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Webkinz Maker To Pay $2.5M To End Antitrust MDL

By **Eric Hornbeck**

Law360, New York (June 25, 2012, 12:15 PM ET) -- The maker of Webkinz toys will pay $2.58 million to settle multidistrict litigation that it forced retailers to buy unrelated gifts in order to sell the plush animals, in breach of antitrust laws, according to a preliminary settlement a California federal judge approved Friday.

U.S. District Judge Richard Seeborg signed off on the proposed settlement between retailers and Webkinz maker Ganz Inc., allowing settlement notices to be sent to class members and setting a final approval hearing on Sept. 23.

"The court hereby preliminarily approves the settlement, as well as the proposed plan of allocation, subject to a hearing on final approval," Judge Seeborg said.

The small toy and novelty retailers serving as the plaintiffs in the MDL allege Ganz instituted sales policies in 2007 that linked retailers' access to Webkinz to the purchase of unrelated Ganz merchandise, including a variety of collectibles, lip gloss, decorations, candles, costume jewelry and other gift items.

That practice violated the Sherman Act, the plaintiffs alleged.

The policy took the form of a "loyalty program" that awarded Webkinz shipment privileges based on the amount of unrelated gift items retailers ordered, the plaintiffs claim. It also caused prices for Webkinz to rise, plaintiffs say.

James I. Serota of Greenberg Traurig LLP, who represents Ganz, told Law360 on Monday that the company's minimum purchase policy — which addressed the supply-demand imbalance at the height of Webkinz's popularity to prevent new customers from buying the toys at volume and reselling them on places like eBay — was legal and designed to protect the retailers and gift shops the company had long worked with.

"This settlement was a financial decision, given that we settled for far less than it took us to litigate this even to class certification," Serota said.

An attorney for the plaintiffs declined to comment beyond the settlement agreement.

Separately, the lead plaintiffs have asked Judge Seeborg to approve 30 percent of the settlement funds — or about $858,000 — be allocated toward attorneys fees, plus another $84,850 in litigation expenses, $60,000 in settlement administration expenses and $35,000 in total incentive awards for each class representative. The judge has not ruled on that motion.

Settlement negotiations began in February 2011 with former U.S. Magistrate Judge Edward Infante acting as a mediator, and terms were agreed to on April 26, 2012, according to settlement documents.

Webkinz, plush toy animals that children can register in an online Webkinz World play area through the Ganz website, were a surprise hit for Ganz and the small specialty retailers that sell the company's products. The privately held company supplies a network of about 30,000 retailers, it has said.

Proposed class action complaints alleging violations of federal antitrust law and state unfair competition laws in Massachusetts, Connecticut, Florida and Illinois were filed against Ganz beginning in 2008 and were later consolidated in the Northern District of California.

The class is represented by Steven N. Williams and Matthew K. Edling of Cotchett Pitre & McCarthy LLP.

Ganz is represented by Evan Nadel, James I. Serota and Scott A. Martin of Greenberg Traurig LLP.

The case is In re: Webkinz Antitrust Litigation, case number 3:08-md-01987, in the U.S. District Court for the Northern District of California.

--Additional reporting by Ian Thoms and Shannon Henson. Editing by John Quinn.