

L'Oreal Ditches False Ad Suit Over Keratin Shampoo

By **Mike Curley**

Law360 (September 15, 2020, 2:49 PM EDT) -- A New York federal judge has scrubbed a proposed class action alleging L'Oreal's EverSleek Keratin Caring hair products falsely advertise that keratin is an ingredient, ruling that the products' label makes it clear they don't include keratin.

In an order filed Monday, U.S. District Judge George B. Daniels dismissed all claims by Tammy DeVane, saying her complaint fails to reconcile the clear ingredient list and other statements on the shampoo and conditioner bottles that show the products don't contain keratin.

"The amended complaint does not address that a simple reading of the label would have resolved the issues she raises," Judge Daniels wrote.

DeVane sued in May 2019, alleging that the name of L'Oreal's Keratin Caring line of products and its advertising are meant to deceive customers into believing they contain keratin and can protect hair, but the ingredient is not in the shampoo or the conditioner.

According to Judge Daniels' order, however, the labels are clear — they state the products are intended to care "for the essential protein and keratin that is found in hair," not that they contain keratin, and the ingredients label clearly shows that the products don't contain keratin.

"The product's labels state multiple times — including on the center of the front labels, as well as in small font on the backs of the labels — that the products are 'Keratin Caring,'" the judge wrote. "It is reasonable to understand this to mean that it cares for the keratin already found in the hair."

In addition, the judge wrote, the labels prominently state that the products are vegan — and thus don't have any ingredients derived from animals — while keratin is a chemical present in humans, and the complaint does not address this discrepancy.

Because the labels show that keratin is not in the products, DeVane's complaint fails to meet pleading standards to demonstrate that reasonable consumers would have believed it was present, the judge wrote.

Specific to DeVane's New York law claims, the judge said in addition to her failure to show that consumers would be misled, the complaint also does not allege that any transactions between her and L'Oreal happened in New York, which alone is grounds for dismissal of those claims.

Representatives for DeVane and L'Oreal could not immediately be reached for comment Tuesday.

DeVane is represented by Taylor Bartlett of Heninger Garrison Davis LLC.

L'Oreal is represented by Joshua Adam Kipnees of Patterson Belknap Webb & Tyler LLP.

The case is DeVane v. L'Oreal USA Inc., case number 1:19-cv-04362, in the U.S. District Court for the Southern District of New York.

--Editing by Orlando Lorenzo.