

## 'Neuro' Energy-Drink Maker Settles Calif. False Ad Row

By **Brandon Lowrey**

*Law360, Los Angeles (April 14, 2016, 8:22 PM ET)* -- Energy drink producer Neurobrands LLC has agreed to pay \$500,000 to settle a false advertising lawsuit brought by the Los Angeles County District Attorney's Office over health-enhancing claims made on the drinks' labels, the office said Thursday.

Neurobrands — which markets Neuro drinks that purportedly promote healthy aging, relieve muscle cramps, boost immunity and improve sleep quality — will also have to change its labels and marketing, according to the settlement; yet under the terms of the deal, it will not have to admit liability.

However, the drinks cannot continue being marketed as dietary supplements under FDA rules except for its Neuro Sleep product. The rest, Neuro Bliss, Neuro Sonic and Neuro Daily, are to be sold as conventional foods, the settlement document says.

Neurobrands must limit the amount of caffeine in a serving of Neuro Sonic to a maximum of 0.02 percent, or a level that is generally recognized as safe by the FDA, according to the document.

The company must stop claiming that its products support memory; "provide fuel for the brain"; provide mental energy, sustained focus, stronger focus and creativity; and normalize sleep patterns, according to the deal. Neurobrands can, however, claim that Neuro Bliss reduces stress, so long as it marks the claim with an asterisk and clarifies nearby that it "may reduce stress temporarily."

In addition, the company must conduct a human study for each of the four drinks, and it can use the results in developing marketing claims for the beverages, the document says.

"Defendant may elect in its sole discretion to discontinue sale of a product rather than to design and implement such a human study," the agreement says.

On Thursday, Neurobrands founder Diana Jenkins told Law360 in a written statement that "the grocery store has become a litigation hotbed" and that this suit centered over disagreements over how the labels could be interpreted.

"In our case, we spent almost three years sharing detailed research findings about our products with city lawyers — everything from clinical trials conducted on Neuro Drinks to peer-reviewed scientific studies qualifying the efficacy of our ingredients," she said in the statement.

"After exhaustive discussions and ongoing disagreement over the science, we ultimately decided

to settle the case rather than engage in costly, protracted litigation," Jenkins added. "We did not and still do not believe the allegations leveled against us are true. Indeed, both parties have stated publicly the decision to settle the case should in no way be construed as an admission of wrongdoing by Neuro Brands."

She added that only the labels — not the ingredients — of the drinks will be changing.

Neurobrands isn't the first energy drink maker to get into hot water over its labels.

In September, Coca-Cola settled a suit in New York federal court over Vitaminwater. In that case, it had to clarify that the beverage contains sweeteners, and was forbidden from using the phrases "vitamins + water = all you need" and "made for the center for responsible hydration."

The government is represented by Los Angeles County District Attorney Jackie Lacey, Deputy District Attorney Kathleen Tuttle, Santa Monica City Attorney Marsha Jones Moutrie, and Deputy City Attorneys Adam Radinsky and Eda U. Suh.

Neurobrands is represented by Angela Agrusa of Liner LLP.

The case is People of the State of California v. Neurobrands LLC, case number SC125676, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Philip Shea.

---

All Content © 2003-2016, Portfolio Media, Inc.