

MASSACHUSETTS SUPREME JUDICIAL COURT

Aspinall v. Philip Morris Companies, Inc.

442 Mass. 381 (2004) · Decided August 13, 2004

SUMMARY

The Massachusetts Supreme Judicial Court affirmed certification of a consumer class action alleging that Philip Morris deceptively marketed Marlboro Lights as delivering lowered tar and nicotine under Massachusetts General Laws chapter 93A. The court held that purchasers could establish similar economic injury based on the alleged misrepresentation without individualized proof of smoking behavior or reliance. It also discussed benefit-of-the-bargain damages and the availability of statutory damages if actual damages could not be proven.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Greaney, J.; Cordy, J.
JURISDICTION	Massachusetts
DECIDED	August 13, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs challenged the marketing of Marlboro Lights under Massachusetts General Laws chapter 93A and sought class certification. The Superior Court certified a class; a single justice of the Appeals Court decertified it under G. L. c. 231, § 118, first paragraph, and granted leave to appeal. The Supreme Judicial Court granted direct appellate review.
STANDARD OF REVIEW	The court reviewed the single justice's order for legal correctness, including abuse of discretion, while giving substantial deference to the Superior Court judge's factual findings and discretionary certification determination. A single justice's order under G. L. c. 231, § 118, is reviewed as if it were an identical order entered by the trial judge.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Aspinall, Individual plaintiffs and purchasers of Marlboro Lights v. Philip Morris Companies, Inc., Philip Morris, Inc.

TOPICS

consumer protection

class actions

deceptive trade practices

appellate procedure

remedies

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Appeals Court single justice's decertification order was properly before an appellate panel for review.
2. Whether a class action could be certified under G. L. c. 93A, § 9(2), where the alleged deception consisted of marketing Marlboro Lights as delivering lowered tar and nicotine.
3. Whether purchase of a product intentionally represented in a deceptive manner can constitute an ascertainable injury under G. L. c. 93A without individualized proof of reliance, smoking behavior, physical harm, or actual economic loss.
4. Whether benefit-of-the-bargain damages measured by the difference between the value paid and the value received could be used if proved with reasonable certainty.
5. Whether class members could receive statutory minimum damages if actual damages could not be proved.

HOLDINGS

1. The matter was properly before an appellate panel because the single justice appropriately certified the correctness of her ruling to a panel, and the Supreme Judicial Court granted direct appellate review.
2. The class was properly certified because the alleged deceptive marketing arose from a common course of conduct, presented common questions concerning the representations and omissions, and allegedly caused similar economic injury to numerous similarly situated purchasers.
3. The purchase of a product intentionally falsely represented may, by itself, constitute an ascertainable injury under G. L. c. 93A; individualized proof of reliance, intent to deceive, physical harm, or each purchaser's smoking behavior is not required to establish the alleged deceptive injury.
4. Advertising need not be wholly false to be deceptive under G. L. c. 93A; a literal truth, half-truth, omission, or overall misleading impression may support a deception claim.
5. Benefit-of-the-bargain damages, measured by the difference between the value paid and the true market value of the product received, would be an appropriate measure if proved with reasonable certainty.
6. If the plaintiffs prove a violation of G. L. c. 93A but cannot establish actual damages, they may recover statutory damages of at least \$25 under G. L. c. 93A, § 9(3), because the deceptive conduct allegedly invaded a legally protected interest and caused compensable statutory injury.

KEY QUOTATIONS

“We reject the proposition that the purchase of an intentionally falsely represented product cannot be, by itself, an ascertainable injury under our consumer protection statute.” (at 394)

“No individual inquiries concerning each class member’s smoking behavior are required to determine whether the defendants’ conduct caused compensable injury to all the members of the class” (at 397)

“It follows that, if the violations of G. L. c. 93A alleged by the plaintiffs are proved, all members of the class of purchasers of Marlboro Lights in Massachusetts will have been injured” (at 402)

FACTUAL BACKGROUND

The plaintiffs alleged that Philip Morris marketed Marlboro Lights as delivering lowered tar and nicotine while knowing that the cigarettes were designed to produce higher tar and nicotine deliveries under ordinary smoking conditions than under Federal Trade Commission machine testing. They alleged that the defendants used ventilation holes, tobacco modifications, additives, and other design features to create low FTC test results while delivering addictive levels of tar and nicotine to smokers. The plaintiffs sought actual or statutory damages under G. L. c. 93A on behalf of Massachusetts purchasers, based on economic injury rather than personal injury.

PROCEDURAL HISTORY

The Superior Court certified a class of Massachusetts purchasers of Marlboro Lights during the four years preceding the complaint. The defendants petitioned for interlocutory review, and an Appeals Court single justice decertified the class. The Supreme Judicial Court reviewed the matter and affirmed the Superior Court's certification order.

DISPOSITION

affirmed

CASES CITED

- Jet-Line Servs., Inc. v. Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988)
- Manfrates v. Lawrence Plaza Ltd. Partnership, 41 Mass. App. Ct. 409, 412 (1996)
- Thorn Transit Sys. Int'l, Ltd. v. Massachusetts Bay Transp. Auth., 40 Mass. App. Ct. 650, 652 (1996)
- Petricca Constr. Co. v. Commonwealth, 37 Mass. App. Ct. 392, 395 (1994)
- Demoulas v. Demoulas Super Mkts., Inc., 33 Mass. App. Ct. 939, 940 (1992)
- Highland Tap of Boston, Inc. v. Boston, 26 Mass. App. Ct. 239, 240 (1988)
- Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 602 (2000)
- Planned Parenthood League of Mass., Inc. v. Operation Rescue, 406 Mass. 701, 706, 709 n.7 (1990)
- Baldassari v. Public Fin. Trust, 369 Mass. 33, 40-41 (1975)
- Weld v. Glaxo Wellcome Inc., 434 Mass. 81, 85, 87, 92-93 (2001)
- Fletcher v. Cape Cod Gas Co., 394 Mass. 595, 605-606 (1985)
- Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975)
- Lowell Gas Co. v. Attorney Gen., 377 Mass. 37, 51 (1979)

- Commonwealth v. AmCan Enters., Inc., 47 Mass. App. Ct. 330, 335-336 (1999)
- Slaney v. Westwood Auto, Inc., 366 Mass. 688, 693, 703 (1975)
- Swanson v. Bankers Life Co., 389 Mass. 345, 349 (1983)
- Purity Supreme, Inc. v. Attorney Gen., 380 Mass. 762, 769-771, 777 (1980)
- Leardi v. Brown, 394 Mass. 151, 156, 159-161 (1985)
- Trans World Accounts, Inc. v. Federal Trade Comm'n, 594 F.2d 212, 214 (9th Cir. 1979)
- P. Lorillard Co. v. Federal Trade Comm'n, 186 F.2d 52, 58 (4th Cir. 1950)
- Urman v. South Boston Sav. Bank, 424 Mass. 165, 168 (1997)
- Underwood v. Risan, 414 Mass. 96, 99-100 (1993)
- Greenery Rehabilitation Group, Inc. v. Antaramian, 36 Mass. App. Ct. 73, 78 (1994)
- Federal Trade Comm'n v. Colgate-Palmolive Co., 380 U.S. 374, 391-392 (1965)
- American Home Prods. Corp. v. Federal Trade Comm'n, 695 F.2d 681, 687 (3d Cir. 1982)
- Exposition Press, Inc. v. Federal Trade Comm'n, 295 F.2d 869, 872 (2d Cir. 1961)
- Federal Trade Comm'n v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994)
- Kraft, Inc. v. Federal Trade Comm'n, 970 F.2d 311, 314 (7th Cir. 1992)
- Southwest Sunsites, Inc. v. Federal Trade Comm'n, 785 F.2d 1431, 1436 (9th Cir. 1986)
- Danca v. Taunton Sav. Bank, 385 Mass. 1, 8 (1982)
- Rice v. Price, 340 Mass. 502, 507 (1960)
- GTE Prods. Corp. v. Broadway Elec. Supply Co., 42 Mass. App. Ct. 293, 296 (1997)
- Chamberlayne School & Chamberlayne Jr. College v. Banker, 30 Mass. App. Ct. 346, 355 (1991)
- Lord v. Commercial Union Ins. Co., 60 Mass. App. Ct. 309, 317-323 (2004)
- Massachusetts Farm Bur. Fed'n, Inc. v. Blue Cross of Mass., Inc., 403 Mass. 722, 730 (1988)
- International Fid. Ins. Co. v. Wilson, 387 Mass. 841, 850 (1983)
- Ciardi v. F. Hoffmann-LaRoche, Ltd., 436 Mass. 53, 60 n.14 (2002)
- O'Neill v. City Manager of Cambridge, 428 Mass. 257, 259 (1998)
- Blanchette v. School Comm. of Westwood, 427 Mass. 176, 179 n.3 (1998)
- United States v. American Heart Research Found., Inc., 996 F.2d 7, 11 (1st Cir. 1993)
- Gloucester Marine Rys. v. Charles Parisi, Inc., 36 Mass. App. Ct. 386, 391 (1994)
- School Comm. of Brockton v. Massachusetts Comm'n Against Discrimination, 423 Mass. 7, 14 n.12 (1996)
- Social Servs. Union, Local 535 v. County of Santa Clara, 609 F.2d 944, 948-949 (9th Cir. 1979)