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Antitrust Claims Against Dog Breeding Group Tossed

By **Abigail Rubenstein**

Law360, New York (August 11, 2010) -- A federal judge has thrown out price-fixing claims brought against the American Mastiff Breeders Council by a former member.

Judge George C. Smith of the U.S. District Court for the District of Ohio on Tuesday partially granted the AMBC's motion to dismiss the amended complaint filed by Craig Williamson, the owner of Circle W Mastiffs, nixing all of Williamson's Sherman Act claims.

Williamson alleged that the breeders association engaged in price-fixing by setting a ceiling price for puppies and also instituted a boycott to prevent new breeders from entering the American mastiff market.

Because he refused to participate in the alleged price-fixing scheme, Williamson claims he was excluded from the AMBC and as a result cannot purchase new breeding stock.

The AMBC and its member breeders moved to dismiss the complaint on grounds that Williamson has failed to plead facts sufficient to support his claims.

Judge Smith ruled that Williamson lacked standing to bring antitrust claims against the association and its members because he could not prove antitrust injury and because he failed to adequately allege a relevant market.

The court held that Williamson could not assert antitrust injury due to his inability to charge more for American Mastiff puppies as a result of the alleged price-fixing because a competitor's inability to charge more, provided the price is at a nonpredatory level, is not an injury protected under antitrust laws.

As for Williamson's claims that he was injured due to a boycott against him and others, Judge Smith found that he had not adequately supported his claim that the relevant market for the alleged antitrust violations is the market for American Mastiffs, both as companion

dogs and breeder dogs.

The market does not rise to the level of plausibility required by the federal pleading requirements because Williamson did not show that other dog breeds could not perform the same function as American mastiffs, Judge Smith's opinion said.

Williamson also asserted that the trademark lawsuit the association filed against him in May 2008 alleging that Circle W Mastiffs diluted the mastiff brand by marketing dogs that were not purebred as genuine American mastiffs.

But Judge Smith noted that the Lanham Act suit had survived a motion to dismiss, so it could not be a frivolous lawsuit that violated the Sherman Act.

Judge Smith stopped short of dismissing Williamson's suit in its entirety, however, allowing claims of defamation and tortious interference with a business relationship to move forward.

The Lanham Act suit, in which Williamson has asserted counterclaims, is also still pending.

"We're happy that the court reached the result that it did," said Kenneth J. Rubin of Vorys Sater Seymour and Pease LLP, who represented the AMBC and its members.

An attorney for Williamson, Stephen Kent, said "we find it incredible that defendants' price limiting/fixing and boycotting conduct against Mr. Williamson and others, confirmed in plaintiff's own e-mails, is not an actionable antitrust claim."

"Mr. Williamson and I are considering whether to appeal the court's order or proceed to trial with the remaining and substantial allegations," Kent told Law360.

Craig Williamson is represented by Reminger & Reminger LPA and Kent Law.

The AMBC is represented by Vorys Sater Seymour and Pease LLP. Attorneys Kenneth J. Rubin and James A. Wilson filed the AMBC's motion to dismiss.

The antitrust case is Williamson v. American Mastiff Breeders Council et al., case number 2:09-cv-00172, in the U.S. District Court for the District of Ohio.

The trademark case is Wagner et al. v. Circle W Mastiffs et al., case number 2:08-cv-00431, in the same court.