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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Etsy Investors Look To Keep IPO Securities Fraud Suit Alive

By **Fola Akinnibi**

Law360, New York (July 12, 2016, 7:20 PM ET) -- Shareholders suing Etsy Inc. over a share decline after its initial public offering asked a New York federal judge to keep their case alive on Monday, arguing that they properly alleged the online crafts shop concealed information about seller abuses on its marketplace.

The proposed class of shareholders continued to allege that the Brooklyn-based company allowed high-volume sellers of counterfeit and infringing products, or CIPs, to operate on the site while telling investors that it was diligently defending against the behavior, according to Monday's opposition to Etsy's motion to dismiss.

These allegations reach the level of false and misleading statements, meaning the suit was properly pled and should not be dismissed, the shareholders argued.

"Investors had no idea it woefully understaffed anti-fraud efforts, disincentivized employees from using available technologies, routinely permitted huge numbers of CIPs, refused to shut down known counterfeiters, and ignored or terminated Integrity Team members who raised concerns," the opposition said. "Textbook examples of undisclosed facts a reasonable investor would view as significantly altering the 'total mix' of information."

However, Joel C. Haims of Morrison & Foerster LLP, counsel for Etsy, told Law360 on Tuesday that the opposition motion is simply a rehash of claims put forth in the complaint.

"The fact of the matter is that Etsy has a takedown policy that was disclosed to investors and that complies with the law," Haims said. "Just because the plaintiffs or some confidential witnesses don't like that policy doesn't give rise to securities law claims."

The stock drop **that led to the suit** was on May 11, 2015, according to court documents. Etsy shares fell more than 8 percent after an analyst note by Wedbush Securities estimated that up to 2 million items, or 5 percent, of Etsy.com products could potentially be counterfeit or infringe intellectual property, prompting concerns that sales growth could suffer.

On the day of the Wedbush note, Etsy shares fell $1.86, or 8.1 percent, to close at $20.85. The company went public at $16 a share on April 16, 2015. Its stock closed trading Tuesday at $10.20 per share.

The suit alleged that Etsy's registration statement filed with the U.S. Securities and Exchange

Commission contained materially false and misleading statements by failing to disclose facts known to company officials but “recklessly disregarded by them.” It names Etsy CEO Chad Dickerson, CFO Kristen Salen and other officials as well IPO underwriters as defendants.

Etsy’s April 5 motion to dismiss claims that the suit is merely a classic “stock drop” action, calling it “meritless.” It also claimed that it spells out its policy online and does not preemptively vet sellers, meaning it adequately disclosed the risks investors were taking on by investing.

Representatives for the shareholders did not immediately respond Tuesday to a request for comment.

The shareholders are represented by Jeremy A. Lieberman and Matthew L Tuccillo of Pomerantz LLP.

Etsy is represented by Morrison & Foerster LLP attorneys Joel C. Haims, Jamie A. Levitt and Kayvan B. Sadeghi.

IPO underwriters including Goldman Sachs Co., Morgan Stanley and others, who are also named as defendants, are represented by Simpson Thacher & Bartlett LLP Jonathan K. Youngwood and James G. Kreissman.

The case is Altayyar v. Etsy, Inc. et al., case number 1:15-cv-02785, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Tom Zanki. Editing by Kelly Duncan.

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