

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL
OF MARYLAND
200 St. Paul Place
Baltimore, Maryland 21202

Plaintiff,

v.

JOHNSON & JOHNSON
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Defendant.

* * * * *

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY

* Case No.:

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

NOW COMES the Plaintiff, the Consumer Protection Division of the Office of the Attorney General of Maryland, and brings this action against Defendant, Johnson & Johnson, for violating the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 – 13-501 (LexisNexis 2013 and LexisNexis Supp. 2023) (the “Consumer Protection Act”), and states as follows:

The Parties

1. Plaintiff, the Consumer Protection Division of the Office of the Attorney General of Maryland (the “Division”), is charged with, among other things, enforcing and seeking redress for violations of Maryland consumer protection laws, including the Maryland Consumer Protection Act.

2. Defendant Johnson & Johnson (“J&J”) is a New Jersey company that maintains its principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

3. At all times relevant hereto, Defendant J&J transacted business in the State of Maryland and nationwide by marketing, promoting, advertising, offering for sale, selling, and

distributing talc-based Johnson's Baby Powder and talc-based Shower to Shower body powder, and that business is governed by the Maryland Consumer Protection Act.

Jurisdiction and Venue

4. This Court has jurisdiction over the Defendant pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-103 (LexisNexis 2013 and LexisNexis Supp. 2023) because Defendant J&J has transacted business within the State of Maryland at all times relevant to the Complaint.

5. Venue is proper in Baltimore City pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201(a) because Defendant J&J has carried on a regular business in Baltimore City.

Background

6. Since the 1890s, J&J and various subsidiaries have manufactured, marketed, and sold talc-based Johnson's Baby Powder and talc-based Shower to Shower body powder (collectively, "Talc Powder Products"). J&J and its subsidiaries marketed these products as safe for daily use by consumers all over their bodies, including female genitals. The products were marketed for consumers to use them to maintain a fresh, dry, and clean feeling; to eliminate friction on the skin; and to absorb excess moisture. J&J and its subsidiaries' Talc Powder Products were advertised as "clinically proven gentle and mild."

7. In advertisements, J&J and its subsidiaries, at times, encouraged primarily women and teenage girls to use Talc Powder Products to mask and avoid odors. Bottles of Johnson's Baby Powder specifically stated, "for use every day to help feel soft, fresh and comfortable." Shower to Shower's advertisements stated "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh and comfortable throughout the day." In short, J&J and its subsidiaries knew and intended that women would use the Talc Powder Products on and in their genitals.

8. Since the 1980s, J&J and/or its subsidiaries knew of studies and other information demonstrating that Talc Powder Products were sometimes tainted with carcinogenic asbestos and that women who used talc-based powders in the genital area have an increased risk of ovarian cancer compared to those women who do not. At all pertinent times during these periods, feasible and safe alternatives to the Talc Powder Products existed. Despite this knowledge, J&J and/or its subsidiaries continued to market Talc Powder Products as safe, pure, and gentle, and as suitable for use in and on female genitals.

9. In the 1970s, there was growing public awareness of the dangers of asbestos with the recognition of asbestos as the primary cause of mesothelioma by the federal Food and Drug Administration (“FDA”).

10. J&J and/or its subsidiaries have known of the potential presence of asbestos in its Talc Powder Products for decades, but failed to disclose this knowledge to the government, media or the public. Instead, the lobbying organization Cosmetic Toiletry and Fragrance Association (hereinafter “CTFA”), which J&J was a part of, denied that cosmetic talc products should bear warning labels to the effect that “talcum powder causes cancer in laboratory animals or the ‘frequent talc application in the female genital area increases the risk of ovarian cancer’.”

11. J&J an/or its subsidiaries also engaged in an effort to influence research on talc safety and disseminated favorable data from various J&J-sponsored studies to scientific and medical communities in the United States.

12. Meanwhile, a 1982 Harvard study found that the use of talc increased a women’s risk of ovarian cancer by 92%. The authors of that study advised J&J to place a warning on its talc products. It did not.

13. Since 1982, multiple studies have found an increased risk of ovarian cancer caused by the use of talc products for feminine hygiene.

14. Despite knowledge of the dangers associated with the use of its Talc Powder Products, J&J and its subsidiaries failed to warn consumers and continued to market Talc Powder Products for use in the manner most likely to increase the risk of ovarian cancer.

15. In the 1990s, J&J specifically targeted African-American and Hispanic women in its marketing campaigns in order to reverse declines in sales of its baby powders.

16. By the 2000s, other manufacturers began placing warnings on their talc products about the risk of developing ovarian cancer as a result of genital talc use. The safety documents provided to J&J by its talc supplier included a statement that the International Agency for Research on Cancer “has concluded that perineal use of talc-based body powder is possibly carcinogenic to humans.” Despite knowing for over 30 years of studies linking the use of Talc Powder Products in the genital area with increased risk of ovarian cancer, J&J and its subsidiaries continued to omit warnings about this risk in its marketing of the Talc Powder Products. Instead, J&J and its subsidiaries continued to market the products as safe for daily use on all areas of the body. For example, Shower to Shower advertisements suggested that “a sprinkle a day keeps odors away” and that the product “can be used all over your body.”

17. In 2012, J&J sold Shower to Shower to Valeant Pharmaceuticals North America, LLC, a wholly-owned subsidiary of Valeant International. In July 2018, Valeant International changed its name to Bausch Health Companies, Inc (“Bausch”). In 2018, Bausch reformulated Shower to Shower by replacing talc with corn starch.

18. In October 2019, J&J issued a recall of Johnson’s Baby Powder after the United States Food and Drug Administration discovered asbestos in some of the products. J&J finally discontinued the

manufacturing, sale, and distribution of talc-based Johnson's Baby Powder in May 2020 in the United States.

Johnson & Johnson's Course of Conduct

19. In marketing its Talc Powder Products, J&J and its subsidiaries misrepresented and failed to disclose the risks associated with the use of the products, particularly the risk of cancer, and misrepresented the safety and purity of its Talc Powder Products, thereby making false and/or misleading representations about the products' risks.

20. In marketing its Talc Powder Products, J&J and its subsidiaries failed to disclose the presence of asbestos in their Talc Powder Products and asbestos' link to cancer.

Violations of the Consumer Protection Act

21. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs 1 through 20 as if they were set out at length herein.

22. In the course of marketing, promoting, selling, and distributing its Talc Powder Products, Defendant J&J has made false statements about, misrepresented, and/or made other representations about the safety and purity of its Talc Powder Products that had the effect, capacity, or tendency, of deceiving or misleading consumers. Pursuant to § 13-301(1) of the Consumer Protection Act, such false statements and misrepresentations constitute unfair, abusive, or deceptive trade practices that are prohibited by § 13-303 of the Consumer Protection Act.

23. In the course of marketing, promoting, selling, and distributing Talc Powder Products, Defendant J&J has made representations concerning the characteristics, uses, benefits, and/or qualities of Talc Powder Products that they did not have. Pursuant to § 13-301(2) of the Consumer Protection Act, such false statements and misrepresentations constitute unfair, abusive, or deceptive trade practices that are prohibited by § 13-303 of the Consumer Protection Act.

24. In the course of marketing, promoting, selling, and distributing Talc Powder Products, Defendant J&J made material omissions concerning the risks associated with its Talc Powder Products, and those material omissions deceived or tended to deceive consumers. Pursuant to § 13-301(3) of the Consumer Protection Act, such material omissions constitute unfair, abusive, or deceptive trade practices that are prohibited by § 13-303 of the Consumer Protection Act.

Request for Relief

25. WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an Order:

- a. Adjudging and decreeing that Defendant has engaged in the acts or practices complained of herein, and that such acts or practices constitute unfair, abusive, and/or deceptive trade practices in violation of § 13-303 of the Consumer Protection Act;
- b. Issuing a permanent injunction prohibiting Defendant, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair, abusive, or deceptive trade practices in the marketing, promoting, selling and distributing of Defendant's Talc Powder Products;
- c. Ordering Defendant to pay civil penalties in the amount of \$10,000 for each and every violation of the Consumer Protection Act pursuant to Md. Code Ann., Com. Law § 13-410;
- d. Ordering Defendant to pay all costs for the prosecution and investigation of this action, as provided by Md. Code Ann., Com. Law § 13-409;
- e. Ordering such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ANTHONY G. BROWN
Attorney General of Maryland

By: /s/ Lauren R. Calia
LAUREN R. CALIA
Senior Assistant Attorney General
Consumer Protection Division
Office of the Attorney General of Maryland
200 St. Paul Place, 16th Floor
Baltimore, MD 21202
(410) 576-6556
Fax: (410) 576-6566
CPF No.: 9412130096
lcalia@oag.state.md.us

Attorneys for Plaintiff,
The Consumer Protection Division,
Office of the Attorney General of Maryland

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