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Apple Plaintiffs Bring On Ads In iPad Overheating Suit

By **Ian Thoms**

Law360, New York (October 13, 2010) -- Plaintiffs in a class action that claims Apple Inc.'s iPad overheats and shuts down when used in the sun have amended their complaint to include examples of advertisements that misled them into thinking the tablet computer worked outdoors.

The amended complaint, filed Tuesday in the U.S. Court for the Northern District of California, alleges Apple repeatedly advertised the iPad as a capable tool for reading books and magazines outdoors. Some commercials show people using their iPads in a sidewalk cafe or on a grassy lawn, while others show iPads strapped to the dashboard of a car or the gas tank of a motorcycle, according to the complaint.

But plaintiffs say their iPads shut down after only a few minutes of use outside.

"In essence, it's false advertising," lead attorney for the plaintiffs Scott Edward Cole said. "You've got to tie your marketing to an intended use. Some products might be good as a doorstop but they're not good at making cappuccinos."

Cole's amended complaint follows a motion to dismiss filed by Apple on Sept. 20. In it, Apple argues that the plaintiffs had failed to point to specific instances where the company misled them into purchasing an iPad.

"The complaint does not identify any specific representations by Apple that allegedly created whatever 'reasonable consumer's expectations' Apple is alleged to have violated. Indeed, every other reference ... to a statement is vague," Apple said.

In response, Cole tried to flesh out some of his clients' stories.

One plaintiff, Claudia Keller, said she attempted to use her iPad next to her pool when it was less than 90 degrees out, according to the amended complaint. "After less than 5 minutes of use, the device displayed an overheating message and shut down."

The suit was filed on July 23 on behalf of both a putative class of national consumers and a putative

class of people who bought their iPads in California.

"Since Apple's launch of the iPad, complaints regarding the overheating of the product have become prevalent across the internet and within technology circles," the suit said.

Despite myriad complaints, Apple has taken no apparent steps to inform potential customers or those who already bought an iPad that the device can overheat, according to the suit.

The suit calls the iPad "virtually unusable" in direct sunlight – regardless of the air temperature – since it shuts off "sometimes after just a few minutes of use."

Apple CEO Steve Jobs unveiled the iPad in January. Between April, when the iPad hit stores, and June, the company sold more than 3 million units, the suit said.

The iPad was marketed as a tool for reading books and magazines, as well as a way to play games, watch movies and surf the Internet, according to the suit.

The suit accuses Apple of fraud for making allegedly false representations in its marketing materials for the iPad and failing to disclose problems with the device.

If the plaintiffs had known of the alleged problems, they would not have purchased their iPads at the price they paid, they said in the complaint.

They also accuse the company of unjust enrichment, breaching express and implied warranties, and negligent misrepresentation for making allegedly reckless claims to the general public.

Some additional claims in the suit pertain only to the California class, including a deceptive advertising practices claim and a claim that Apple violated the state's consumer legal remedies law.

The suit is seeking putative damages, restitution, interest, injunctive and other relief, as well as attorneys' fees and costs.

The named plaintiffs are Jacob Baltazar, Claudia Keller and John R. Browning.

An Apple representative did not immediately return a call seeking comment Wednesday.

Plaintiffs are represented by Scott Cole & Associates APC.

Apple is represented by Paul Hastings Janofsky & Walker LLP.

The case is Jacob Baltazar et al. v. Apple Inc., case number 3:10-cv-03231, in the U.S. District Court for the Northern District of California.