

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

Dennis Pickering,)	
)	
Plaintiff,)	Case No. 1:09-cv-00087-MP-GRJ
v.)	
)	
A.L.S. Enterprises, Inc., et al.)	
)	
Defendants.)	

STIPULATION OF DISMISSAL WITH PREJUDICE

FINDINGS OF FACT

1. Plaintiff Dennis Pickering brought this consumer class action, alleging that A.L.S. Enterprises, Inc.’s (“ALS’s”) Scent-Lok[®] carbon hunting clothing did not work as advertised.

2. Class certification was denied in this and other related actions, *see In re Activated Carbon-Based Hunting Clothing Mktg. & Sales Practices Litig.*, No. 09-md-2059 (RHK/JJK), 2010 U.S. Dist. LEXIS 144548 (D. Minn. Sept. 29, 2010); *Buetow v. A.L.S. Enters., Inc.*, 259 F.R.D. 187 (D. Minn. 2009).

3. Carbon is a highly effective odor adsorbent.

4. Expert testing found that, using highly elevated test odor concentrations that were “likely a ten thousand fold greater than a human body could produce in the

course of 24 hours,” Scent-Lok[®] carbon hunting clothing fabrics blocked 96-99% of the odor compounds, and essentially 100% of the surrogate body odor compounds tested.

5. As exemplified by the test results below, Scent-Lok[®] carbon hunting clothing fabrics dramatically outperformed non-carbon fabrics at blocking odor permeation in head-to-head testing:

Test Sample (sample time = 1 hour)	% Reduction Odor Permeation
Fleece Balaclava w/out carbon Fleece Balaclava w/Scent-Lok [®]	5 99
Base Layer w/out carbon Base Layer w/Scent-Lok [®]	19 98
Hunting Jacket w/out carbon Hunting Jacket w/Scent-Lok [®]	11 97
Hunting Pants w/out carbon Hunting Pants w/Scent-Lok [®]	32 98

6. Expert testing also found that after drying, or washing and drying, Scent-Lok[®] carbon fabrics continue to be highly effective at blocking odor permeation.

7. The United States Court of Appeals for the Eighth Circuit held that ALS’s use of the terms “odor eliminating” and “reactivation” were not literally false, *Buetow v. A.L.S. Enters., Inc.*, 650 F.3d 1178 (8th Cir. 2011).

8. The United States Court of Appeals for the Eighth Circuit held that injunctive relief was not available in the absence of a showing of irreparable injury, and ordered the dismissal with prejudice of plaintiffs’ claim for injunctive relief in the lead *Buetow* action, *Buetow v. A.L.S. Enters., Inc.*, 650 F.3d 1178 (8th Cir. 2011).

9. On August 17, 2012, the district court in the lead *Buetow* action granted defendants' motion to dismiss plaintiffs' damages claims and entered judgment in defendants' favor, *Buetow v. ALS Enters., Inc.*, Civ. No. 07-3970 (RHK/JJK), 2012 U.S. Dist. LEXIS 116041 (D. Minn. Aug. 17, 2012).

STIPULATION

BASED ON THE FOREGOING, IT IS HEREBY STIPULATED AND AGREED THAT:

1. Plaintiff Dennis Pickering hereby dismisses this action with prejudice, pursuant to FED. R. CIV. P. 41(a)(2), and, in doing so, takes nothing from defendants A.L.S. Enterprises, Inc., Bass Pro Shops, Inc., Browning, Inc., Cabela's Inc., Cabela's Wholesale, Inc., and Gander Mountain Company (collectively "defendants"), agrees to bear his own costs and attorneys' fees, and foregoes any and all appeal rights.

2. As a condition of this stipulation of dismissal with prejudice, defendants agree to bear their own costs and attorneys' fees.

3. Plaintiff Dennis Pickering agrees that he shall not, hereafter, sue or otherwise seek to establish liability against any of the defendants based, in whole or in part, upon any of the claims that were brought, or could have been brought, in this litigation.

4. Plaintiff and his counsel represent that they are not presently aware of any third party who is contemplating bringing a false advertising lawsuit against defendants, and agree that they will not offer their voluntary assistance to any third party who initiates a false advertising lawsuit against defendants in the future.

5. Defendants shall not seek to recover against Plaintiff Dennis Pickering or his counsel for any claim, demand, suit or cause of action, in law or in equity, that defendants, or any of them, ever had, has now, or hereafter may have on account of, or in any way arising out of, any conduct related to or associated with this action. This includes, but is not limited to, any claim, demand, suit or cause of action in connection with the bringing, filing, or prosecuting of this action.

WHEREFORE, the parties respectfully request that the Court issue an Order of dismissal with prejudice, a proposed form of which has been submitted concurrently with this Stipulation.

Respectfully submitted,

Dated: September 19, 2012

s/ Renae D. Steiner
Renae D. Steiner
HEINS MILLS & OLSON, P.L.C.
310 Clifton Avenue
Minneapolis, MN 55403
Tel.: (612) 338-4605
Fax: (612) 338-4692
Email: rsteiner@heinsmills.com

Jayne A. Goldstein
SHEPHERD FINKELMAN & SHAH LLP
1640 Town Center Circle, Suite 216
Weston, FL 33326
Tel.: (954) 515-0123
Fax: (954) 515-0124
Email: jgoldstein@sfmslaw.com

Thomas J. Leach, III
MERCHANT & GOULD
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2215
Tel.: (612) 332-5300
Fax: (612) 332-9081
Email: TLeach@merchantgould.com

Attorneys for Plaintiff Dennis Pickering

Dated: September 19, 2012

s/Christopher Ryan Maloney

Christopher Ryan Maloney
Florida Bar Number 0653903
FOLEY & LARDNER
One Independent Drive, Suite 1300
Jacksonville, FL 32202
Tel: (904) 359-2000
Fax: (904) 359-8700
Email: cmaloney@foley.com

Naikang Tsao (WI Bar No. 1036747)
FOLEY & LARDNER LLP
150 East Gilman Street
Madison, WI 53703
Tel.: (608) 258-4250
Fax: (608) 258-4258
Email: ntsao@foley.com

*Attorneys for Defendants A.L.S.
Enterprises, Inc., Gander Mountain
Company, and Bass Pro Shops, Inc.*

Dated: September 19, 2012

Michael V. Elsberry
Florida Bar No. 0191861
LOWNES, DROSDICK, DOSTER
KANTOR, & Reed, P.A.
450 South Orange Avenue, Suite 800
Orlando, FL 32802
Tel: (407) 843-4600
Fax: (407) 843-4444

s/ Kristina L. Carlson

James K. Langdon
Kristina L. Carlson
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Tel: (612) 340-2600
Fax: (612) 340-2868
Email: Langdon.james@dorsey.com
Carlson.kristina@dorsey.com

Michael C. Mahoney
MAHONEY ANDERSON, LLC
125 West Lake Street, Suite 201
Wayzata, MN 55391
Tel: (612) 332-2226
Fax: (952) 249-0566

*Attorneys for Cabela's, Inc. and Cabela's
Wholesale, Inc.*

Dated: September 19, 2012

Felix J. Lopez
Florida Bar No. 0827142
DIBELLO, LOPEZ & CASTILLO, P.A.
1550 Madruga Ave., Suite 504
Coral Gables, FL 33146
Tel: (305) 668-8870
Fax: (305) 668-8892

s/ Angus Edwards
Angus Edwards
JONES WALDO HOLBROOK &
McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, UT 84101
Tel.: (801) 521-3200
Fax: (801) 328-0537
Email: aedwards@joneswaldo.com

Attorneys for Defendant Browning, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2012, a copy of the foregoing document was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: September 19, 2012

s/ Renae D. Steiner
Renae D. Steiner