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In Time for Bikini Season, Kardashians Face Lawsuit Over Endorsement of Diet Aids

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Kim Kardashian, the reality star, is accustomed to the public eye, but now she faces a lawsuit that may not bring her good publicity at all. Along with her sisters Khloe and Kourtney, Kim has been named as a defendant earlier this year in a class action over QuickTrim, a dietary supplement that they have been promoting.

The complaint, filed in the U.S. District Court for the Southern District of New York, accuses the Kardashians (along with QuickTrim's manufacturer, Windmill Health Products; the retailer GNC; and others in the sales and marketing chain) of false and deceptive marketing of the diet aid. The plaintiffs, hailing from several states, brought claims under their respective states' consumer protection laws alleging false and deceptive advertising, as well as other claims under federal and state common law. The corporate defendants are represented by John Robert Vales of Riker Danzig Scherer Hyland Perretti of Morristown, N.J.

The basis for the suit appears to be the [Food and Drug Administration's findings on the use of caffeine in dietary supplements](#). According to the lawsuit, the FDA has determined that caffeine is not a safe or effective treatment for weight control. Since QuickTrim's main ingredient, according to the plaintiffs' complaint, is caffeine, QuickTrim is not a safe or effective treatment — and thus, QuickTrim consumers were sold an unsafe, ineffective treatment.

Where Kim & Ko fit in is that they are the product's face, with their images plastered across QuickTrim's labeling, packaging, and advertising. They have also actively promoted the QuickTrim product line on their Twitter and Facebook accounts and personal web pages. Their promotional activities include Twitter feeds like: "Hi dolls, have you seen the QuickTrim buy one get one free sale at GNC? Just in time for bikini season!" Or: "Aw thanks doll! I try 2 work out every morning in my Shapeups and I use QuickTrim. It's important to stay in shape." Plaintiffs allege that they were deceived into buying QuickTrim products — products that are "worthless" and of "no value" — by the sisters' promotional activities.

The plaintiffs' complaint is already in its third iteration. The latest version, filed July 2, 2012, is a clear response to the Kardashians' Motion to Dismiss filed in June. The Kardashians moved to dismiss an earlier version of the plaintiffs' complaint, arguing that there are no reported cases supporting a private right of action for spokesperson liability. They further argued that the Kardashians were not alleged to be sellers or merchants of QuickTrim, which is required to successfully assert breach of warranty and contract claims. Finally, they argued the plaintiffs' state law claims of deceptive advertising failed because there are no allegations or proof (1) that the Kardashians were not bona fide users of QuickTrim products at the time they made public statements, (2) that the public statements did not reflect the Kardashians' honest opinions, findings, beliefs or experiences, and (3) that the Kardashians knew, based upon their personal experiences, that the advertising claims of the manufacturer, which the sisters repeated, were false.

The July 2 amended complaint attempts to overcome these deficiencies by peppering the filing with allegations (1) that "[t]he Kardashian sisters deal in goods of this kind — weight loss and fitness products — and hold themselves out as having knowledge or skill peculiar to the weight loss field" and (2) that "the Kardashian sisters are not bona fide users of QuickTrim, and their public statements endorsing the products do not reflect their honest opinions, findings, beliefs and experiences."



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It will be interesting to see what the court does with the case and whether it will allow it to survive another likely round of dismissal requests. It is clear from the [Federal Trade Commission's 2009 revised guidelines on celebrity endorsements](#) that a celebrity product sponsor may get into hot water for repeating unsubstantiated health claims about a product. But a possible enforcement action by the FTC does not translate into a private right of action for consumers. Celebrity endorsers should have some degree of immunity from these types of suits. Otherwise, they risk being beleaguered by consumer publicity-seekers. The more appropriate course of sanction for disgruntled consumers is the filing of an FTC complaint, which the FTC can review and determine whether there is a basis for action.

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