

# Class Action Lawsuit Takes Flight

By Reg P. Wydeven  
November 16, 2014

Black Friday is quickly approaching. Once again my dad and I are planning to go out to find some deals. Thankfully we have been following through with our shopping off-season workouts so we're ready for the big day. We focus on cardio so we have plenty of endurance – we don't want to drop while we shop. We do some weights so we can heft large items into our carts. Finally, we've added kick-boxing, so we can fend off other cutthroat shoppers.

At some point in our excursion we typically end up at Walmart. After finding our goods, we started a tradition that while I wait in line to check out, my dad heads to the in-store Subway to buy us some Diet Cokes. After some rigorous shopping, the soft drink is incredibly refreshing and replaces fluids lost to blood, sweat, and of course, tears.

While Diet Coke is our beverage of choice, I notice that a lot of other shoppers will be downing Red Bull. The Austrian energy drink claims that drinking it will “give you wings.” My dad and I have contemplated switching to Red Bull if it would give us a competitive shopping edge. After learning about the company's recent \$13.5 million lawsuit, I think we'll stick with our Diet Cokes.

The lawsuit was filed in New York by long-time Red Bull drinker Benjamin Careathers. He claims that after drinking Red Bull for 10 years, he realized no improved athletic or intellectual abilities. In other words, he did not get wings.

Careathers' suit alleges Red Bull was “misleading customers” by claiming that drinking the “functional beverage” will give you wings. The lawsuit cited reports that concluded that energy drinks provided the same benefit as a cup of coffee.

Careathers' lawyers claimed that they are “seeking to redress the pervasive pattern of fraudulent, deceptive, false and otherwise improper advertising, sales and marketing practice that the Red Bull defendants have engaged in.” They went on to explain that, “The Red Bull defendants prey upon consumers by promising that, among other things, ‘Red Bull gives you wings’ by providing a mixture of ingredients that, when ingested, significantly improve a consumer's physical and mental performance”.

Instead of litigating, Red Bull decided to settle out of court. According to the terms of the settlement, consumers who purchased Red Bull between January 1, 2002, and October 3, 2014, are either entitled to \$10 of cash or \$15 worth of Red Bull products. No proof of purchase is required to file a claim, which can be done at [www.energydrinksettlement.com](http://www.energydrinksettlement.com) by March 2, 2015. In addition, the company will stop using the slogan that Red Bull will give you wings.

A spokesman for the company explained that, “Red Bull settled the lawsuit to avoid the cost and distraction of litigation.” The spokesman went on to say that despite the settlement, “Red Bull maintains its marketing and labelling have always been truthful and accurate, and denies any and all wrongdoing or liability”.

I'm assuming they settled because they didn't have enough energy to fight.

*This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2014 McCarty Law LLP. All rights reserved.*