

## Mascara Seller's \$3.3M Deal Blots 'Natural Fiber' False Ad Suit

By **Mike LaSusa**

Law360 (August 13, 2019, 8:12 PM EDT) -- Online cosmetics seller Younique LLC has agreed to pay \$3.25 million to end a class action claiming the company falsely marketed a mascara product as containing "natural fibers" when it actually had only synthetic ingredients, according to filings made Monday in California federal court.

The multimillion-dollar fund will be used to make payouts to customers in 11 states who bought "Moodstruck 3D Fiber Lashes" from Younique between 2012 and 2015, according to a court filing made in support of granting the deal preliminary approval.

Court documents did not provide an expected average payout per customer, but did indicate that the legal team representing the customers expects to seek attorney fees equal to about a third of the settlement amount — just over \$1 million — plus expenses of up to \$175,000.

"Further," the filing said, "Younique agrees that, for a period of three years, if Younique elects to describe an ingredient in its current or future fiber lash products as 'natural,' Younique will have the product tested by a reputable U.S.-based laboratory every six months to confirm the ingredients identified as 'natural' are as described."

Younique continues to deny any wrongdoing. But the customers said in their bid for preliminary approval of the settlement that they had "built a strong case for liability and damages."

"The heart of plaintiffs' claims is that defendant adopted, promulgated, and benefited from the representation that the fiber lashes were composed of natural ingredients," the customers said. "Plaintiffs believe there is ample evidence that the fibers were not 'natural.'"

A California woman named Megan Schmitt sued the cosmetics company in 2017 and, according to court records, was later joined in her suit by other purchasers of the Moodstruck lashes who lived in other states.

The customers claimed that Younique had advertised the mascara product as containing "natural" fibers and "100% natural green tea fibers," when in fact it only contained shredded nylon, according to court records. They said they either wouldn't have bought the product or would have paid less for it if they'd known it was synthetic.

A similar proposed class action was lodged in October last year in Missouri state court, but according to court records, the issue of class certification hasn't yet been decided in that case.

A hearing on the bid for preliminary approval of the settlement agreement is set for Sept. 16, court records show.

Neither side responded on Tuesday to requests for comment.

The plaintiffs are represented by Jonathan D. Miller and Alison M. Bernal of Nye Stirling Hale & Miller LLP, Todd D. Carpenter of Carlson Lynch Sweet Kilpela & Carpenter LLP, Adam Gonnelli of The Sultz Law Group PC and Bonner Walsh of Walsh LLC.

Younique is represented by Sascha Henry, Jonathan D. Moss and Abby H. Meyer of Sheppard Mullin Richter & Hampton LLP.

The case is Megan Schmitt v. Younique LLC et al, case number 8:17-cv-01397, in the U.S. District Court for the Central District of California.

--Additional reporting by Chelsea Naso. Editing by Abbie Sarfo.