

Southern District of New York: Material Information Not Withheld Where Plaintiff Failed to Allege Defendants Possessed But Withheld More Detailed or More Alarming Information Sufficient to Make Their Prior Disclosures Deficient

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On July 19, 2021, the Southern District of New York dismissed a securities fraud class action alleging that a clothing company, certain of its executives and its majority stockholder failed to disclose that the company's retail customers were purchasing products earlier in the year (the so-called "timing shifts"), such that "disproportionately" fewer people would be purchasing products later, and failed to fully disclose the negative financial impact of these timing shifts. [Cheng v. Canada Goose, 2021 WL 3077469 \(S.D.N.Y. 2021\) \(Broderick, J.\)](#). Finding that defendants properly disclosed the information at issue, the court held that "[a]bsent allegations that Defendants possessed but withheld more detailed or more alarming information related to these timing shifts sufficient to make their prior disclosures legally deficient, Plaintiff cannot plausibly allege that Defendants withheld material information about these timing shifts."

The court noted that on several occasions defendants actually did disclose the information at issue, which plaintiff conceded. For example, in an investor and analyst conference call following Q1, the CEO stated that "[o]n the product side . . . people are buying their parkas early." The court also pointed out that after the announcement of the Q3 results, defendants disclosed that investors should "expect a naturally lower rate of speed in both [the wholesale and retail] channels through the remainder of the fiscal year." Nevertheless, plaintiff alleged that defendants "failed to disclose the full, negative impact" of the timing shifts. In response, the court stated that the legal standard did not necessarily require defendants to disclose the full, negative impact. The court pointed out that the burden was on plaintiff to establish that "any omitted fact was both material and that its omission would be misleading to a reasonable investor."

The court observed that it was difficult to understand what more plaintiff believed that defendants should have disclosed about the timing shifts. The court noted that defendants acknowledged the precise phenomenon at issue, warned that retail growth would be slowed for the rest of the fiscal year, and plainly disclosed that "the timing shift would negatively impact the Company's last two fiscal quarters." To the extent that plaintiff wanted defendants to have disclosed "more granular, empirical, or dire information" about the precise impact the timing shifts

would have, the court determined that this argument failed because the complaint did not allege that defendants possessed or had access to any such information. Without allegations that defendants “possessed but withheld more detailed or more alarming information related to these timing shifts sufficient to make their prior disclosures legally deficient,” the court held that plaintiff could not plausibly allege that defendants withheld material information about the timing shifts.

Authors and
Contacts

Meaghan Kelly
Partner
mkelly@stblaw.com
+1-202-636-5542

George Wang
Partner
gwang@stblaw.com
+1-212-455-2228

Cheryl Scarboro
Of Counsel
cscarboro@stblaw.com
+1-202-636-5529

