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Horizon Milk Suits Over 'Brain Health' Claims Joined In Fla.

By **Erin Fuchs**

Law360, New York (February 10, 2012, 1:06 PM ET) -- A federal panel on Thursday consolidated in Florida five suits claiming the manufacturer and distributor of Horizon Organic Milk fortified with omega-3 fatty acids falsely marketed the beverage as promoting brain health in adults and children.

The five proposed class actions — two of which are in Florida — share factual questions over allegedly misleading brain health claims that Dean Foods Co. and WhiteWave Foods Co. made about Horizon milk with DHA omega-3, the U.S. Judicial Panel on Multidistrict Litigation ruled.

While plaintiffs in two of the suits wanted the MDL in the Northern District of Illinois, the JPML found consolidation in the Sunshine State's Southern District would be most convenient for consumers and for Dean Foods and WhiteWave.

The Southern District of Florida, moreover, is presiding over fewer MDL dockets than other proposed districts, the panel found, saying that centralizing the cases in that district would promote efficiency in the litigation.

Dean Foods and WhiteWave promote DHA omega-3-fortified Horizon on cartons and in print, broadcast and online ads as benefitting brain health despite a lack of reliable scientific support, according one of the five suits, a proposed class action filed in California federal court in September.

El Centro, Calif., resident Evereth Barrera relied on brain health claims on a Horizon DHA omega-3 label to buy three half-gallon cartons of the product during a two-month period, paying between \$4.75 and \$6 for each carton.

Since they began selling the milk products in 2007, manufacturer Dean Foods and distributor WhiteWave have consistently conveyed the message to consumers that the product line fortified with highly processed, fermented algae — which includes whole, reduced fat, fat free and chocolate milk varieties — supports brain health, according to the California complaint.

But Barrera alleges no studies support the claim that DHA algal oil supports brain health — especially in what he says is the relatively small amount found in a serving of Horizon milk — and that he and proposed class members have been tricked into paying a significant price premium for the products.

The California complaint asserts violations of the Consumer Legal Remedies Act and unfair

competition law, as well as breach of express warranty stemming from allegedly misleading ads and false labels.

A lawyer for Dean Foods and WhiteWave said Friday that they would aggressively defend themselves regardless of the venue where the suits are litigated.

"We believe that we'll be able to establish that these cases don't have any merit," defense lawyer Angela C. Agrusa said.

A lawyer for the plaintiffs did not immediately respond to a request for comment Friday.

The plaintiffs are represented by various attorneys, including Elaine Ryan, Patricia Syverson, Lindsey Gomez and Todd Carpenter of Bonnett Fairbourn Friedman & Balint PC as well as Stewart Weltman of Futterman Howard Ashley & Weltman PC.

Dean Foods and WhiteWave are represented by Angela C. Agrusa of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP.

The case is In Re: Horizon Organic Milk Plus DHA Omega-3 Marketing and Sales Practices Litigation, MDL No. 2324, before the U.S. Judicial Panel on Multidistrict Litigation.

--Additional reporting by Allison Grande. Editing by Eydie Cubarrubia.

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