'aggrieved consumer' under TCCWNA," Kott said.

In the Vita-Mix suit, plaintiff Lucia Candelario says the company includes unlawful terms of service on its website.

The service contract "purports to impose illegal exculpatory and other provisions ... and purports to nullify certain legal duties and responsibilities defendant owes its consumers," Candelario says.

Vita-Mix, based in Ohio, tells its website users that they're forgoing "virtually any claim under tort or negligence" that could arise out of their site use, the complaint says, and also tells users that they indemnify Vita-Mix in connection with users' account activity on the internet and that Vita-Mix needn't protect customers from hackers.

"All of these provisions violate the TCCWNA," Candelario says.

In particular, the New Jersey Consumer Fraud Act requires website proprietors to notify and protect consumers with regard to personal information breaches, Candelario says.

Vita-Mix moved to dismiss the suit on May 31. Kott noted in Wednesday's letter that the Croscill suit was brought by the same lawyer as the Vita-Mix suit.

Candelario is represented by Gerald Clark of Clark Law Firm PC.

Vita-Mix is represented by David Kott of McCarter & English LLP.

The suit is Candelario v. Vita-Mix Corp., case number 3:16-cv-02260, in the U.S. District Court for the District of New Jersey.

--Editing by Rebecca Flanagan.