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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

STEFANIE MLEJNECKY; GREG
CLAYTOR

Plaintiffs,

v.

OLYMPUS IMAGING AMERICA INC.,

Defendant.

CASE NO. 2:10-cv-02630-JAM-KJN

**ORDER GRANTING MOTION OF
DEFENDANT OLYMPUS IMAGING
AMERICA INC. TO DISMISS SECOND
AMENDED COMPLAINT**

1 On August 3, 2011, the Motion of Defendant Olympus Imaging America Inc.
2 (“Olympus”) to Dismiss the Second Amended Complaint (“SAC”) filed by Plaintiffs Stefanie
3 Mlejnecky and Greg Claytor (“Plaintiffs”) came on for hearing in the above-captioned case.
4 Having considered the memoranda filed in support for and in opposition to the Motion, as well as
5 the arguments of counsel at the hearing, the Court hereby orders as follows:

6 I. Plaintiffs’ Standing to Assert Claims Relating to the Olympus Stylus 850 SW

7 Olympus moves to dismiss Plaintiffs’ claims to the extent they relate to the Olympus
8 Stylus 850 SW, on the grounds that Plaintiffs never purchased that particular model and therefore
9 do not have standing to assert such claims. The Court agrees. All claims relating to the Olympus
10 Stylus 850 SW are DISMISSED without leave to amend.

11 II. Plaintiffs’ Standing to Pursue Claims Based on Advertisements They Never Relied On

12 Olympus argues that Plaintiffs cannot pursue claims based on advertisements they never
13 saw or relied on. The Court agrees that Plaintiffs do not have standing to pursue such claims, and
14 hereby DISMISSES and STRIKES the following allegations ^{from that are in bold} from the SAC that are shown in
15 bold:

16
17 ~~• ¶ 32 (Page 9, lines 5-8): “. . . Prior to their purchases of Stylus SW cameras, Plaintiff Mlejnecky, Plaintiff Claytor and Class Members were exposed to Olympus’s extensive and long-term advertising campaign for the Stylus SW cameras, including representations in paragraphs 30 and 31 above.”~~

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19 • ¶ 45 (Page 16, line 25): “Olympus has not recalled the Stylus SW cameras to
20 repair the defects, has not offered to its customers a suitable repair or replacement
21 free of charge, and has not offered to reimburse Stylus SW camera owners who
22 incurred costs relating to repairs. Nor has Olympus not removed the deceptive
23 marketing materials from its website **and other places** which state that the Stylus
24 SW cameras function in up to 33 feet (for the Stylus 1030 SW) or 10 feet (for the
25 Stylus 850 SW) of water and that they withstand drops of 6.6 feet (for the Stylus
26 1030 SW) or 5 feet (for the Stylus 850 SW).”

27 • ¶ 56 (Page 21, lines 14-16): “. . . In addition, Olympus’s website **and company**
28 **materials** state that the Stylus 1030 SW can withstand a 6.6 foot drop and can
function up to 33 feet under water. . .”

• ¶ 57 (Page 21, lines 22, 26): “Olympus also violated Civil Code 1770(a) by
excluding from its warranty the very characteristics and benefits it represented the
Stylus SW cameras had in advertisements, **marketing materials**, on its website,
on the boxes in which the cameras are sold and on the cameras themselves.
Specifically, Olympus’s warranty excludes defects or damages from “impact” and
“liquids” even though 1) the boxes in which the cameras are sold and the cameras

1 themselves contain the representation “SHOCK + WATERPROOF;” and 2)
2 Olympus’s **marketing materials** and website explicitly state that the Stylus 1030
3 SW can withstand a 6.6 foot drop and can function up to 33 feet under water and
4 that the Stylus 850 SW can withstand a 5 foot drop and can function up to 10 feet
5 under water.”

- 6 • ¶ 70 (Page 24, line 20): “In advertisements, **marketing materials**, on its website,
7 on the box in which each Stylus SW camera was sold and on the cameras
8 themselves, Defendant made material misrepresentations of the Stylus SW
9 cameras’ characteristics and benefits by stating and advertising that they have
10 characteristics and benefits that they do not have.”
- 11 • ¶ 72 (Page 25, line 3): “Defendant engaged in “unlawful” business practices by
12 knowingly and intentionally excluding from its warranty the very characteristics
13 and benefits it represented the Stylus SW cameras had in advertisements,
14 **marketing materials**, on its website, on the box in which each Stylus SW camera
15 was sold and on the cameras themselves.”
- 16 • ¶ 83 (Page 26, line 10): “In advertisements, **marketing materials**, on its website,
17 on the boxes in which the Stylus SW cameras were sold and on the cameras
18 themselves, Defendant made material misrepresentations of the Stylus SW
19 cameras’ characteristics and benefits by stating and advertising that they have
20 characteristics and benefits that they do not have.”
- 21 • ¶ 85 (Page 26, line 19): “Defendant engaged in “unfair” business practices by
22 knowingly and intentionally excluding from its warranty the very characteristics
23 and benefits it represented the Stylus SW cameras had in advertisements,
24 **marketing materials**, on its website, on the boxes in which the cameras were sold
25 and on the cameras themselves.”
- 26 • ¶ 96 (Page 28, line 7): “In advertisements, **marketing materials**, on its website,
27 on the boxes in which the Stylus SW cameras were sold and on the cameras
28 themselves, Defendant made material misrepresentations of the Stylus SW
cameras’ characteristics and benefits by stating and advertising that they have
characteristics and benefits that they do not have.
- ¶ 98 (Page 28, line 19): “Defendant engaged in “fraudulent” business practices by
knowingly and intentionally excluding from its warranty the very characteristics
and benefits it represented the Stylus SW cameras had in advertisements,
marketing materials, on its website, on the boxes in which the cameras were sold
and on the cameras themselves.”
- ¶ 112 (Page 30, line 13): “Defendant engaged in “unfair, deceptive, untrue or
misleading advertising” when it knowingly and intentionally excluded from its
warranty the very characteristics and benefits it represented the Stylus SW cameras
had in advertisements, **marketing materials**, on its website, on the boxes in which
the cameras were sold and on the cameras themselves.

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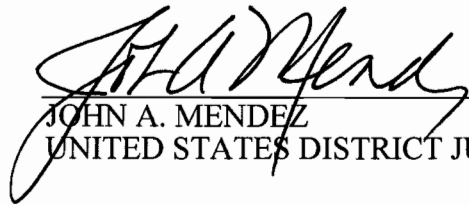
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Olympus shall file its answer to the Second Amended Complaint, which shall be deemed amended in accordance with the above ruling, within twenty (20) days from the date of this Order.

Dated:

August 23, 2011



JOHN A. MENDEZ
UNITED STATES DISTRICT JUDGE