

Rival Says Allergan Muscle Toner Not As Strong As Claimed

By **Mike Curley**

Law360 (February 20, 2020, 6:28 PM EST) -- The makers of the Emsculpt electric muscle toning device sued Allergan Inc. in Delaware federal court on Thursday, saying Allergan's claims that its competing device is 50% stronger than Emsculpt don't match up with its real performance.

BTL Industries Inc. told the court that the CoolTone device, which Allergan began selling late last year, is advertised as having 50% higher magnetic density than its only competitor, Emsculpt, but real world use shows that it's only between 6% and 37% stronger, depending on which muscles it's used on.

BTL said in the complaint that it believes Allergan may have based its numbers on the use of its device without using the covers provided for its applicators, but noted that using the device without the covers could burn patients. Using the covers as one would in real-world application results in substantially less magnetic density, BTL said.

BTL added that its device — which requires no such covers — uses different kinds of applicators for different muscles, while CoolTone only has one type of applicator. BTL says it believes Allergan based its comparison on larger applicators that deliver lower magnetic density than smaller ones.

Even if Allergan's claims about CoolTone's magnetic density were true, the statements would still be misleading, BTL said, as they imply that magnetic density alone is a measure of efficiency. Instead, the device's rate of "pulses" in electricity in the device, which cause the muscles to expand and contract, is a more accurate measure of the product's effectiveness, according to the complaint.

In addition, BTL said the Emsculpt is able to maintain its level of magnetic pulse intensity throughout a 20- to 30-minute session, while CoolTone cannot, meaning that for some muscles, particularly the legs, Emsculpt on average produces a higher magnetic density than CoolTone.

BTL alleged in the complaint that testing has shown that Emsculpt induces 56% more average electrical current into the targeted muscles than CoolTone when averaged over use on the abdomen, buttocks and legs.

Allergan's allegedly false statements have caused BTL to lose business, as both physicians and patients have been swayed into switching products, according to the complaint, forcing BTL to lower its prices and offer rebates and other incentives to stay competitive.

In the suit, BTL is seeking an injunction stopping Allergan from advertising its devices as 50% stronger than BTL's, saying that BTL's reputation and sales are suffering because of Allergan's higher profile and name recognition.

The company is also seeking unspecified damages, including any profits Allergan has made as a result of its allegedly false advertising, and an order directing Allergan to produce an advertising campaign informing the public that its product was falsely advertised.

In a statement Thursday, Allergan called the claims "baseless" and said it would defend the case vigorously.

An attorney for BTL declined to comment.

BTL is represented by Karen E. Keller of Shaw Keller LLP and J.C. Rozendaal, Michael E. Joffre, Monica R. Talley and Chandrika Vira of Sterne Kessler Goldstein & Fox PLLC.

Counsel information for Allergan was not available.

The case is BTL Industries Inc. v. Allergan PLC, case number 1:20-cv-00239, in the U.S. District Court for the District of Delaware.

--Editing by Michael Watanabe.