

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**MIDWESTERN MIDGET
FOOTBALL CLUB INC.,**)

Plaintiff,)

v.)

**RIDDELL, INC.; ALL AMERICAN
SPORTS CORPORATION d/b/a
RIDDELL/ALL AMERICAN;
RIDDELL SPORTS GROUP, INC.;
EASTON-BELL SPORTS, INC.;
EASTON-BELL SPORTS, LLC; EB
SPORTS CORPORATION; and RBG
HOLDINGS CORPORATION,**)

Defendants.)

CASE NO.: 2:14-14634

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff Midwestern Midget Football Club, Inc., a non-profit youth football organization, purchased Riddell Revolution football helmets (“Revolution Helmets”). The Defendants are corporate affiliates related by ownership that are involved in the design, manufacture, marketing, and sale of the Revolution Helmets (collectively, “Riddell” or “Defendants”). Riddell sells Revolution Helmets at a market price reflecting marketing claims that the helmets reduce the incidence of concussion in comparison with its own, earlier helmet designs and helmets of competitors. In particular, the Revolution Helmets were marketed as containing “concussion reduction technology” which reduces the incidence of concussion by up to “31%.”

2. These marketing statements were knowingly false. Riddell's assertions were based upon a statistically unsound study paid for by Riddell and co-authored by a Riddell employee, and publically criticized by third-party scientists. Scientific studies and other data of which Riddell was aware indicate that the Revolution Helmets make no difference to a player's risk for concussion as compared to other traditional football helmets.

3. Unfortunately, this marketing was successful. Plaintiff and others purchased Revolution Helmets at market prices reflecting this illusory benefit of a reduced risk of concussion in comparison with other helmets. Plaintiff now sues Riddell on its own behalf and on behalf of a class for violating the West Virginia Consumer Credit and Protection Act ("WVCCPA"), seeking injunctive relief, the greater of actual damages or statutory damages, and attorney's fees and costs.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because the Plaintiff is diverse from Defendants and the amount in controversy exceeds \$75,000, exclusive of interests and costs. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because the amount in controversy exceeds \$5,000,000 exclusive of interest and costs, there are more than one hundred Class members, and minimal diversity exists because Plaintiff and the members of the Class are citizens of a different state than the Defendants.

5. This Court has personal jurisdiction over Defendants because Defendants have sufficient minimum contacts with West Virginia through their marketing and sale of Revolution Helmets in West Virginia.

6. Venue is proper under 28 U.S.C. § 1391(a) because (1) Defendants are subject to personal jurisdiction in this District, and (2) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. Defendants engaged in the promotion and sale of the Revolution Helmets in this District, and Plaintiff is a resident of this District and purchased Revolution Helmets in this District.

PARTIES

7. Plaintiff Midwestern Midget Football Club Inc. ("Midwestern Football") is a youth football organization, operating in Kanawha County, West Virginia and a citizen of West Virginia. Approximately 150 youths participate in the program every year. Midwestern Football supplies the helmets for these participants. Each year, Midwestern Football purchases between 12 and 24 new Riddell Revolution Helmets. Older helmets are refurbished when appropriate, and Midwestern Football sends older Riddell Revolution Helmets to defendant All American Sports Corporation for refurbishing. Midwestern Football purchases Revolution Helmets and arranges for the refurbishment of Revolution Helmets through contacts with a Riddell representative in West Virginia.

8. Defendant Riddell, Inc. is a subsidiary corporation of Riddell Sports Group, Inc., organized and existing under the laws of the State of Illinois with a principal place of business in the State of Illinois. Riddell, Inc. is engaged in the business of designing, manufacturing, selling and distributing football equipment, including Revolution Helmets. This defendant ships its products, including Revolution Helmets, to purchasers and distributors in West Virginia, maintains a direct sales force in West Virginia, sells its

products in retail stores in West Virginia, and advertises its products in West Virginia.

Riddell, Inc. is a subsidiary of Riddell Sports Group, Inc.

9. Defendant All American Sports Corporation, doing business as Riddell/All American, is a subsidiary corporation of Riddell Sports Group, Inc. organized and existing under the laws of the State of Delaware. It is engaged in the business of reconditioning Riddell helmets, including Revolution Helmets, and related marketing thereof. This defendant provides the reconditioning service to customers in West Virginia, maintains a direct sales force in West Virginia, and advertises its service to potential customers in West Virginia.

10. Defendant Riddell Sports Group, Inc. is a Delaware corporation with its principal place of business at 6255 N. State Highway, #300, Irving, Texas 76038. It is wholly-owned by Easton-Bell Sports, Inc. Upon information and belief, this defendant ships its products, including Revolution Helmets, to direct purchasers and distributors in West Virginia, maintains a direct sales force in West Virginia, sells its products in retail stores in West Virginia, and advertises its products in West Virginia.

11. Defendant Easton-Bell Sports, Inc. is a Delaware Corporation with a principal place of business at 7855 Haskell Avenue, Suite 200, Van Nuys, California 91406. It is the parent corporation of Riddell Sports Group Inc. and a wholly-owned subsidiary of RBG Holdings Corp. Easton-Bell Sports, Inc. designs, develops, and markets branded athletic equipment and accessories, including Riddell brand Revolution Helmets. This defendant markets its products in West Virginia, sells and ships directly to customers in West Virginia,

and supplies distributors with a presence in West Virginia, resulting in the sale of its products in West Virginia to Plaintiff and others.

12. Defendant RBG Holdings Corporation is a Delaware corporation with its principal place of business at 7855 Haskell Avenue, Suite 350, Van Nuys, California 91406. It operates as a holding company, as the owner of Easton-Bell Sports, Inc. and the wholly-owned subsidiary of EB Sports Corporation, and through its subsidiaries designs, develops and markets sports equipment, including Revolution Helmets. This defendant, through its subsidiaries, ships its products, including Revolution Helmets, to direct purchasers and distributors in West Virginia, maintains a direct sales force in West Virginia, sells its products in retail stores in West Virginia, and advertises its products in West Virginia.

13. Defendant EB Sports Corporation is a Delaware corporation with its principal place of business at 7855 Haskell Avenue, Van Nuys, California 91406. It operates as a holding company, as the owner of RBG Holdings Corporation and the wholly-owned subsidiary of Easton-Bell Sports, LLC. This defendant, through its subsidiaries, ships its products, including Revolution Helmets, to direct purchasers and distributors in West Virginia, maintains a direct sales force in West Virginia, sells its products in retail stores in West Virginia, and advertises its products in West Virginia.

14. Defendant Easton-Bell Sports, LLC is the parent corporation of EB Sports Corporation and is incorporated in Delaware, with a principal place of business at 152 West 57th Street, New York, New York 10019. This defendant, through its subsidiaries, ships its products, including Revolution Helmets, to direct purchasers and distributors in West

Virginia, maintains a direct sales force in West Virginia, sells its products in retail stores in West Virginia, and advertises its products in West Virginia.

FACTS

15. Riddell has engaged in the design, development, manufacture, sale, and distribution of football equipment, including helmets, since 1922.

16. In or about 2000, while Riddell was designing and developing the Revolution Helmet, Biokenetics, a biomechanics firm hired by the NFL and later retained by Riddell, sent Riddell a report showing that no football helmet, no matter how revolutionary, could prevent concussions.

17. In 2002, Riddell introduced for sale the first versions of the Riddell Revolution Helmet, which Riddell manufactured, sold, and distributed. Riddell claimed that the Revolution Helmet was designed to reduce the risk of concussion.

18. In 2002, Riddell provided a research grant to the University of Pittsburgh Medical Center (hereinafter “UPMC”) for a study comparing rates of concussions among high school athletes who wore Revolution Helmets with those who wore traditional helmets.

19. Riddell used the results of this study to claim that the Revolution Helmet reduced concussions by 31%, despite UPMC’s recommendation that Riddell not make such claims and peer reviewed comments expressing concerns that the study suffered “serious, if not fatal, methodological flaws.” In the *Journal of Neurosurgery*, leaders in the concussion field explained that the study by UPMC was flawed in that, among other issues, it discounted low impact hits, did not account for the relatively older population wearing the Revolution Helmets, and did not account for the age-related deterioration of non-Revolution Helmets in

the study many of which were older reconditioned helmets. The study included no youth football participants whatsoever, as it involved only high school football players. Because of these failings, the study did not demonstrate that Revolution Helmets reduced the risk of concussions.

20. Despite the lack of evidence that the Revolution Helmet reduced the overall risk of concussion more than other helmets, Riddell continued to sell, market, and distribute the Revolution Helmets with the promise of “concussion reduction.”

21. Particularly troubling is the fact that Riddell touted the Revolution Helmet as safer for youth players, when in fact Riddell never tested the helmet on youth players.

22. Throughout the Class Period, Riddell has marketed and advertised the Revolution Helmet as significantly reducing the risk of concussion. Specifically, Riddell, directly and through distributors and retailers, utilized the following representations, *inter alia*, to market the Revolution Helmet:

- a. “Shown to reduce incidence of concussion by 31% compared to traditional helmets, the [helmet] utilizes an exclusive Revolution Concussion Reduction Technology that provides superior protection for players on the field.”
- b. “Riddell’s exclusive Concussion Reduction Technology protects young athletes against concussions and impact.”
- c. “The most advanced piece of modern concussion prevention in the game today!”
- d. “Safer, more protective, and advanced frontal helmet protection designed to reduce concussions.”

- e. “All Riddell Concussion Reduction technologies specifically designed to cushion to head, absorb impact, and reduce the risk of concussions by 31%, when compared to a traditional helmet.”
- f. “Riddell Revolution CRT (Concussion Reduction Technology): Research shows a 31% reduction in concussions when used versus a traditionally designed helmet.”
- g. “Riddell CRT (Concussion Reduction Technology) to keep young players safe on the field.”
- h. “Riddell’s Concussion Reduction Technology provides increased protection against concussions and impact.”

23. Despite Riddell’s representations to the contrary, there is no material difference in the Revolution and other football helmets in regard to concussion prevention, and certainly not a 31% reduction as claimed. Scientific studies show that the brand of football helmet makes no difference in a player’s risk of concussion and that high tech helmets like the Revolution do not reduce concussion risk for players any more effectively than low-cost helmets.

24. Riddell failed to disclose that the Revolution Helmets provide no material reduction in the risk of a concussion. Coupled with the affirmative misstatements, Riddell’s failure to disclose that there is no material difference in concussion reduction misled reasonable consumers.

25. Because Riddell’s claims were included in advertisements, marketing, and sales presentations, a reasonable consumer would likely be misled into believing that the Revolution Helmet will reduce concussions, and may do so by 31%.

26. As a result of Riddell's deceptive marketing, consumers in West Virginia were exposed to Riddell's misleading representations and purchased Revolution Helmets at market prices reflecting these helmets' alleged concussion reducing benefits rather than a market price based on truthful information about the Revolution Helmet product. These consumers, including Plaintiff, did not receive the promised benefits. All of these West Virginia consumers who purchased a Revolution Helmet have been injured by Riddell's wrongful conduct.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this class action on behalf of himself and all others similarly situated in West Virginia as members of a proposed Class defined as follows:

All West Virginia residents who purchased a Riddell Revolution football helmet in the State of West Virginia during the period beginning four years prior to the date of filing of this Class Action Complaint through the present (the "Class Period").

Excluded from the Class are the following:

- a. Defendants and any of their officers, directors, and employees, and any person or entities that has already settled or otherwise compromised similar claims against the defendant;
- b. Plaintiff's counsel, anyone working at the direction of Plaintiff's counsel, and/or any of their immediate family members; and
- c. Anyone who has pending against a named defendant on the date of the Court's final certification order any individual action wherein the recovery sought is based in whole or in part on the type of claims asserted herein.

28. This action is brought and may properly be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

29. The Class is so numerous that the individual joinder of all members is impracticable. While the exact number of class members is currently unknown and can only be ascertained through appropriate discovery, Plaintiff alleges that the Class includes thousands of members.

30. Common legal and factual questions exist and predominate over any questions affecting only individual Class members. These common questions, which do not vary among Class members and which may be determined without reference to any Class member's individual circumstances, include, but are not limited to:

- a. Whether Defendants' representations regarding the helmet were false and misleading or reasonably likely to deceive;
- b. Whether Defendants had adequate substantiation for their claims prior to making them;
- c. Whether Defendants' failure to disclose that the helmet did not reduce the risk of concussion compared to other helmets would mislead a reasonable consumer;
- d. Whether Defendants' helmet reduces the risk of concussion by 31%, a material amount, or at all;
- e. Whether Defendants charged a price premium for the helmet;

- f. Whether Defendants engaged in unfair, unlawful, and/or deceptive business practices regarding their helmet in violation of the WVCCPA;
- g. Whether Defendants' conduct alleged herein constitutes false advertising in violation the WVCCPA;
- h. Whether Defendants represented, through their words or conduct, that the helmet had characteristics, uses, or benefits that it did not actually have in violation of the WVCCPA;
- i. Whether Plaintiff and the Class have been damaged by the wrongs complained of herein, and if so, whether Plaintiff and the Class are entitled to equitable relief, actual damages, statutory damages, or other relief, and the nature and amount of such relief.

31. Plaintiff's claims are typical of the Class members' claims. Defendants' common course of conduct caused Plaintiff and all Class members the same harm. Defendants' conduct caused each Class member's economic losses. Likewise, Plaintiff and other Class members must prove the same facts in order to establish the same claims.

32. Plaintiff is an adequate Class representative because it is a member of the class it seeks to represent and its interests do not conflict with other Class members' interests. Plaintiff retained counsel competent and experienced in consumer protection class actions, and Plaintiff and its counsel intend to prosecute this action vigorously for the class's benefit. Plaintiff and its counsel will fairly and adequately protect Class interests.

33. The Class may be properly maintained under Rule 23(b)(2). Defendants have acted or refused to act, with respect to some or all issues presented in this Complaint, on

grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

34. The Class can be properly maintained under Rule 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual litigation of each Class member's claim is impracticable. Even if each Class member could afford to bring individual actions, it would be unduly burdensome on the court system for thousands of individual cases to proceed. Individual litigation also presents the potential for inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk of an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation would increase the expense and delay to all parties and the courts because it would require individual resolution of common legal and factual questions. By contrast, the class action device presents fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

COUNT ONE
Violation Of the West Virginia Consumer Credit and Protection Act

35. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the factual allegations contained in the preceding paragraphs of this Complaint.

36. The WVCCPA prohibits unfair, deceptive and fraudulent acts or practices in order to protect the public. W. Va. Code § 46A-6-101, -104.

37. Riddell marketed the Revolution Helmets as reducing the risk of concussion in comparison with other helmets, and by up to 31%, when the Revolution Helmet did not in fact provide this benefit. Riddell knew these statements were false because, among other

reasons, it was told so by impartial scientists and the flawed study upon which the concussion reduction statement was based was written in part by one of Riddell's own employees. In particular, there was no evidence as to the effectiveness of the helmet for youth players, as the flawed study which Riddell cited evaluated only high school players.

38. Riddell, in actively marketing this illusory benefit, intended that consumers would rely on the false information in the marketing when making a determination about what helmet to buy.

39. Riddell's conduct is an unfair and deceptive act or practice. *See, e.g., id.* at § 46A-6-102(7)(E), (M).

40. Plaintiff is a "person" as defined by WVCCPA § 46A-1-102(31).

41. Because Plaintiff is a "person," and suffered a loss of money as a result of purchasing Revolution Helmets at market pricing reflecting the unfair and deceptive marketing of an illusory concussion-reducing benefit, Plaintiff has standing to bring an action against Riddell challenging Riddell's unlawful conduct. *Id.* at § 46A-6-106(a).

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and the Class, requests that the Court order the following relief and enter judgment against Defendants as follows:

- a. An Order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel to represent the class;
- b. A declaration that Defendants have engaged in the illegal conduct described herein;

- c. An Order awarding declaratory and injunctive relief as permitted by law or equity, including permanently enjoining Defendants from continuing their unlawful practices as set forth herein;
- d. A judgment awarding Plaintiff and the Class actual damages or the WVCCPA statutory penalty, whichever is greater;
- e. Ordering Defendants to engage in a corrective advertising campaign;
- f. Awarding attorney fees and costs incurred in prosecuting this action;
- g. Pre-judgment and post-judgment interest; and
- h. All other relief that the Court deems necessary, just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: April 14, 2014

/s/Michael Murphy
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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Midwestern Midget Football Club, Inc.

(b) County of Residence of First Listed Plaintiff Kanawha (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael Murphy, Bailey & Glasser LLP, 910 17th St. NW, Suite 800 Washington, DC 20006, 202-463-2101 Marc Weintraub, Bailey & Glasser, LLP, 209 Capitol St., Charleston, WV

DEFENDANTS

Riddell, Inc.; All American Sports Corporation d/b/a Riddell/All American; Riddell Sports Group, Inc; Easton-Bell Sports, Inc.; Easton-Bell Sports, LLC; EB Sports Corporation and RBG Holdings

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(a) Brief description of cause: violation of the West Virginia Consumer Credit and Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/14/2014 SIGNATURE OF ATTORNEY OF RECORD /s/Michael Murphy

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE