



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Apparel Co. Fights \$8.3M Award In Activewear Contract Suit

By **Braden Campbell**

Law360, New York (March 7, 2016, 5:25 PM ET) -- Clothing maker Kellwood Co. on Monday appealed to the Second Circuit a New York federal court decision ordering it to pay \$8.3 million to a business partner after a jury found it wrongfully backed out of an agreement to manufacture and market his line of athletic apparel and launched its own.

U.S. Magistrate Judge Sarah Netburn on Friday confirmed a February jury verdict awarding Daryl K. Washington more than \$4.3 million in lost profits after Kellwood said it would make and distribute to retailers a line of Under Armour-like compression apparel under his Sunday Players Inc. moniker but instead entered the segment itself, robbing Washington of subsequent revenue, according to court documents. Judge Netburn also ordered Kellwood to pay Washington nearly \$4 million in interest.

Kellwood also has until Friday to file a motion for a new trial, according to a post-verdict scheduling order issued last month. An attorney for Washington said Tuesday he could better respond once that document is filed, saying he is unaware of "meritorious grounds for appeal." Kellwood did not say Monday on what grounds it will base its argument at the next level.

Washington alleged in his 2009 second amended complaint that he and Kellwood agreed in November 2003 on a contract by which Kellwood would make and market a line of compression clothing — a type of tight-fitting athletic apparel that ostensibly improves performance by compressing muscles — and pay Washington 5 percent of net sales. Washington claims he and Kellwood reached this agreement following more than a year of discussions in which Kellwood claimed MTV had expressed interest in promoting the brand and that Target and Foot Locker would sell it, with initial orders set to "easily" exceed \$10 million.

According to Washington, Kellwood further said it expected the joint venture would yield hundreds of millions of dollars in annual sales and that it did not at that time make a line of clothing in the growing segment. But rather than fulfill its end of the bargain, Kellwood did not sell a single item under the Sunday Players brand and instead launched a competing clothing line, ultimately terminating the agreement in April 2005, Washington said. Washington filed his initial complaint that November.

A jury found in Washington's favor on Feb. 11, calculating Kellwood's contract breach cost Washington \$250,000 in profits from November 2003 through March 2005, another \$4.1 million in profits from March 2005 through January 2007 and another \$500,000 in lost market value, as well as interest. The jury found Washington could elect to take either the \$4.1 million or \$500,000 figure, but not both. He chose the larger figure, according to Judge Netburn's order.

The jury's reasoning and math were not clear Monday as their verdict was not available.

In a subsequent motion for judgment on the verdict, Washington argued he should be paid the award plus compound interest for a total of \$11.3 million, but Judge Netburn ruled on Friday that New York law dictates he be paid simple interest.

Attorneys for Kellwood did not respond to a request for comment Monday.

Washington is represented by Aubrey "Nick" Pittman of The Pittman Law Firm PC, Joseph Russello of Robbins Geller Rudman & Dowd LLP, and Douglas Cowey and Lauren Fornarotto of McKool Smith PC.

Kellwood is represented by Mark S. Olinsky, Kenneth Schachter and James M. Hirschhorn of Sills Cummis & Gross PC.

The case is Daryl K. Washington et al. v. Kellwood Co., case number 1:05-cv-10034, in the U.S. District Court for the Southern District of New York.

--Editing by Aaron Pelc.

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