

Smucker's Says Marketing Firm Overcharged, Underserved It

By **Ryan Harroff**

Law360 (December 20, 2022, 3:55 PM EST) -- Smucker's has accused its former marketing agency of overcharging it more than \$3.3 million in part by taking secret discounts on ad space purchases and withholding those savings from the food giant, despite explicitly promising it was doing no such thing during contract renewal negotiations.

J.M. Smucker Co.'s complaint was removed to Ohio federal court Thursday by integrated marketing company Carat USA Inc., which the complaint states worked as the media and marketing agent for Smucker's from 2010 through 2018. During that time, the suit says, Carat violated the company's media planning and buying services agreement, failed to live up to its fiduciary duty and made it impossible for Smucker's to verify its work.

Carat's job was to purchase ad space on multiple media platforms on behalf of Smucker's and use its industry knowledge to get good deals with major online, print and broadcast media groups, Smucker's said in its suit. According to the complaint, Carat did not share invoices from the media companies it bought marketing space with, such as Google, NBC and People magazine, but instead sent Smucker's invoices from Carat itself.

"The practical effect was that, by Carat's design, there was no transparency and Smucker had no ability to confirm, reconcile or otherwise verify the accuracy of Carat's charges," Smucker's said.

Behind the scenes, the complaint claims, Carat was taking "agency volume bonuses" from the companies it worked with on Smucker's behalf but not telling the food company that it had gotten rebates and discounts, letting Smucker's pay the full price instead of the discounted rate.

Smucker's had specifically asked about this kind of practice when renewing its contract in 2016, according to the complaint, citing concerns after a former marketing industry leader gave a speech about such secret bonuses in 2015. The suit says Carat assured Smucker's it had never taken such bonuses for work related to its account and would not in the future.

After Smucker's terminated its relationship with Carat effective January 2019, the company hired an industry compliance expert to audit Carat's work, according to the complaint. That auditor discovered the secret bonuses and also that Carat allegedly broke its promise to only let certain higher-level employees work on the Smucker's account but had charged for that premium service anyway, Smucker's said.

When approached by the auditor, Carat refused to provide documentation disproving the claim it had taken bonuses without passing the savings on to Smucker's, according to the complaint. Carat also has refused to repay Smucker's \$2.3 million it was allegedly paid for services that were never rendered, which the complaint states was partially caused by Carat resubmitting multiple invoices that had already been rejected.

In a Tuesday statement to Law360, Carat denied the allegations, saying, "While we do not comment on specifics on any legal matters, Carat's position is that the claims alleged are baseless and we plan to vigorously defend ourselves."

Carat owes Smucker's the \$2.3 million it was overpaid, \$1 million more for letting low-level workers handle its account and an additional sum yet to be determined for the allegedly hidden discounts,

according to the complaint. The suit brings six claims including breach of contract, fiduciary duty and fair dealing.

Counsel and representatives for Smucker's did not immediately reply to requests for comment.

Smucker's is represented by Nora K. Cook, Johannes C. Maliza, David M. Hopkins and David A. Rammelt of Benesch Friedlander Coplan & Aronoff LLP.

Carat is represented by Christine M. Haaker and Jamar T. King of Thompson Hine LLP.

The case is J.M. Smucker Co. v. Carat USA Inc., case number 5:22-cv-02259, in the U.S. District Court for the Northern District of Ohio.

--Editing by John C. Davenport.