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## Federal Judge Clips Sharper Image's Coupon-Only Deal

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In a stunning blow to gadget retailer Sharper Image and Coral Gables, Fla., plaintiffs attorney Robert Parks, a Miami federal judge Thursday rejected a proposed agreement to settle a class action lawsuit over allegedly defective air purifiers made by the San Francisco-based company.

The deal would have placed \$19 coupons in the hands of 2 million to 3 million customers who bought the Ionic Breeze purifier. Opponents of the agreement said consumers should have been paid in cash.

U.S. District Judge Cecilia M. Altonaga, in a 61-page ruling, called the settlement unfair. She said it violated the Class Action Fairness Act passed by Congress in 2005. That law was intended to curb coupon-only settlements and provide more meaningful agreements.

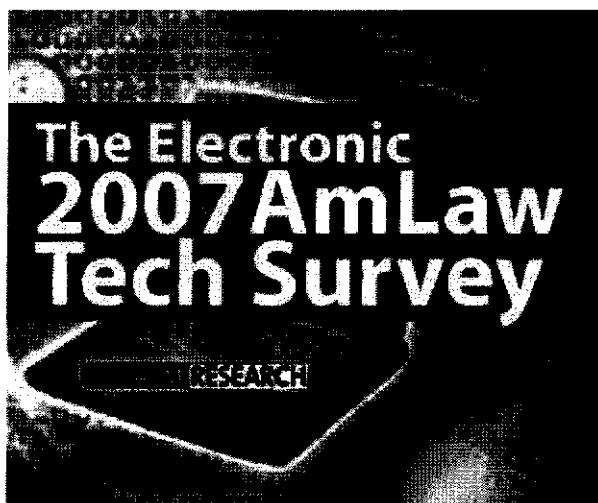
Sharper Image's "precarious financial situation" did not affect the judge's decision, Altonaga said. She wrote that she did not find the proposed settlement "fair, adequate or reasonable."

Altonaga's ruling effectively sidelines the proposed settlement reached between Parks and his co-counsel, the Birmingham, Ala., firm Lightfoot Franklin & White, and Sharper Image earlier this year. Altonaga also rejected the \$2 million in attorney fees the plaintiffs firms were due to receive.

"I think she's wrong," said Parks, who said he was unclear whether the case would proceed.

A Sharper Image spokesman did not return calls for comment. The company, whose stock is trading near a 52-week low of \$3.25 a share, did not issue a statement as the markets closed Thursday.

Altonaga wrote that she was influenced by the rare interventions in the class action by 36 state attorneys general, who filed amicus briefs objecting to the proposed settlement.



Along with plaintiffs attorneys prosecuting a separate lawsuit, the attorneys general said the case should have been settled with cash payments.

Michael Tein, a Miami attorney who has a parallel case pending in California state court and intervened to stop the Miami one, called Altonaga's ruling, "nothing short of brilliant. This is a huge victory for the millions of Americans who each spent hundreds of their hard-earned dollars on a machine that was broken before it got out of the box."

Several different class action suits were brought against Sharper Image by purchasers of the devices, which were slammed by Consumer Reports as being largely ineffective.

The case in Miami federal court was given provisional class certification last year and the settlement appeared headed for approval when Tein intervened in the case. In Tein's case, plaintiffs are seeking full refunds for claimants who purchased the \$300 purifier.

Tein successfully fought to get numerous documents laying out the entire settlement unsealed, over the objections of Sharper Image and the plaintiffs. Tein and the attorneys general argued that the coupons -- originally assigned a value of \$2 each by Sharper Image -- do not meet the spirit of the Class Action Fairness Act.

If the California suit is successful, Parks and a financial expert he retained argued that Sharper Image could be forced into bankruptcy. The California case is now headed for trial.

In her ruling, Altonaga said she did not find evidence to support Tein's assertions that Parks and Sharper Image were in collusion on a "reverse auction" in their settlement.

Bob Jarvis, a Nova Southeastern Law School professor, called the ruling highly unusual.

"You don't often see a judge rejecting a settlement," Jarvis said. "Usually the judge goes along with it." Still, Jarvis noted that the California plaintiffs pushing for full refunds "better be careful."

"If they push too hard, Sharper Image will file for bankruptcy and they will then simply be unsecured creditors and will get nothing," Jarvis said, comparing the case to class action suits that forced manufacturers of breast implants into bankruptcy.