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CBD Product Maker Can't Escape Suit Over Broken Deal

By **Diana Novak Jones**

Law360 (February 4, 2021, 10:35 PM EST) -- A lawsuit against manufacturer CBD Universe will go forward after a New York federal judge said Thursday there's enough evidence to support allegations the company knew it was part of a plan to breach a competitor's contract.

U.S. District Judge J. Paul Oetken rejected CBD Universe's motion to dismiss the lawsuit filed by manufacturer SLS Brands after finding the suit does enough to allege CBD Universe knew about SLS' contract when it signed an identical agreement with SLS' business partners.

SLS Brands sued CBD Universe, ski gear company Spyder and brand owner Authentic Brands Group after its contract with Spyder and Authentic Brands to make Spyder-branded skin care products fell apart and the companies joined up with CBD Universe to make the products instead.

CBD Universe, which manufactures CBD products for a variety of companies, moved to dismiss SLS' claims, arguing SLS hadn't shown it knew about the contract or intended to help breach it. But Judge Oetken said it is enough to infer CBD Universe was aware of the deal that preceded its contract with Spyder until discovery can take place.

"It is unclear what, precisely, CBDU knew about the Agreement at the time of the alleged breach, but this Court finds it plausible to infer, for the purposes of this motion, that CBDU had 'some knowledge' of the Agreement, given that it was actively working alongside ABG and Spyder to replace SLS," Judge Oetken wrote.

He also rejected CBD Universe's motion to dismiss SLS' claim for punitive damages, saying it's too early to decide whether the company's alleged conduct should expose it to that liability.

Mark Fishbein of Marks & Klein LLP, who represents SLS Brands, told Law360 the company is pleased with the ruling.

SLS Brands "looks forward to proceeding to trial, proving its claims and recovering the substantial damages incurred," Fishbein said.

A spokesman for the company that owns CBD Universe, Tellus Core Inc., declined to comment.

SLS Brands says it entered into a licensing agreement with Authentic Brands and Spyder in 2017, with a plan to make Spyder-branded skincare products through 2022. The agreement barred Authentic Brands and Spyder from contracting with anyone else to make the products, according to SLS.

SLS Brands spent a little more than \$400,000 developing and marketing the products, and was in the process of developing CBD products. But in 2019, Authentic Brands and Spyder struck a deal with Canadian cannabis company Tilray, a revenue-sharing arrangement by which Tilray would pay them up to \$250 million to become the companies' preferred provider of CBD products, according to the suit.

CBD Universe had a separate arrangement with Tilray to make the products, the suit says.

Authentic Brands sent an email to SLS, telling it that the Spyder brand was going to make CBD products through its partnership with Tilray and it asked SLS to sign off on an amendment to their agreement allowing for these products. SLS declined, it said in the suit.

Authentic Brands then sent SLS a letter notifying them it was terminating their agreement, citing six payments it said came late, according to the suit.

A few weeks after the termination, Authentic Brands entered into a new contract with CBD Universe, giving the company the right to make the Tilray and Spyder CBD products, according to court records.

SLS filed its suit in August 2019. It named Tilray, Spyder and Authentic Brands, accusing them of essentially conspiring to kick SLS out of its licensing agreement.

Tilray argued it actually had nothing to do with the dispute, and in January 2020 SLS Brands **dismissed its claims** against the company.

But a few weeks later, SLS Brands added CBD Universe to the suit.

SLS is represented by Justin M. Klein and Mark Fishbein of Marks & Klein LLP.

CBD Universe is represented by Jessica Rutherford of Ferdinand IP LLC.

The case is SLS Brands LLC v. Authentic Brands Group LLC et al., case number 1:19-cv-08115, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sarah Jarvis. Editing by Emily Kokoll.

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