Lawyer Up: Class-Action Suits Are Thriving in New York

If a new consumer protection bill passes in New York State, false advertising and mislabeling cases could get another boost, experts say.

By Britta Lokting
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On a hot summer day, a woman walked into a gas station in the Bronx and spent $1.99 on a bag of TGI Fridays Sour Cream & Onion Potato Skins chips. She tore into the snack, looking forward to the "potato skins," as they were marketed on the packaging in 2018, according to court documents.

But they were just regular chips, she discovered.

The next spring, she filed a class-action complaint through her attorneys at Lee Litigation Group. It argued that consumers were being deceived into thinking the chips would "deliver the taste of genuine potato skins, as popularized by TGIF through its restaurants' potato skin appetizers," according to the lawsuit.

Judge Katherine Polk Failla didn't buy it. In her opinion and order, she wrote that "no reasonable consumer viewing the picture on the front of the snack chips packaging could believe that the snack chips were thick slices of potato skins," like those "served hot in a restaurant."

The case was dismissed.

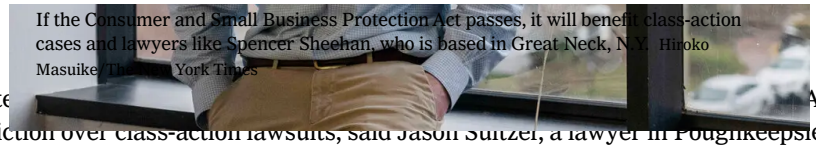
Consumer class-action lawsuits can range from the absurd to the righteous. And New York City is a hot spot for them — for lawyers, plaintiffs and the companies in between. Since 2015, over 700 complaints have been filed in federal court in New York against major companies like Pfizer and Iberia Foods for deceptive and false advertising practices, according to a 2021 New York Civil Justice Institute report. The group found that consumer class-action cases with origins in New York State tripled between 2017 and 2020.

For years, Lee Litigation Group led this exponential growth. Founded in 2012 by C.K. Lee, a former investment banker, the Chelsea firm has been successful at filing suits that result in settlements, though judges also dismiss Mr. Lee's cases. Between 2015 and 2018, the firm was responsible for one-fifth of all consumer class actions filed in the state, according to the New York Civil Justice Institute report.

Now other class-action lawyers are giving Mr. Lee some competition. Spencer Sheehan, for example, a consumer class-action lawyer in Great Neck, N.Y., specializes in the mislabeling of food products as "natural." He emerged in 2019 to "claim the throne as king of New York's class actions," according to the New York Civil Justice Institute report.

As other lawyers cross into class-action territory, there is some concern that the multiplying suits will clog the court system, and that lawyers are only intent on securing big settlements. But others think that large corporations could take advantage of consumers if left unchecked. In 2021, Democrats in the State Senate introduced a bill, the Consumer and Small Business Protection Act, with the intent of securing more protections for consumers by enacting a statewide standard to ban unfair and deceptive business practices.

If the bill passes, it will benefit class-action cases and lawyers like Mr. Lee and Mr. Sheehan. "It's easy to focus on these cases that sound silly," Mr. Sheehan said of his work on behalf of consumers. "But it's always more nuanced."



If the Consumer and Small Business Protection Act passes, it will benefit class-action cases and lawyers like Spencer Sheehan, who is based in Great Neck, N.Y. Hiroko Masuike/The New York Times

The debate over what constitute[illegible]Action Fairness Act gave federal courts expanded jurisdiction over class-action lawsuits, said Jason Sultzer, a lawyer in Poughkeepsie. Mr. Sultzer has filed dozens of federal cases, including a complaint against Babo Botanicals for labeling its products as "natural" and one against Beyond Meat for exaggerating the amount of protein on its packaging.

Deborah Hensler, a professor at Stanford Law School, said that, although a lawyer can be sanctioned for bringing a suit that has no factual basis, business lobbyists often use the term "frivolous lawsuit" as part of their defense strategy. "It's a way of characterizing a litigation," she said, adding that big companies are not the innocents they sometimes claim to be in court. If suits are being settled, she explained, then that suggests the defendants think they have merit: "Otherwise, why would they be so quick to settle?"

But consumer class-action work has its detractors.

"These lawsuits are entirely lawyer-driven," said Tom Stebbins, the executive director of the Lawsuit Reform Alliance of New York. "They're not about consumers. They're not about plaintiffs. They're about forcing quick settlements that go right into the pockets of the lawyers."

When Vivian Wei worked as a paralegal at Lee Litigation Group in 2018 and 2019, she questioned whether the firm's tactics were legitimate. Assigned to trawl websites for possible lawsuits, she searched for public services or accommodations sites that were inaccessible to blind or deaf people. The goal was to work with plaintiffs to bring litigation against companies whose websites didn't provide audio and closed captioning or were not compatible with screen readers, a software that converts text to speech or Braille; the lawyers would argue that the sites violated the Americans With Disabilities Act.

"It just seems like it would be an illegitimate lawsuit if your firm is the person looking for the website," Ms. Wei said. Mr. Lee did not respond to messages seeking comment.

(In 2018, a civil rights class-action suit against The New York Times was settled over a "lack of closed captioning" in a news video, according to the complaint. The plaintiff was represented by Lee Litigation Group.)

But looking for plaintiffs is legitimate, Ms. Hensler said. In the United States, she explained, lawyers are allowed to advertise their services on billboards and television. "'Had a car accident? Call 800-GET-CASH,'" she said, referring to the kinds of ads some lawyers run. "This is legal."

These tactics, whatever one thinks of them, fall under the rubric of consumer protection, an idea that has broad support.

"The state must not allow bad actors to peddle predatory products and services as long as they are clever enough not to get caught in a lie," declares the Consumer and Small Business Protection Act, which is currently sponsored by State Senator Leroy Comrie, a Democrat. It proposes increasing statutory damages (the minimum amount to be awarded to plaintiffs) from $50 to $1,000, allowing for even higher fees for "particularly egregious behavior."

Mr. Stebbins of the Lawsuit Reform Alliance opposes the bill. These "nuisance cases," he said, referring to ones involving false advertising and mislabeling, could develop into "catastrophic cases that could threaten entire enterprises."

False advertising is "not going to cause injury or death, but it is nonetheless a deceptive practice," said Mr. Sheehan, who supports the bill. "What other remedy exists for consumers to say to a company like Godiva, 'You shouldn't write on this "Belgium 1926" without telling consumers that these chocolates are not made in Belgium'?"

For Mr. Sultzer, who began his career defending the types of corporations he now sues, class-action work is not just important but critical. "Without it," he said, "it would really just give a company unfettered right to do what they want."