

Suing in Bulk

By Reg P. Wydeven
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Last year, a lot of people I know got very excited about Costco opening up in Appleton. The membership-only warehouse club is the largest in the country, even surpassing Sam's Club. They have great deals on tons of items, especially when bought in bulk. Heck, they even sell cars!

In 2016, Costco started selling golf balls under its own Kirkland Signature brand logo for \$29.99 for two dozen. It turns out that the balls are manufactured by Nassau Golf out of South Korea, the same company that makes TaylorMade golf balls.

After golfers discovered the high quality of the balls, Costco couldn't keep them in stock. By January of this year, they had completely sold out. Everybody was happy...except Acushnet.

Acushnet manufactures Titleist brand golf balls. According to a report from seattlepi.com, after learning of Costco's Kirkland Signature balls, Acushnet sent a cease and desist letter to Costco alleging their balls infringe upon eleven of its patents. Acushnet further asserted Kirkland Signature's guarantee that all of its products "will meet or exceed the quality standards of leading national brands" constitutes false advertising.

In response, Costco headed straight to court. The chain is seeking a declaratory judgment from the U.S. District Court for the Western District of Washington that it did not violate Acushnet's patents and did not engage in false advertising. Costco claims that while many golfers or reviewers have compared Kirkland Signature balls to Titleist's premium balls, Costco itself had not.

The company issued a statement, published by Golf World, that reads: "We have asked the Court to protect our right to continue to sell our Kirkland Signature golf ball against challenges made by Acushnet under patent and advertising laws. The success of the ball with our members and the favorable comments it has received from reputable reviewers apparently have caused Acushnet to believe that our ball directly competes with the Titleist Pro V1 and Pro V1x balls."

If Costco never asserted its golf balls match up to Titleist balls, it would be hard to imagine it falsely advertised. In addition, because Costco just sells the balls and did not manufacture them, they didn't violate Acushnet's patents. If anyone did, it would be Nassau.

Some legal experts speculate that Acushnet is not upset that Costco is selling a golf ball comparable to theirs – they're upset because they're selling a comparable ball so cheap. While two dozen Kirkland balls go for \$30, one dozen Titleist V1 balls typically sell for over \$40.

This is based on the fact that Acushnet has previously sued several other smaller golf ball manufacturers that have made "economy balls." Acushnet has so far not sued Nassau, because until now, it had been selling its TaylorMade balls for roughly the same price as Titleists. Now that Nassau is selling similar balls for about a third of the price of Titleists, Acushnet may change its tune.

Golf enthusiasts will stay on top of this case because Costco is supposed to start selling its Kirkland Signature balls again this month.

Because their business deals in bulk, I wonder if Costco has a dozen lawyers working on their case.

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