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**Counsel for Plaintiff and the Class**

**(Additional Counsel appear on the signature page)**

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

<b>CARYN LIEBERSON, LISA</b>	:	
<b>TRIANTAFILLOU, and PAMELA</b>	:	
<b>DUBIN, On Behalf of</b>	:	
<b>Themselves and All Others Similarly</b>	:	
<b>Situated,</b>	:	<b>Civil Action No.</b>
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	<b>CLASS ACTION COMPLAINT</b>
	:	
<b>JOHNSON &amp; JOHNSON CONSUMER</b>	:	
<b>COMPANIES, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

Plaintiffs, Caryn Lieberman (“Lieberman”), Lisa Triantafillou (“Triantafillou”), and Pamela Dubin (collectively “Plaintiffs”), allege, upon personal knowledge as to themselves and their own acts, and upon information and belief (based on the investigation of counsel) as to all other matters, as follows:

### **NATURE OF ACTION**

1. Defendant, Johnson & Johnson Consumer Companies, Inc. (“J&J” or “Defendant”), manufactures, markets and sells Johnson & Johnson Bedtime Bath Products, including JOHNSON’S® BEDTIME® Bath (“Bedtime Bath”) and JOHNSON’S® BEDTIME® Lotion (“Bedtime Lotion”) (collectively, “Bedtime Bath Products” or “Products”), which purport to help a baby sleep better. Specifically, on the front of each bottle, there is a prominent logo that proclaims: “CLINICALLY PROVEN, HELP BABY SLEEP BETTER.”<sup>1</sup> Further, J&J markets and advertises the Bedtime Bath Products as having the following benefits: (1) “Releases NaturalCalm Essences” (Exhibits 1, 2); (2) “help your baby fall asleep easier” (Exhibits 1, 2); and (3) “help[] babies...sleep through the night better.” (Exhibits 1, 2). J&J also markets and advertises, on the back of the bottles, that it has also created a “clinically proven” 3-step routine of a warm bath, gentle massage (with the Products) and quiet activities that will help babies sleep better (*e.g.*, reading, cuddling, and singing lullabies) (Exhibits 1, 2).

2. Since the introduction of the Bedtime Bath Products in 2000, Defendant’s nationwide advertising campaign for the Bedtime Bath Products has been extensive, and Defendant has spent a significant amount of money to convey its deceptive messages to consumers throughout the United States and other parts of the world. Defendant utilizes a wide array of media to convey its deceptive claims about the Bedtime Bath Products, including in television, magazines, the Internet, and on the Product labels and labeling. Through this massive marketing campaign, Defendant has worked to convey a singular message: the Bedtime Bath

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<sup>1</sup>A true and correct copy of the product label for Bedtime Lotion is attached hereto as Exhibit 1, and a true and correct copy of the product label for Bedtime Bath is attached hereto as Exhibit 2.

Products are clinically proven to help babies sleep better. Each person who has purchased the Bedtime Bath Products has been exposed to the advertising message and, in particular, the misleading labels, and purchased the Products as a direct result of that message.

3. Defendant's claims are deceptive and misleading, and have been designed solely to cause consumers to buy Bedtime Bath Products. Defendant knew or should have known, at the time it began selling the Products, that there are no scientifically significant or reliable studies showing that Bedtime Bath Products are clinically proven to provide the results promised by Defendant, and Defendant has no reliable, relevant substantiation for the claims it makes regarding the Products.

4. As a result of its unsubstantiated claims, J&J charges a premium of at least \$1.00 for Bedtime Bath Products over its other baby washes and lotions, which premium Plaintiffs and other consumers paid (and continue to pay) with the specific understanding, based upon Defendant's false and misleading labeling, advertising and pervasive representations, that using the Bedtime Bath Products, alone, or in connection with the "proven" 3-step nighttime routine, will help babies sleep better. As a result of seeing these false and misleading representations, Plaintiffs and consumers bought the Bedtime Bath Products, paid more for the Bedtime Bath Products than they otherwise would have paid absent the wrongful conduct, and have been damaged and suffered an ascertainable loss as a result of the wrongful conduct.

5. This nationwide class action seeks to provide redress to consumers who have been harmed by the false and misleading marketing practices Defendant has engaged in with respect to the Bedtime Bath Products. Defendant's conduct has included the systematic and continuing practice of disseminating false and misleading information from New Jersey and throughout the

United States via pervasive multi-media advertising and the product packaging, all of which were and are intended to induce unsuspecting consumers, including Plaintiffs and the members of the Class, into purchasing the more expensive Bedtime Bath Products, which are not clinically proven to have the benefits that are represented, although those very supposed benefits serve as the basis for consumers' decisions to purchase the Bedtime Bath Products as opposed to ordinary Johnson & Johnson baby washes and lotions which have long been sold on the market, and which do not purport to provide such clinically proven benefits.

6. Plaintiffs assert claims on behalf of themselves and the Class (defined below) for violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.* ("CFA") and in the alternative for violations of the CFA and Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, *et seq.*

7. Though this action, Plaintiffs seek injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys' fees, costs, and all other relief available to the Class as a result of Defendant's unlawful conduct.

### **PARTIES**

8. Lieberman is, and at all times relevant to this action has been, a resident and citizen of Mt. Laurel, New Jersey.

9. Triantafillou is, and at all times relevant to this action has been, a resident and citizen of Somerdale, New Jersey.

10. Dubin is, and at all times relevant to this action has been, a resident and citizen of Pembroke Pines, Florida.

11. J&J is a New Jersey corporation and, at all times relevant to this action,

has maintained its principal place of business in Skillman, New Jersey. J&J, thus, is a citizen of New Jersey. All critical decisions made with respect to the Bedtime Bath Products, including all decisions concerning the marketing and advertising of the Bedtime Bath Products, were made by J&J employees located in New Jersey. J&J sold the Bedtime Bath Products through retail stores, the Internet, and also through television and other advertisements, all of which led consumers to purchase the Bedtime Bath Products. J&J knew, or should have known, that the representations made regarding the Bedtime Bath Products were false and misleading at the time that it began distributing the Bedtime Bath Products in the United States market.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which certain of the Class members and Defendant are citizens of different states.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because Defendant is a resident of this judicial district, conducts business throughout this district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims took place within and emanated from this judicial district.

### **FACTUAL BACKGROUND**

14. This class action is brought against J&J for the benefit and protection of all purchasers of the Bedtime Bath Products.

15. J&J launched its Bedtime Bath Products in 2000. As a general matter, many babies and toddlers have difficulty falling asleep and sleeping through the night. Indeed, J&J's

website indicates that “20-30 percent of babies experience regular sleep problems, including difficulty falling asleep and sleeping through the night. Most parents, 76 percent, report a desire to change some aspect of their baby’s sleep routine.”

16. J&J has had baby washes and lotions on the market for years. J&J is not in the business of selling routines -- it is in the business of selling its Products. In order to sell more products, and attempt to capitalize on this perceived market to improve baby’s sleep routine, J&J introduced its Bedtime Bath Products. Indeed, J&J launched these Products and claimed it had “expanded its line to bring you **innovative products** and the information you need to help your baby sleep better.” (Emphasis added).<sup>2</sup>

17. On one of its websites, Defendant provides a New Parent’s Guide to Better Sleep, which states that: “Now, thanks to the sleep experts at Johnson’s, a clinically proven before-bed routine, and a remarkable line of Johnson’s products developed with Naturalcalm essences, all babies can sleep better.” The Guide goes on to state: “This booklet provides information on a unique, simple, nightly before-bed routine and the ONLY line of baby bath and massage products clinically proven to help the babies sleep better...so you can help your baby get to sleep faster and spend less time awake during the night.” (Exhibit 3).

18. The Bedtime Bath Products are known to customers only by the representations made about the Products by Defendant. If, as is the case here, J&J sold other baby washes and lotions for infants and young children, then customers would have no reason to buy the NEW products, the Bedtime Bath Products, and pay a premium for them, unless and until they are

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<sup>2</sup>A true and correct copy of the New Parent’s Guide to Better Sleep, <http://www.johnsonspprofessional.com/bedtime-sleep/new-parent> (last visited 10/4/11), is attached hereto as Exhibit 3.

exposed to the messages about its purported properties and benefits, by Defendant. And it is only on the label, as well as in the marketing material disseminated by Defendant, that the properties are explained. In other words, given the existence of similar bath and skin lotion products, long sold by J&J, for washing and moisturizing a baby's skin, consumers would purchase the Bedtime Bath Products if, **and only if**, they were exposed to Defendant's pervasive labeling and advertising campaign that these NEW Products did something that its others did not do -- here, it is that the new Bedtime Bath Products were CLINICALLY PROVEN to help baby sleep better.

19. The labeling and marketing communicates a persistent and material message and makes a common and pervasive representation that the Products are clinically proven to help babies sleep better.

20. The core representations alleged to be false and misleading, that the Products are clinically proven to help babies sleep better, are all contained on the label itself for every purchaser to read.

21. On the front of the bottle of the Products, there is a prominent logo that proclaims: "CLINICALLY PROVEN, HELP BABY SLEEP BETTER." (Exhibits 1, 2).

22. J&J claims that its Bedtime Bath and Bedtime Lotion are clinically proven to help babies and toddlers fall asleep easier and sleep through the night better. (Exhibits 1-3).

23. Therefore, Defendant expressly and impliedly represented that the Products were clinically proven to help baby sleep better.

24. As Defendant knows, however, contrary to the clear labeling and advertising, the Bedtime Bath Products are not clinically proven to help a baby sleep better.

25. J&J further markets and advertises, on the back label of the bottle, that it has also

created a “clinically proven” 3-step routine of a warm bath, gentle massage (with Products) and quiet activities (*e.g.*, reading, cuddling, and singing lullabies). *See* Exhibit 1.

Johnson® has created a nightly routine that is clinically proven to help baby fall asleep through the night better. Treat your baby to a warm bath using JOHNSON'S® BEDTIME BATH®, then gently massage skin with JOHNSONS® BEDTIME LOTION®. Each product releases NATURALCALM™ essences, a patent pending blend of gentle soothing aromas. Your baby will drift off to a better night's sleep...

Thus, Defendant has carefully created the misleading and deceptive impression that consumers have the clinically proven Product **and** the clinically proven “3-step routine.”

26. At no time, however, either in its labels, advertising, or so-called clinical studies does J&J attempt to sell the routine, or to describe the use of the routine or its studies, without also including the Bedtime Bath Products in the description of the routine and in the description of the studies. Nor would one expect it to, since Defendant does not sell routines, it sells Bedtime Bath Products.

27. Since the launch of the Products and to the present, on its labeling and in its other advertisements, J&J has consistently and uniformly stated that the Products are clinically proven to help babies sleep better, which is intended to appear scientific, and to give the claims a special significance, when in reality, the Products are not clinically proven.

28. Throughout the relevant time period, Defendant has marketed the Products using uniformly deceptive advertising and packaging. Likewise, the labeling and marketing for the Bedtime Lotion and Bedtime Bath contain substantially the same message. A typical label promises that:

- a. the Products are “CLINICALLY PROVEN, HELP BABY SLEEP BETTER” (Exhibits 1, 2);



- b. the Products “help your baby fall asleep easier and sleep through the night better” (Exhibits 1, 2);
- c. JOHNSON’S® BEDTIME® products with NATURALCALM™ essences are part of a clinically proven routine to help baby fall asleep easier and sleep through the night better (Exhibits 1, 2); and
- d. the nighttime routine is clinically proven to help babies and toddlers sleep better (Exhibits 1, 2).

29. The Bedtime Bath Products print advertisements contain substantially similar messages about the ability of the Products to help babies sleep. These advertisements emanate from New Jersey, and contain materially the same deceptive messages about the Products that Defendant has conveyed since the Products were launched.

30. Defendant also provides Baby Sleep Guides as part of its advertising. These marketing materials also contain the unfair and/or deceptive representations about the Products.

In its Sleep Guide, which cites to its own “baby care experts” at J&J, Defendant states that:

Our new products, enriched with NATURALCALM™ essences, a unique blend of gentle ingredients and soothing aromas, can help your baby sleep better when used as part of a regular nightly routine. **JOHNSON’S® is the first and only brand that’s clinically proven to help babies fall asleep easier and sleep through the night better.** To learn more about our products, visit [JohnsonsBaby.com/sleep](http://JohnsonsBaby.com/sleep).

[http://www.johnsonsbaby.com/sites/default/files/sleep\\_baby\\_6-18m.pdf](http://www.johnsonsbaby.com/sites/default/files/sleep_baby_6-18m.pdf) (emphasis added)<sup>3</sup>

31. Defendant also repeats its unfair and/or deceptive representations about its Products on its Internet websites [www.johnsonsbaby.com](http://www.johnsonsbaby.com), [www.jnj.com](http://www.jnj.com) and [www.johnsonspprofessional.com](http://www.johnsonspprofessional.com). The content of the websites contain materially the same

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<sup>3</sup>A true and correct copy of the Baby Sleep Guide, disseminated from New Jersey, is attached hereto as Exhibit 4.

message about the Products that Defendant has put on the labels and disseminated since its launch.

32. For example, Defendant's website advertising states that the Products are formulated with NATURALCALM™, a "unique blend of patent pending essences that has been tested and proven to have relaxing properties." In fact, since the time of the introduction of the Bedtime Bath Products, J&J has also added NATURALCALM™ to several of the Bedtime Bath Products. J&J claims that NATURALCALM™ is a "patent-pending blend of gentle and soothing aromas" proven to promote calming and a relaxed state. (Exhibit 1).

33. The website also states that the Bedtime Lotion is "clinically shown to last all night long."<sup>4</sup> Further, the website provides that the parent and child will get a "good night's rest." The website also states: "Did you know? A bedtime routine that includes a warm bath with "JOHNSON'S® BEDTIME® Bath, followed by a massage with "JOHNSON'S® BEDTIME® Lotion, and quiet time, is clinically proven to help babies fall asleep easier and sleep through the night better." (Exhibit 5).

34. To attempt to reinforce the appearance that its claims are legitimate and its Bedtime Bath Products are different from its long-sold ordinary bath products, including that the benefits claims are backed by scientific and medical support, J&J refers to number of "studies" purporting to support the claims that the Products are clinically proven.

35. However, no studies, clinical or otherwise, substantiate J&J's claims about its Bedtime Bath Products. The study or studies J&J cites -- many of them funded by J&J or conducted by employees, consultants or agents of J&J itself -- are deeply flawed in design, or are

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<sup>4</sup>A copy of the advertisement is attached hereto as Exhibit 5.

insignificant, but, in any event, do not even purport to test the “routine” with J&J’s long-sold ordinary bath products, or with no products at all.

36. Along these lines, Defendant provides through its website, so-called clinical information that also contains its unfair and/or deceptive representations, and although purporting to provide the “clinical support,” the so-called studies do not support J&J’s claims.<sup>5</sup>

The “clinical support” documents provide as follows:

A clinical study measured the impact of a 3-step before-bed routine on babies’ nighttime sleep habits. This routine, including a bath and massage with Johnson’s Bedtime Bath and Johnson’s Bedtime Lotion containing NaturalCalm essences, helped improve nighttime sleep. (Exhibit 6).

37. However, neither this study, nor any clinical study, purports to measure or compare the impact of a 3-step before-bed routine on babies utilizing J&J’s regular baby washes and lotions or with no products at all.

38. Contrary to its representations, Defendant knows that the Bedtime Bath Products have not been subjected to clinical tests which substantiate the claim that using the 3-step routine with the Bedtime Bath Products is any more effective in helping babies sleep than using the 3-step routine without the Bedtime Bath Products, or even than using the 3-step routine without any products at all.

39. In the United Kingdom, a challenge to the advertising of the very claims at issue here, found that Defendant’s advertising was “likely to mislead” as Defendant failed to show that it was the use of the Products in the suggested routine that was proven to help babies sleep better and because the advertising did not make clear that the routine had only been tested on babies

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<sup>5</sup>A copy of the “clinical” materials from the so-called “professional” portion of [www.johnsonsbaby.com](http://www.johnsonsbaby.com) are attached hereto as Exhibit 6.

over seven months old. The ASA Council “told them to ensure that any similar advertising did not suggest that Johnson’s products, as part of the bedtime routine, had been proven to help babies sleep better and to make clear that the routine had been proven to work only for babies over seven months old.”

[http://www.asa.org.uk/ASA-action/Adjudications/2008/4/Johnson-and-Johnson-Ltd/TF\\_ADJ\\_44345.aspx](http://www.asa.org.uk/ASA-action/Adjudications/2008/4/Johnson-and-Johnson-Ltd/TF_ADJ_44345.aspx).<sup>6</sup>

40. As a result of the lack of substantiation for its claims, representations made by J&J regarding the Bedtime Bath Products, which have been disseminated through television commercials, printed advertisements, websites, and product packaging, are deceptive, false and misleading.

41. All of these representations made by J&J are deceptive, false and misleading. Moreover, as a result of these representations, Defendant was able to sell, to Plaintiffs and other consumers, the Bedtime Bath Products at a premium over its plain baby lotion and wash products (*e.g.* JOHNSON’S® Baby Lotion, JOHNSON’S® Baby Wash or other comparable name brand products), which cost at least twenty-five (25%) less than the Bedtime Bath Products. In other words, each of the Plaintiffs purchased the Products at a premium price over other baby bath and lotions.

42. Had Plaintiffs and other members of the proposed Class been aware of the truth, they would not have purchased the more expensive Bedtime Bath Products or would have paid substantially less for them.

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<sup>6</sup>A true and correct copy of the decision is attached hereto as Exhibit 7.

### **Plaintiffs' Experiences**

43. Plaintiff Lieberman's claims are based on viewing the advertising and the Product labels. On or about January 2008, when her first child was around four months old, Lieberman viewed: (a) commercials on television, (b) advertisements from a number of parenting magazines that she routinely read including, for example, *Baby Talk*, *Parenting* and *Parents* magazines as well as internet advertisements similar to those described above; and (c) claims on the label of the bottles of the Bedtime Bath Products. Plaintiff Lieberman specifically recalls viewing at this time, print advertisements that claimed that the Products were better than the other J&J products because these Products (and only these Products) were "clinically proven" to help babies sleep better. Lieberman also specifically recalls viewing, at this time, television advertisements that claimed that the Products were better than the other J&J products because these Products (and only these Products) were "clinically proven" to help babies sleep better.

44. These print and television advertisements prompted her to search out the Products in the ShopRite and to review the labels. Lieberman read the labels, which also stated that the Products were clinically proven. The labels, coupled with the pervasive advertising message to which she had been exposed, convinced her to buy the Bedtime Bath Products.

45. In reliance on the claim that the Bedtime Bath Products were clinically proven to help her four month old sleep better (including her review of the labels), Lieberman purchased, Bedtime Bath and Bedtime Lotion for approximately \$5.69 per 15 oz. bottle, at the Shop Rite on Union Mill Road in Mt. Laurel, New Jersey.

46. The labeling of the bottles and the representations therein, were made by Defendant. Reasonably relying on the claims made in the pervasive advertising message

disseminated by Defendant through commercials, printed advertisements, as well as on the labeling of the bottles, Plaintiff purchased the Products. Plaintiff reasonably expected that the Products would work as advertised and sold and, thus, used the Bedtime Bath Products as directed. By way of example, the back of the Bedtime Lotion bottle (Exhibit 1), states:

Johnson® has created a nightly routine that is clinically proven to help baby fall asleep through the night better. Treat your baby to a warm bath using JOHNSON'S® BEDTIME BATH®, then gently massage skin with JOHNSONS® BEDTIME LOTION®. Each product releases NATURALCALM™ essences, a patent pending blend of gentle soothing aromas. Your baby will drift off to a better night's sleep...

47. After using the Bedtime Bath Products purchased as part of the 3-step nightly routine for a period of time with her child, Lieberman discontinued use as she determined that neither the Bedtime Bath Products nor the "routine" helped her baby sleep better, because the Bedtime Bath Products had no efficacy.

48. Plaintiff Dubin's claims are based on viewing the advertising and the Product labels. On or about August 2011, when her child was a few months old, Dubin viewed: (a) commercials on television, (b) advertisements from *Parents* magazine; and (c) claims on the label of the bottles of the Bedtime Bath Products. Plaintiff Dubin specifically recalls viewing at this time, print advertisements that claimed that the Products were better than the other J&J products because these Products (and only these Products) were "clinically proven" to help babies sleep better. Dubin also specifically recalls viewing, at this time, television advertisements that claimed that the Products were better than the other J&J products because these Products (and only these Products) were "clinically proven" to help babies sleep better.

49. These print and television advertisements prompted her to search out the Products

in the Target in Pembroke Pines and to review the labels. Dubin read the labels, which also stated that the Products were clinically proven. The labels, coupled with the pervasive advertising message to which she had been exposed, convinced her to buy the Bedtime Bath Products.

50. In reliance on the claim that the Bedtime Bath Products were clinically proven to help her baby month old sleep better (including her review of the labels), Dubin purchased, Bedtime Bath and Bedtime Lotion at the Target in Pembroke Pines, Broward County, Florida.

51. The labeling of the bottles and the representations therein, were made by Defendant. Reasonably relying on the claims made in the pervasive advertising message disseminated by Defendant through commercials, printed advertisements, as well as on the labeling of the bottles, Plaintiff purchased the Products. Plaintiff reasonably expected that the Products would work as advertised and sold and, thus, used the Bedtime Bath Products as directed. By way of example, the back of the Bedtime Lotion bottle (Exhibit 1), states:

Johnson® has created a nightly routine that is clinically proven to help baby fall asleep through the night better. Treat your baby to a warm bath using JOHNSON'S® BEDTIME BATH®, then gently massage skin with JOHNSONS® BEDTIME LOTION®. Each product releases NATURALCALM™ essences, a patent pending blend of gentle soothing aromas. Your baby will drift off to a better night's sleep...

52. After using the Bedtime Bath Products purchased as part of the 3-step nightly routine for a period of time with her child, Dubin discontinued use as she determined that neither the Bedtime Bath Products nor the "routine" helped her baby sleep better, because the Bedtime Bath Products had no efficacy.

53. Plaintiff Triantafillou's claims are based on the Product's labels. On or about January or February 2012, when her daughter was around two months old, Triantafillou, while

shopping for a baby lotion, viewed the claims on the label of the bottles of the Bedtime Bath Products. The labels convinced her to try the Bedtime Bath Products to help her baby sleep better. In reliance on the label's claims that the Bedtime Bath Products were clinically proven to help her child sleep better, she purchased Bedtime Lotion in March 2012 in either Walmart or BabiesRUs in Deptford, New Jersey.

54. The labeling of the bottles, and the representations therein, were made by Defendant. Reasonably relying on the claims made in the pervasive advertising message disseminated by Defendant through commercials, printed advertisements, as well as on the labeling of the bottles, Plaintiff purchased the Bedtime Lotion. Plaintiff reasonably expected that the Product would work as advertised and sold and thus used the Bedtime Bath Product as directed. By way of example, the back of the Bedtime Lotion bottle (Exhibit 1), states:

Johnson® has created a nightly routine that is clinically proven to help baby fall asleep through the night better. Treat your baby to a warm bath using JOHNSON'S® BEDTIME BATH®, then gently massage skin with JOHNSONS® BEDTIME LOTION®. Each product releases NATURALCALM™ essences, a patent pending blend of gentle soothing aromas. Your baby will drift off to a better night's sleep...

55. After using the Bedtime Bath Product daily as part of a 3-step nightly routine for a few months with her daughter, Plaintiff Triantafillou correctly determined that neither the Bedtime Bath Product nor the "routine" helped her baby sleep better, because the Product had no efficacy.

56. Plaintiffs each suffered an ascertainable loss in the amount of the price of the Bedtime Bath Products as a result of the improper actions described herein because the Bedtime Bath Products did not perform as Defendant claimed.



**New Jersey's Substantive Laws Apply To The Proposed Class**

57. New Jersey's substantive laws may be applied to the claims of Plaintiffs and the Class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. New Jersey has significant contact, or a significant aggregation of contacts, to the claims asserted by Plaintiffs and all Class members, thereby creating state interests that ensure that the choice of New Jersey state law is not arbitrary or unfair.

58. Defendant's headquarters and principal places of business are located in New Jersey. Defendant also owns property and conducts substantial business in New Jersey and, therefore, New Jersey has a significant interest in regulating Defendant's conduct under its laws. Defendant's decisions to reside in New Jersey and avail itself of New Jersey's laws renders the application of New Jersey law to the claims herein constitutionally permissible.

59. A substantial number of Class members, including Plaintiffs Lieberman and Triantafillou, reside in New Jersey and purchased the Bedtime Bath Products in or from New Jersey.

60. New Jersey also is the state from which Defendant's misconduct emanated. This conduct similarly injured and affected Plaintiffs and Class members. For instance, J&J's marketing and advertising efforts (including Products' labeling) were created in and orchestrated from the location of its present headquarters in New Jersey.

61. The application of New Jersey's laws to the Class is also appropriate under New Jersey's choice of law rules because New Jersey has significant contacts to the claims of the Plaintiffs and the Class, and New Jersey has a greater interest in applying its laws here than any other interested state.

### **CLASS ACTION ALLEGATIONS**

62. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

63. The Class that Plaintiffs seek to represent is defined as follows:

**Class:**

All persons who purchased the Bedtime Bath Products within the United States, not for resale or assignment.

Excluded from the Class are (a) Defendant, including any entity in which Defendant has a controlling interest, and its representatives, officers, directors, employees, assigns and successors; (b) any person who has suffered personal injury or is alleged to have suffered personal injury as a result of using the Bedtime Bath Products; and (c) the Judge to whom this case is assigned. In the alternative to a nationwide Class, Plaintiffs seeks to represent two sub-classes (collectively, the “Classes”) defined as:

**New Jersey Class:** All persons who purchased the Bedtime Bath Products within the State of New Jersey, not for resale or assignment ("New Jersey Sub-Class").

**Florida Class:** All persons who purchased the Bedtime Bath Products within the State of Florida, not for resale or assignment ("Florida Sub-Class").

64. **Numerosity/Impracticability of Joinder:** The members of the Classes are so numerous that joinder of all members would be impracticable. The proposed Classes includes thousands of members. The precise number of Class members can be ascertained by reviewing documents in Defendant’s possession, custody and control or otherwise obtained through reasonable means.

65. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, include, but are not limited to the following:

- a. whether Defendant engaged in a pattern of fraudulent, deceptive and misleading conduct targeting the public through the marketing, advertising, promotion and/or sale of the Bedtime Bath Products;
- b. whether Defendant's acts and omissions violated the CFA and FDUPTA;
- c. whether Defendant made material misrepresentations of fact or omitted to state material facts to Plaintiffs and the Classes regarding the marketing, promotion, advertising and sale of the Bedtime Bath Products, which material misrepresentations or omissions operated as fraud and deceit upon Plaintiffs and the Classes;
- d. whether Defendant's false and misleading statements of fact and concealment of material facts regarding the Bedtime Bath Products were intended to deceive the public;
- e. whether, as a result of Defendant's misconduct, Plaintiffs and the Classes are entitled to equitable relief and other relief, and, if so, the nature of such relief; and
- f. whether the members of the Classes have sustained ascertainable loss and damages as a result of Defendant's acts and omissions, and the proper measure thereof.

66. **Typicality:** The representative Plaintiffs' claims are typical of the claims of the members of the Classes they seek to represent. Plaintiffs and all Class members have been injured by the same wrongful practices in which Defendant has engaged. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class members, and are based on the same legal theories.

67. **Adequacy:** Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Classes, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiff nor their attorneys have any interests

which are contrary to or conflicting with the Classes.

68. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Classes are likely in the millions of dollars, the individual damages incurred by each Class member resulting from Defendant's wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Classes do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Defendant has acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

69. Plaintiffs will not have any difficulty in managing this litigation as a class action.

**FIRST COUNT**

**On Behalf Of Plaintiffs And The Nationwide Class (and, in the alternative, on behalf of Plaintiffs Lieberson and Triantafillou on behalf of the New Jersey Sub-Class) Against J&J (Violations of N.J.S.A. § 56:8-1 *et seq.*)**

70. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

71. Plaintiffs and other members of the Nationwide and New Jersey Sub-Class and Defendant are “persons” within the meaning of the CFA.

72. Plaintiffs and other members of the Class are “consumers” within the meaning of the CFA.

73. The Bedtime Bath Products are “merchandise” within the meaning of the CFA.

74. At all relevant times material hereto, Defendant conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

75. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

76. Defendant has engaged in deceptive practices in the sale of the Bedtime Bath Products because Defendant knew that it had purposely marketed and sold the Bedtime Bath Products in a manner that made Plaintiffs and reasonable consumers believe that the Bedtime Bath Products themselves were clinically proven to help babies sleep better and were also part of a “routine” that was clinically proven to help babies sleep better.

77. Defendant has engaged in deceptive practices in the sale of the Bedtime Bath Products because Defendant knew that no clinical studies demonstrate that the Bedtime Bath Products are clinically proven to help, or will help babies sleep better.

78. Defendant has engaged in deceptive practices in the sale of the Bedtime Bath Products because Defendant knew that no clinical studies demonstrate that using the Bedtime Bath Products with the 3-step routine is any more effective at helping babies sleep better than using the 3-step routine without the Bedtime Bath Products.

79. Similarly, Defendant also failed to disclose material facts regarding the Bedtime Bath Products to Plaintiffs and members of the Class -- namely, that no clinical studies demonstrate that using the Bedtime Bath Products will help babies sleep better and that no clinical studies demonstrate that using the 3-step routine with Bedtime Bath Products is any more effective at helping babies sleep better than using the 3-step routine without the Bedtime Bath Products.

80. Defendant's unconscionable conduct described herein included its false representations and the omission and concealment of material facts concerning the Bedtime Bath Products and their lack of efficacy.

81. Defendant intended that Plaintiffs and the other members of the Class rely on these acts of concealment and omissions, so that Plaintiffs and other Class members would purchase the Bedtime Bath Products.

82. The false and misleading representations were intended to, and likely to, deceive a reasonable consumer.

83. The facts not disclosed would be material to the reasonable consumer, and are facts that a reasonable consumer would consider important in deciding whether to purchase the Products and how much to pay.

84. Defendant's representations and omissions were, and are, material to reasonable

consumers, including Plaintiffs, in connection with their respective decisions to purchase the Products.

85. Had Defendant not engaged in false and misleading advertising regarding the Bedtime Bath Products, Plaintiffs and other members of the Class would not have purchased the Bedtime Bath Products.

86. Had Defendant disclosed all material information regarding the Bedtime Bath Products to Plaintiffs and other members of the Class, they would not have purchased the Bedtime Bath Products.

87. The foregoing acts, omissions and practices directly, foreseeably and proximately caused Plaintiffs and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to purchase the Bedtime Bath Products at a premium price, and they are entitled to recover such damages, together with appropriate penalties, including, but not limited to, treble damages, attorneys' fees and costs of suit.

88. Application of the CFA to all Class members, regardless of their state of residence, is appropriate as described herein and because, *inter alia*:

a. Defendant controlled and directed its nationwide sales operations and support operations from New Jersey;

b. Defendant's marketing operations and decisions, including the decisions as to how to advertise, promote and sell the Bedtime Bath Products, were made in New Jersey, and Defendant's sales and marketing personnel are all based in New Jersey;

c. All Product review and analysis was conducted in New Jersey;

d. Defendant's principal places of business are located in New Jersey;

- e. The significant employees of Defendant are based in New Jersey;
- f. The majority of relevant documents of Defendant are located in New Jersey;

and

g. The facts and circumstances of this case bestow numerous contacts with the State of New Jersey so as to create a state interest in applying the CFA to Defendant, thereby making application of New Jersey law to the entire Class appropriate.

**SECOND COUNT**  
**On Behalf Of Florida Plaintiff And The Florida Sub-Class Against J&J**  
**(Violations of FDUTPA, Fla. Stat. § 501.201, et seq)**

89. Plaintiff Dubin repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

90. Plaintiff Dubin resides and bought her Bedtime Bath Products in Florida.

91. Plaintiff Dubin and the Class members are consumers within the meaning of FDUTPA.

92. Defendant, through its conduct described in this Complaint, is engaged in trade and/or commerce within the meaning of FDUTPA.

93. The purchase of the Bedtime Bath Products by Plaintiff Dubin and Class members, as described herein, constitute consumer transactions within the meaning of FDUTPA.

94. Fla. Stat. § 501.204(1) declares unlawful "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

95. Defendant has engaged in deceptive practices in the sale of the Bedtime Bath Products because Defendant knew that it had purposely marketed and sold the Bedtime Bath



Products in a manner that made Plaintiff Dubin and reasonable consumers believe that the Bedtime Bath Products themselves were clinically proven to help babies sleep better and were also part of a “routine” that was clinically proven to help babies sleep better.

96. Defendant has engaged in deceptive practices in the sale of the Bedtime Bath Products because Defendant knew that no clinical studies demonstrate that the Bedtime Bath Products are clinically proven to help, or will help babies sleep better.

97. Defendant has engaged in deceptive practices in the sale of the Bedtime Bath Products because Defendant knew that no clinical studies demonstrate that using the Bedtime Bath Products with the 3-step routine is any more effective at helping babies sleep better than using the 3-step routine without the Bedtime Bath Products.

98. Similarly, Defendant also failed to disclose material facts regarding the Bedtime Bath Products to Plaintiff Dubin and members of the Class -- namely, that no clinical studies demonstrate that using the Bedtime Bath Products will help babies sleep better and that no clinical studies demonstrate that using the 3-step routine with Bedtime Bath Products is any more effective at helping babies sleep better than using the 3-step routine without the Bedtime Bath Products.

99. By the conduct described herein, Defendant has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce, which offend public policies and are immoral, unscrupulous and injurious to consumers.

100. Plaintiff Dubin and the Class have been aggrieved by Defendant's unfair and deceptive practices in that they paid more for the Bedtime Bath Products than they would have if they had known about the false statements.

101. The representations and omissions by Defendant were likely to deceive reasonable consumers and a reasonable consumer would have relied on these representations and omissions. The representations at issue in this litigation were material to Plaintiff Dubin and any reasonable consumer.

102. Had Defendant disclosed all material information regarding the Bedtime Bath Products to Plaintiff Dubin and other members of the Class, they would not have purchased the Bedtime Bath Products, or would have paid substantially less for them.

103. As a direct and proximate result of Defendant's violations of FDUTPA, Plaintiff and the Class have suffered injury in fact and/or actual damage and/or ascertainable loss by purchasing the Bedtime Bath Products. Had Defendant disclosed the true quality and nature of Products, Plaintiff Dubin and the Class would not have purchased them, or would have paid substantially less for them.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes, pray for judgment against Defendant granting the following relief:

A. An order certifying this case as a class action and appointing Plaintiffs as Class representatives and Plaintiffs' counsel to represent the Classes;

B. Restitution and disgorgement of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

C. All recoverable compensatory and other damages sustained by Plaintiffs and the Class;

D. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Classes and in the maximum amount permitted by applicable law;

E. An order (1) requiring Defendant to immediately cease its wrongful conduct as set forth above; (2) enjoining Defendant from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (3) ordering Defendant to engage in a corrective notice campaign; and (4) requiring Defendant to pay to Plaintiffs and all members of the Classes the amounts paid for the Bedtime Bath Products;

F. Statutory pre-judgment and post-judgment interest on any amounts;

G. Payment of reasonable attorneys' fees and costs; and

H. Such other relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: January 31, 2013

SHEPHERD, FINKELMAN, MILLER &  
SHAH, LLP

/s/ James C. Shah

James C. Shah

Natalie Finkelman Bennett

475 White Horse Pike

Collingswood, NJ 08107

Telephone: (856) 858-1770

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Facsimile: (954) 515-0124  
Email: [jgoldstein@sfmslaw.com](mailto:jgoldstein@sfmslaw.com)

**Attorneys for Plaintiff and the Proposed  
Class**

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Caryn Lieberman

(b) County of Residence of First Listed Plaintiff Burlington County

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

James C. Shah  
Shepherd, Finkelman, Miller & Shah, LLP  
475 White Horse Pike, Collingswood, NJ 08107  
Phone: 856-858-1770 Email: jshah@sfmslaw.com

**DEFENDANTS**

Johnson &amp; Johnson Consumer Companies, Inc.

County of Residence of First Listed Defendant Somerset County

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |  | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332(d)(2)

Brief description of cause:

False and misleading representations made regarding Bedtime Bath Products**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

5,000,000.00 +

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/31/2013

s/James C. Shah

# **EXHIBIT 1**

NEW &amp; IMPROVED

# Johnson's bedtime lotion®

CLINICALLY PROVEN.  
HELP BABY

SLEEP BETTER

Releases NaturalCalm™ essences  
Libera esencias NaturalCalm™

Johnson & Johnson

15 FL OZ (444 mL)

729453

JOHNSON'S® has created a nightly routine that is clinically proven to help your baby fall asleep easier and sleep through the night better. Treat your baby to a warm bath using JOHNSON'S® BEDTIME BATH®, then gently massage skin with JOHNSON'S® BEDTIME LOTION®. Each product releases NATURALCALM™ essences, a patent-pending blend of gentle and soothing aromas. Your baby will drift off to a better night's sleep. JOHNSON'S® BEDTIME LOTION® is clinically proven mild, allergy tested and formulated to help keep baby's skin feeling soft.

**DIRECTIONS:** Massage gently over entire body.

**SAFETY TIP:** Keep this product out of reach of children.

**Remove quality seal before use. Do not use if seal is broken.**

Está clínicamente comprobado que la rutina nocturna creada por JOHNSON'S® ayuda a tu bebé a dormirse más fácil y mejor durante toda la noche. Dale a tu bebé un baño tibia utilizando JOHNSON'S® BEDTIME BATH®. Luego masajear delicadamente su piel con JOHNSON'S® BEDTIME LOTION®. Cada producto desprende esencias NATURALCALM™. Una mezcla con aromas delicados y relajantes en proceso de ser patentada. Tu bebé tendrá un mejor descanso durante la noche. Está clínicamente comprobado que la crema JOHNSON'S® BEDTIME LOTION® es ligera, no causa alergias y ha sido creada con una fórmula para ayudar a mantener suave la piel de tu bebé.

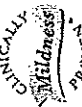
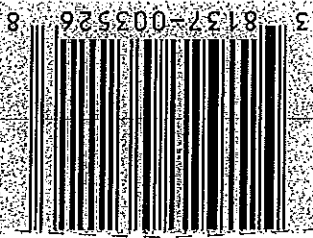
**DIRECCIONES:** Masajear suavemente sobre todo el cuerpo.

**PRECAUCIÓN:** Mantener fuera del alcance de los niños.

**Remove the seal of quality before use. No utilizar si el sello está roto.**

JOHNSON'S® does not make store brands.

**INGREDIENTS:** Water, Mineral Oil, Glycerin, Carbomer, Phenoxyethanol, Ceteareth-8, Fragrance, Methylparaben, Sodium Citrate, Stearyl Alcohol, Ethylparaben, Propylparaben. May also contain: Citric Acid, Sodium Hydroxide



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www.Johnsonsbaby.com/sleep

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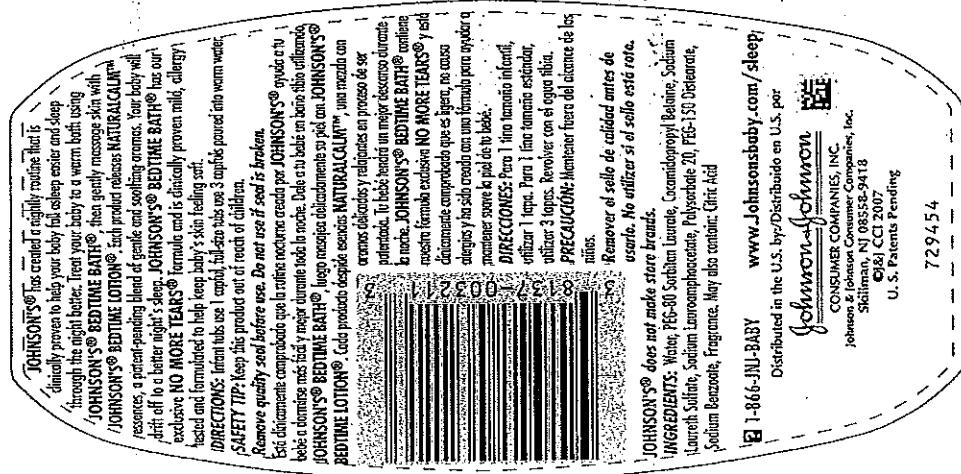
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U. S. Patents Pending

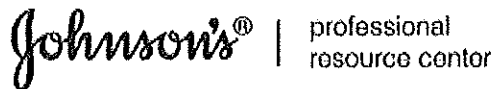
729453

# **EXHIBIT 2**





# **EXHIBIT 3**



## A New Parent's Guide to Better Sleep

### Once Upon a Time, Getting Babies to Sleep Was a Challenge...

Now, thanks to the sleep experts at JOHNSON'S®, a clinically proven before-bed routine, and a remarkable line of JOHNSON'S® products developed with NATURALCALM™ essences, all babies can sleep better.

Every baby is different. Some seem able to fall asleep easily anywhere. Others are born night owls. Whatever type of sleeper your baby is, JOHNSON'S® can help! This booklet provides information on a unique, simple, nightly before-bed routine and the ONLY line of baby bath and massage products clinically proven to help babies sleep better...so you can help your baby get to sleep faster and spend less time awake during the night.

### A Good Night's Sleep Starts With JOHNSON'S®

JOHNSON'S® is a name you can trust, with a commitment to baby care that generations of mothers have relied on for more than 100 years. JOHNSON'S®, working with pediatricians and pediatric sleep experts, has expanded its line to bring you innovative products and the information you need to help your baby sleep better. And better sleep for your baby may mean better sleep for you.

JOHNSON'S® is introducing a new line of bath and massage products with NATURALCALM™ essences—ingredients specially designed to help calm and relax. In fact, the JOHNSON'S® 3-step, before-bed routine using JOHNSON'S® BEDTIME BATH® and JOHNSON'S® BEDTIME LOTION® is clinically proven to help baby sleep. Count on the sleep experts at JOHNSON'S® to help you and your baby rest easy.

### Sleepy Time—A Necessity for Every Baby

#### Happy, Healthy Babies Need a Good Night's Sleep

A good night's sleep is just as important to your baby's well-being as it is to yours. Just as you feel terrible after a poor night's sleep, so can your baby. Babies who sleep well are better rested and can be happier and less cranky during the day than babies who don't get enough sleep. Many parents comment on the improvements they see once their babies begin to sleep through the night.<sup>1</sup>

#### When Baby Sleeps, It's Good for the Whole Family

When baby doesn't sleep, it affects the rest of the family. By helping your baby become a better sleeper, you're helping the whole family get a good night's sleep. And that's not only good for you, but good for your

baby as well. Happy, well-rested parents are less stressed and better able to face the challenges that babies present each day.

## Learning to Sleep

All newborn babies start out waking and sleeping for a few hours at a time around the clock. As they grow older, babies can sleep better and for longer periods of time.

Newborns		Infants		Toddlers	
Birth	10.5 to 18 hours sleep	2 months	14 to 14.5 hours sleep	12 months	13 to 14 hours sleep
	No regular, defined sleep pattern		Shift toward longer nighttime sleep; distinct daytime naps		Continue to sleep long hours at night; need for daytime naps tapers off
					36 months

Total sleep time includes daytime naps and nighttime sleep

## Important Tips on Infant Sleep

Make sure baby's sleep environment is appropriate. The room should be as quiet as possible, with subdued lighting, no TV, and very little traffic. Also, put your baby to bed at the same time every night to help baby's internal clock "learn" a regular sleep time.

## Set Realistic Goals

Newborn babies shouldn't be expected to sleep through the night before they are 6 weeks old. Talk to your pediatrician about how much sleep your baby needs.

A Comforting Routine and JOHNSON'S® BEDTIME BATH® and JOHNSON'S® BEDTIME LOTION® Containing NATURALCALM™ Essences Can Improve Sleep

Sleep experts agree that it's important to create a calming before-bed routine for your baby. A warm bath using JOHNSON'S® BEDTIME BATH® with NATURALCALM™ essences, a soothing massage using JOHNSON'S® BEDTIME LOTION® with NATURALCALM™ essences, and quiet activities can signal that it's time for bed. Help your baby settle down with the routine that is clinically proven to help your baby fall asleep more easily and sleep through the night better.

JOHNSON'S® 3-Step Before-Bed Routine...Three Steps to Better Sleep

### Step 1

Bathe...Bubbles Away to Dreamland

Your baby's bath time should be an uninterrupted and enjoyable part of your day. A warm bath (90oF to 100oF) using JOHNSON'S® BEDTIME BATH® with NATURALCALM™ essences is an excellent way to help your baby relax and prepare for sleep. It's also a perfect way to separate "busy time" from "time for bed," while giving you the chance to bond with your baby.

Remember to make sure that everything you need—towel, clothes, diaper, baby wash—is within reach. And remember—NEVER leave your baby unattended in water, not even for a moment.

## Step 2

### Massage Your Way to Sweet Slumbers

After the bath, when your baby is clean and snuggly, moisturize your baby's skin using gentle JOHNSON'S® BEDTIME LOTION® with NATURALCALM™ essences. A massage can be comforting and can help your baby switch to "nighttime" mode.

Massage has clinically demonstrated benefits. It has been shown to contribute to healthy weight gain, improve babies' sleep patterns, and calm them when they're irritable. Choose a warm, quiet room, and play calming background music if you like.

### Sleep Tip:

A video is worth a thousand words! See a demonstration of infant massage techniques online at [www.johnsonsbaby.com/sleep](http://www.johnsonsbaby.com/sleep).

To massage your baby, begin with a quarter-size amount of JOHNSON'S® BEDTIME LOTION® or JOHNSON'S® BEDTIME TOUCH™ Massage Gel in your palm. Rub your hands together to distribute and warm. In long, fluid motions, gently rub your hands from the top of baby's shoulders down the back to the waist, from the thighs to the feet and up the thighs again, and from the shoulders to the hands and back to the shoulders.

Remember, these are just helpful tips. Your gentle touch is what is most soothing to your baby. Just do what comes naturally.

## Step 3

### Quietly Off to Sleep With Lullabies and Soft Light

Follow bath and massage with quiet activities to settle your baby down for bed. You can set the mood for quiet time with soft tones and melodies. The warmth of your voice can be very comforting, and a quiet before-bed activity, such as reading, also can help settle your baby down. You can also try singing softly to your baby. Babies should be placed in their cribs drowsy but still awake. This will help them develop the ability to "self-soothe." Babies who develop this ability are more likely to go back to sleep on their own when they awaken at night.

Don't get in the habit of rocking or nursing the baby to sleep! Your baby is learning sleep habits now, and will someday be a toddler who should be able to go to sleep without being held and rocked. Keep the routine

consistent, even with caregivers or when you and baby are away from home. And take turns with your partner putting your baby to bed. This allows your partner to bond with baby too!

### Sleep Tip:

"White noise," or "ambient sounds," can help block out distracting noises. Create your own ambient "soundtrack" on [www.johnsonsbaby.com/sleep](http://www.johnsonsbaby.com/sleep).

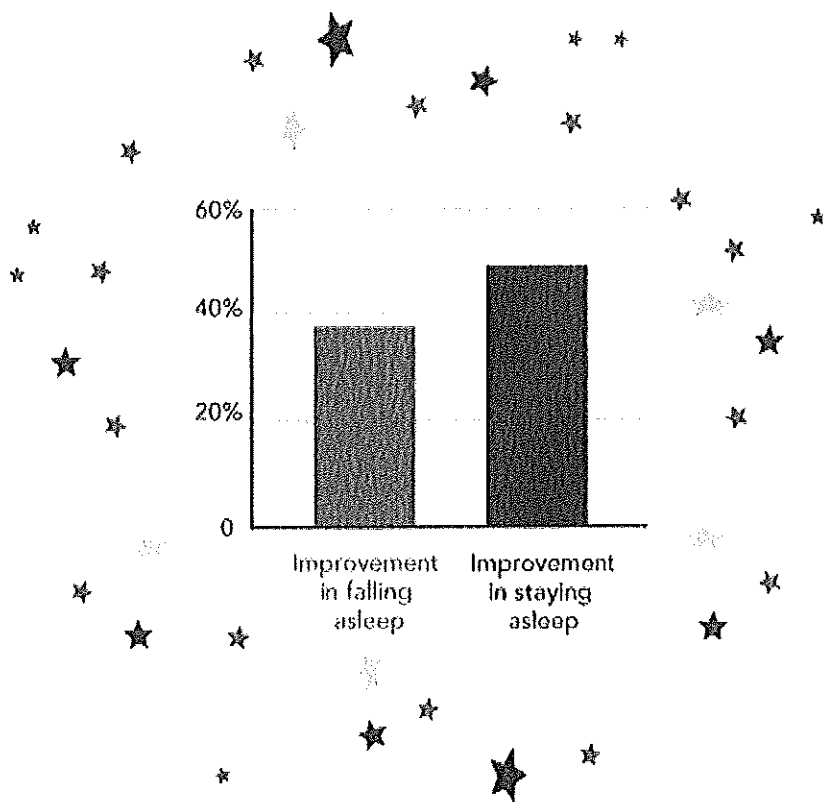
### Clinical Proof That Babies Can Become Better Sleepers

Researchers conducted a clinical study to prove that the JOHNSON'S® 3-step nightly routine would help babies sleep better. For this study, parents were asked to follow a simple 3-step before-bed routine:

1. Give baby a warm, relaxing bath using JOHNSON'S® BEDTIME BATH® with NATURALCALM™ essences
2. Massage baby using JOHNSON'S® BEDTIME LOTION® with NATURALCALM™ essences
3. Engage in a quiet activity, such as reading, singing a lullaby, or playing relaxing music, before putting baby to bed

When their mothers followed this before-bed routine, babies fell asleep faster and slept longer, so they slept better. Mothers also reported benefits for themselves, including feeling less tense and tired and having more energy.

### JOHNSON'S® 3-Step Before-Bed Routine, Clinically Proven to Help Babies Sleep Better



## Keeping Baby Safe Through the Night

The American Academy of Pediatrics recommends placing infants to sleep on their backs to reduce the risk of Sudden Infant Death Syndrome (SIDS). A safe crib environment is also essential.

- Crib slats should be no more than 2 3/8 inches apart; no corner posts, finials, or decorative cutouts
- Less than 2 fingers' space between mattress and side; firm, flat foam or natural fiber mattress with washable surface (NO plastic coverings); NEVER place a crib near a window
- No pillows, bumpers, comforters, quilts, sheepskins, or toys—including mobiles, crib gyms, stuffed animals, and rattles—when baby is sleeping or unattended

## More Tips and Tools for You and Your Baby

As a parent, you know that getting your baby to drift off to dreamland—and get enough sleep—isn't always easy. But thankfully, there are ways you can help your baby get the sleep he or she needs! Visit [www.johnsonsbaby.com/sleep](http://www.johnsonsbaby.com/sleep) for expert advice, trusted products, special offers, and more. This Web site can teach you soothing infant bathing and massage techniques that have been clinically proven to benefit both babies and parents. Get important sleep tips about the changing needs of babies and toddlers.

Is Your Baby Getting the Right Amount of Sleep? Find out at [www.johnsonsbaby.com/sleep](http://www.johnsonsbaby.com/sleep)

Now there is a way to find out if your baby's sleep habits are normal for his or her age. JOHNSON'S® worked with leading pediatric sleep experts to create a unique way to help you learn how well your baby sleeps. Once you've answered the online questions, you'll get a Customized Sleep Profile detailing your baby's sleep results. You'll also receive customized age-appropriate advice on how you can help your baby sleep better as he or she grows.

Your Customized Sleep Profile is available only at [www.johnsonsbaby.com/sleep](http://www.johnsonsbaby.com/sleep).

## The Happy Ending You Always Dreamed Of

Take advantage of our full line of products, developed with pediatricians and sleep experts. They include

JOHNSON'S® BEDTIME BATH®

JOHNSON'S® BEDTIME LOTION®

JOHNSON'S® BEDTIME TOUCH™ Massage Gel

JOHNSON'S® BEDTIME WASHCLOTHS™

JOHNSON'S® BEDTIME MOISTURE WASH™

all containing NATURALCALM™ essences.

With a nighttime routine and a little help from JOHNSON'S®, your baby's sleep story will always end with the "happily ever after" you've been dreaming about.

## Sweet Dreams for Everyone



Reference: 1. Mindell JA. The benefits of sleeping through the night. In: *Sleeping Through the Night: How Infants, Toddlers, and Their Parents Can Get a Good Night's Sleep*. Rev ed. New York, NY: HarperResource; 2005:11.



# **EXHIBIT 4**

Johnson's



## The Baby Sleep Guide

By six months of age, your baby will have reached a most wonderful milestone – the ability to sleep through the night. What a relief! And as your baby becomes busier with crawling, pulling up, clapping hands, “talking” and playing peek-a-boo, it’s more important than ever to make sure she’s getting the rest she needs.

### How much sleep?

Between six and 12 months of age, your baby will need about 14 to 15 hours of sleep each day. Crawling, rolling over, sitting up – an active baby means a tired baby. However, every baby is different and some babies need much more sleep and others need much less. Most babies take two or three naps a day at six months of age and two naps at 12 months.\*

### Problem habits.

Rocking, cuddling and feeding your baby to sleep are major causes of sleep problems, so try to break these habits if you’ve established them. If, for example, you rock your baby to sleep or give your baby a feeding right before bed, you’ll likely be rocking or feeding your baby back to sleep in the middle of the night. Instead, try to put your baby down to sleep when drowsy, but still awake. If you let your baby learn to self-soothe to sleep before bed, she’ll be able to soothe herself back to sleep if she wakes in the middle of the night.\*

### Developmental milestones can alter sleep patterns.

Interestingly, your baby’s physical advances can alter sleep patterns. Many developmental milestones, such as rolling over and pulling up to stand, can temporarily upset your baby’s sleep. Don’t be discouraged if your baby, who once slept through the night, temporarily wakes up in the middle of the night. Stick to your routine to help your baby get back to a regular sleep pattern.\*

### Cutting back on naps won’t help your baby sleep.

Contrary to what you may think, cutting down on naps won’t help at night. It can be a recipe for overtiredness and a worse night’s sleep. But avoid naps too close to bedtime. Create soothing surroundings: keep the bedroom dark, cool, and quiet.\*

### Make sleep a family priority.

Make sure you create good sleep habits for yourself too. Keep a consistent sleep schedule. Relax with a nighttime routine for yourself. Take a bath, give yourself a massage, or ask your partner to give you one. Relax by listening to soft music or reading a book in bed. And avoid caffeinated beverages after lunch. Avoid alcohol and smoking, too, as they are unhealthy for your infant.\*

Baby yourself.  
New JOHNSON’S® Melt Away Stress with AROMASMOOTHIE™ – the only body lotion clinically proven to reduce tension in four out of five women.

2

**Bath time and massage say  
"it's time for sleep".**

**Take a moment to bond  
with your baby.**

A black and white photograph of a baby sleeping peacefully, wearing a striped shirt. The baby is lying down, and the image is framed by a dark, textured border.

A warm bath.....



### A soothing massage



## New Resource for Sleepy Babies (and Parents)

[illegible][illegible]

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# **EXHIBIT 5**

INTERNET ARCHIVE  
Wayback Machine

http://johnsonsbaby.com/product.do?id=30

Go

JAN DEC JAN

◀ 31 ▶

2008 2009 2010

Close

Help

7 captures  
14 Jul 07 - 31 Dec 09

- [Nurturing Care](#)
- [Our Baby Products](#)
- [Why JOHNSON'S®](#)
- [Special Offers](#)

More from JOHNSON'S®:  
[Better Sleep](#) | [Touching Bond](#) | [Locks in 10](#)

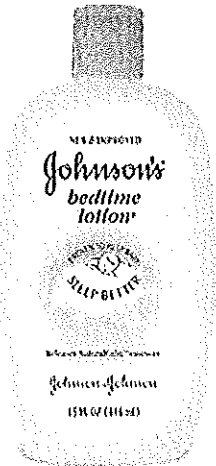
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All our products

0%

View our products by type |

Send to a friend Print this Page



## JOHNSON'S® BEDTIME LOTION®

A soft, soothing moisturizer for your baby's nightly routine

There's nothing like a good night's rest, for your baby and for you. JOHNSON'S® BEDTIME LOTION® is formulated with NATURALCALM™ essences, a special blend that releases soothing aromas. This gentle baby lotion is great to use as an after-bath moisturizer or for your baby's massage as part of her nightly routine.

- When used with a massage, releases soothing aromas and helps relax your baby.
- Clinically shown to last all night long. Leaves skin feeling touchably soft and smooth.
- Hypoallergenic, clinically proven mild formula.

- Enriched with lavender and chamomile, ingredients shown to have calming and relaxing properties.
- Great for kids and adults, too.

#### Did you know?

A bedtime routine that includes a warm bath with JOHNSON'S® BEDTIME BATH®, followed by a massage with JOHNSON'S® BEDTIME LOTION®, and quiet time, is clinically proven to help babies fall asleep easier and sleep through the night better. Visit our [Baby Care](#) section of the site to learn more about developing a healthy bedtime routine.

#### How to Use

To help your baby sleep better at night, gently massage JOHNSON'S® BEDTIME LOTION® over your baby's entire body as a part of her nightly routine. The calming aromas and your soothing touch will relax your baby for bed.

#### When to Use

Use JOHNSON'S® BEDTIME LOTION® every night as a part a before-bed routine for your baby.

#### Safety

Keep out of reach of children.

#### Ingredients

Water, Propylene Glycol, Myristyl Myristate, Oleic Acid, Glyceryl Stearate, Stearic Acid, Polysorbate 61, C12-15 Alkyl Benzoate, Dimethicone, Isopropyl Palmitate, Sorbitan Stearate, Cetyl Alcohol, Stearyl Alcohol, Synthetic Beeswax, Benzyl Alcohol, Carbomer, Methylparaben, Propylparaben, Butylparaben, BHT, Fragrance, Sodium Hydroxide

*Recommended Products*

#### JOHNSON'S® BEDTIME BATH®

Use in a warm bath as part of your nightly routine.

#### JOHNSON'S® Baby Lotion

With that unmistakable baby fresh scent

See all JOHNSON'S® Baby Lotions and Creams

*Featured Articles*

#### Sleep and Your Young Infant

Between the ages of three and six months, your baby will start to be able to sle...

#### Sleep and Your Older Infant

At six months, your baby is busy, busy, busy. But not all this activity is visib...

#### How to Ease Teething Discomfort

Most babies sprout their first teeth between four and seven months of age. Some ...

#### Bedtime and Your Toddler


As your toddler starts becoming more and more independent and doing so many thin...

See all articles



*Special Offers, Expert Resources and Educational Guides*

 <p><b>Make Your Touch More Touching™</b>                  Discover the signs of bonding and learn ways to enhance the bond between you and your baby.  <a href="#">Visit touchingband.com &gt;</a></p>	<p><b>New JOHNSON'S® Baby Bubble Bath</b>                  The first and only formula clinically proven mild and gentle enough for every day.</p> 	 <p><b>Save \$2</b>                  on JOHNSON'S® Moisture Care Wash or Baby Cream product &gt;</p>	
 <p><b>Interactive Resource Center</b>                  Get expert advice on giving your baby a bath. Visit JOHNSON'S® Interactive Resource Center &gt;</p>	<p><b>Sweet dreams for all</b>                  Create your baby's customized sleep profile &gt;</p> 	<p><b>Ten Days, Without Worry</b>                  With the New Parent Guide to the First Ten Days, Get the guide and other great offers. &gt;</p> 	 <p><b>Johnson's® By Your Side™</b>                  for exclusive offers, free downloadable guides and expert stage-based emails &gt;</p>

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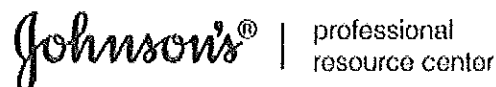
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This link will take you to a website to which this privacy policy does not apply.

We encourage you to read the privacy policy of every website you visit.

# **EXHIBIT 6**





The JOHNSON'S® Brand has been a trusted name in baby products for more than 100 years and we understand the difference between baby and adult skin.

Our baby products are assessed against established professional guidelines on caring for babies' skin, underscoring our company's strong commitment to ensuring the safety and skin care benefits of JOHNSON'S® Brand baby products.

### Clinical Support

Review clinical studies and scientific data on our baby products. [More](#)

### Skin Care

View and share with parents information on infant skin needs. [More](#)

### Bedtime / Sleep

View and share with parents information on sleep tips and before-bed routines. [More](#)

### Bathing

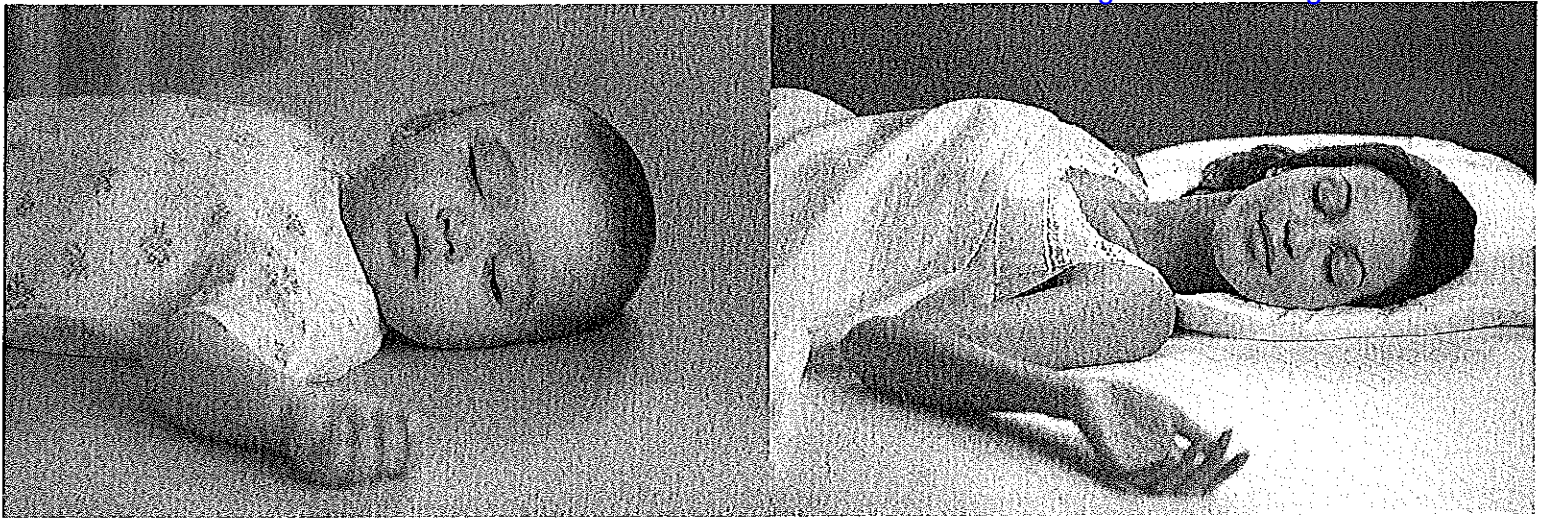
View and share with parents information on bathing techniques. [More](#)

### Diapering

View and share with parents treatment information for irritant diaper dermatitis. [More](#)

### Baby Wellness

View and share with parents information on vaccinations and other health topics. [More](#)



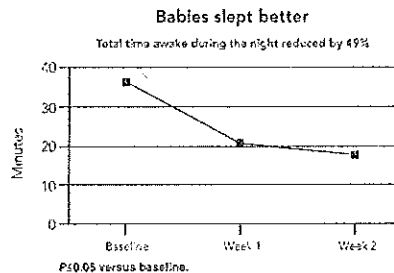
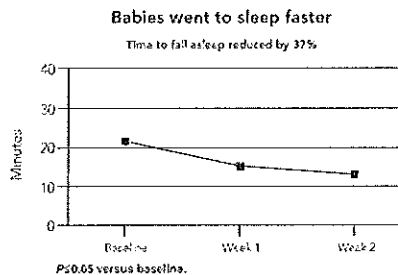
## It's not just baby who's sleeping better.

### Recommend a clinically proven sleep routine

JOHNSON'S® BEDTIME BATH® and JOHNSON'S® BEDTIME LOTION® containing NATURALCALM™ essences\* were used by mothers for their infants in a 3-step nightly routine of a warm bath, gentle massage, and quiet activities

- Babies went to sleep 37% faster ( $P \leq 0.05$  versus baseline)
- Babies slept better, reducing total time awake during the night by 49% ( $P \leq 0.05$  versus baseline)
- Mothers reported a 55% reduction in their own tension and a 59% reduction in their own fatigue ( $P \leq 0.05$  versus baseline)<sup>1</sup>

#### Results of a clinical study<sup>1</sup>



Reference: 1. Mindel JA, Telofski LS, Wiegand B, Kurtz ES. A nightly bedtime routine: Impact on sleep in young children and maternal mood. *Sleep*. 2009;32:599-606.

\*NATURALCALM™ essences, a unique blend that has been tested and proven to have relaxing properties.

Johnson's®



Refer your patients to [www.johnsonsbaby.com/sleep](http://www.johnsonsbaby.com/sleep)  
to create a customized sleep report and for tips to help improve baby's sleep.

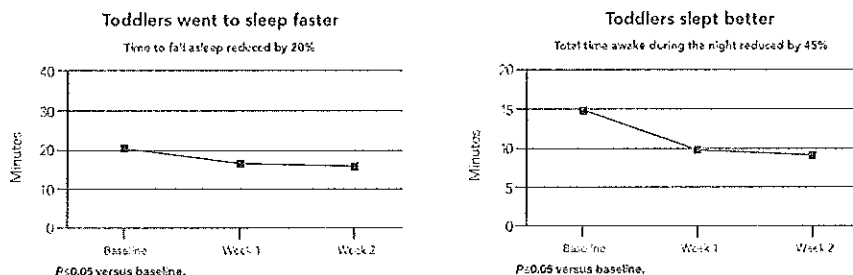
# ...Toddlers are sleeping better, too.

The same clinically proven sleep routine also benefited toddlers.

JOHNSON'S® BEDTIME BATH® and JOHNSON'S® BEDTIME LOTION® containing NATURALCALM™ essences\* were used by mothers for their toddlers in a 3-step nightly routine of a warm bath, gentle application of lotion, and quiet activities

- Toddlers went to sleep 20% faster ( $P \leq 0.05$  versus baseline)
- Toddlers slept better, reducing total time awake during the night by 45% ( $P \leq 0.05$  versus baseline)
- Mothers reported a 36% reduction in their own tension and a 38% reduction in their own fatigue ( $P \leq 0.05$  versus baseline)<sup>1</sup>

Results of a clinical study<sup>1</sup>



Reference: 1. Mindel JA, Telofski LS, Wiegand B, Kurtz ES. A nightly bedtime routine: Impact on sleep in young children and maternal mood. *Sleep*. 2009;32:599-606.

\*NATURALCALM™ essences, a unique blend that has been tested and proven to have relaxing properties.

Johnson's®



Refer your patients to [www.johnsonsbaby.com/sleep](http://www.johnsonsbaby.com/sleep) to create a customized sleep report and for tips to help improve toddler's sleep.

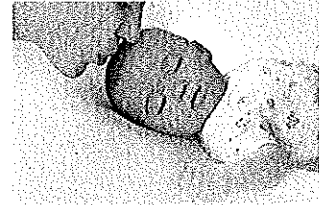


# Johnson's® tender touches™

Help Your Baby Get a  
Good Night's Sleep

## A Comforting Routine Can Improve Sleep

Sleep experts agree that it's important to create a calming before-bed routine for your baby. A warm bath, a soothing massage, and quiet activities can signal that it's time for bed. In a clinical study, a warm bath with JOHNSON'S® BEDTIME BATH® followed by a massage using JOHNSON'S® BEDTIME LOTION® and ending with quiet time was shown to improve sleep. Help your baby settle down with the routine that is clinically proven to help your baby fall asleep more easily and sleep through the night better.



### Bathe

Your baby's bath time should be an uninterrupted and enjoyable part of your day. A warm bath (90°F to 100°F) using JOHNSON'S® BEDTIME BATH® is an excellent way to help your baby relax and prepare for sleep. It's also a perfect way to create a separation between "busy time" and "time for bed," while giving you the chance to bond with your baby. Make sure that everything you need—towel, clothes, diaper, baby wash—is within reach. And remember, NEVER leave baby unattended in water, not even for a moment.



### Massage

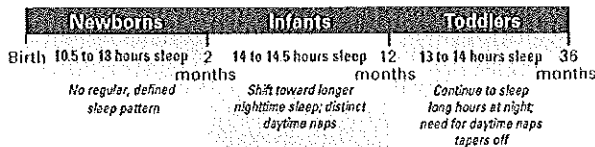
After a bath, when your baby is clean and snuggly, moisturize your baby's skin with JOHNSON'S® BEDTIME LOTION®. A massage can be comforting and can help your baby switch to "nighttime" mode. Massage has clinically demonstrated benefits and has been shown to contribute to healthy weight gain, improve babies' sleep patterns, and calm them when they're irritable. Choose a warm, quiet room, and play calming background music if you like. See the reverse side for more information on massage techniques.



### Quietly Off to Sleep

Follow your baby's bath and massage with quiet activities, such as reading, as you settle your baby down for bed. You can also try singing softly to your baby. Babies should be placed in their cribs drowsy but still awake. This will help them to develop the ability to "self-soothe." Babies who develop this ability are more likely to go back to sleep on their own when they are awakened at night.

## How Much Sleep Is Enough?



## Important Tips on Infant Sleep

- 1. A before-bed routine should be started early, when your baby's sleep patterns start to become established (when your baby can tell the difference between night and day and is beginning to sleep through the night). This usually occurs between 6 weeks and 3 months
- 2. The time that you put your baby to bed should be the same every night
- 3. Make sure the environment is appropriate; there shouldn't be a TV in the room—it should be as quiet as possible, with subdued lighting and very little traffic

## Keep Your Baby Safe Through the Night

- 1. Crib slats no more than 2 inches apart; no corner posts, finials, or decorative cutouts
- 2. Less than 2 fingers' space between mattress and side; firm, flat, foam, or natural fiber mattress with washable surface (NO plastic coverings); NEVER place a crib near a window
- 3. No pillows, bumpers, comforters, quilts, sheepskins, or toys—including mobiles, crib gyms, stuffed animals, and rattles—when baby is sleeping or unattended

## Proven Sleep Benefits

A clinical study measured the impact of a 3-step before-bed routine on babies' nighttime sleep habits. This routine, including a bath and massage with JOHNSON'S® BEDTIME BATH® and JOHNSON'S® BEDTIME LOTION® containing NaturalCalm™ essences,\* helped improve nighttime sleep.

- Babies went to sleep more easily
- Babies stayed asleep longer and mothers reported they "slept well"
- Mothers felt less tense, less tired, and had more energy

Make JOHNSON'S® BEDTIME BATH® and JOHNSON'S® BEDTIME LOTION® containing NaturalCalm™ essences part of your baby's before-bed routine.



this feels right™

Johnson & Johnson  
CONSUMER PRODUCTS COMPANY  
Division of Johnson & Johnson Consumer Companies, Inc.

The American Academy of Pediatrics recommends placing infants to sleep on their backs to reduce the risk of Sudden Infant Death Syndrome (SIDS).

\*NaturalCalm™ essences, a unique blend that has been tested and proven to have relaxing properties.

Visit [baby.com](http://baby.com) for expert advice, trusted products, special offers, and more.

# **EXHIBIT 7**

ASA Adjudication on Johnson & Johnson Ltd - Advertising Standards Aut... Page 1 of 4

## **ASA Adjudication on Johnson & Johnson Ltd**

### **Johnson & Johnson Ltd**

The Braccans  
London Road  
Bracknell  
Berkshire  
RG12 2AT

**Date:**

30 April 2008

**Media:**

Magazine

**Sector:**

Health and beauty

**Number of complaints:**

1

**Agency:**

Lowe London

**Complaint Ref:**

46036

**Ad**

A magazine ad, for Johnson's Baby Bedtime bath and lotion, stated "Kiss goodbye to sleepless nights. Putting your baby down for the night can now be the highlight of the day thanks to Johnson's Baby. Our new Bedtime Bath and Bedtime Lotion routine has NaturalCalm, a unique blend of gentle, soothing aromas. In fact, ours is the first and only Clinically Proven routine to help your baby sleep better".

**Issue**

1. The complainant challenged whether Johnson & Johnson could substantiate the

claims that the routine could help babies sleep better.

2. The ASA challenged whether the ad misleadingly implied that Johnson & Johnson's products specifically, as part of the routine, had been proven to help babies sleep better and whether the ad implied the routine had been proven to work for babies of all ages.

### **CAP Code (Edition 11)**

#### 3.17.150.1

### **Response**

1. Johnson & Johnson Ltd (Johnson's) said their Bedtime bath and lotion routine consisted of three steps. The first step was to bath the baby in a warm bath that contained Johnson's Baby Bedtime Bath. The second step was to massage the baby with Johnson's Baby Bedtime Lotion and the third was quiet time, which involved helping the baby to wind down by singing gently or reading to the baby or feeding him or her. They said the claim "clinically proven to help babies sleep better" was fully substantiated by a clinical study conducted before the product launch. They said a leading paediatric sleep expert, who was internationally recognised for her expertise in paediatric sleep disorders, was the sub-investigator in the study. They said the study's aim was to examine the effects on babies' sleep of a consistent pre-bedtime routine, which included the use of Johnson's Baby Bedtime Bath and Johnson's Baby Bedtime Lotion. They provided details of the study and said it provided support for the claims "fall asleep faster", "sleep longer" and "sleep better" in association with the bedtime routine.

Johnson's said the claim "Kiss goodbye to sleepless nights" was a play on words to reflect both the visual of the relaxed looking mother kissing her baby goodnight and the results of the study, which showed that a significant proportion of babies went to sleep faster, slept for longer and awoke less often during the night after adopting their bedtime routine. They believed consumers were unlikely to interpret the claim literally and therefore would not be misled.

2. Johnson's said it was not their intention to imply that it was their products alone that contributed to the improvement in sleep. They said it was obvious from the ad that they were promoting a routine. They said the study had compared the Johnson's bedtime routine against a control group. The parents in the control group had maintained their infant's existing night-time routine, which could include other bath products. They said that because they knew bath time in particular, and also massage, were very common pre-bedtime activities, they could assume that bath products other than Johnson's were used in the control group. They believed a routine that used other products had not been clinically proven to help babies sleep

better.

Johnson's said the study was carried out on babies between seven and 18 months of age, because seven months was the age at which normal sleep patterns were established. It was also a safety measure because that was when most babies could sit unaided in a bath. They said the ad showed an image of a baby who looked older than six months and that was therefore consistent with the study.

Johnson's said they had no plans to use the ad again.

## Assessment

### 1. Not upheld

The ASA noted the study provided by Johnson's demonstrated that babies subjected to a before-bed routine using Johnson's products slept for longer, went to sleep faster and woke less often during the night than the babies in the control group. We noted the study had been conducted under the supervision of an independent expert in the field and had produced clinically relevant results. We concluded that the study demonstrated that the bedtime routine used could help babies sleep better. We also considered that readers were likely to interpret the claim "kiss goodbye to sleepless nights" in the context of the "help babies sleep better" claim and were unlikely to understand it as a guarantee that all babies would sleep at night if they were subjected to the routine.

On this point, we investigated the ad under CAP Code clauses 3.1 (Substantiation) and 50.1 (Health & Beauty Products and therapies) but did not find it in breach.

### 2. Upheld

We noted the control group in the study provided by Johnson's had consisted of mothers and babies carrying out their normal bedtime routine. Because there had not been a control group that carried out the 'bath, massage and quiet time' routine but without Johnson's products, we considered that the study did not demonstrate that it was specifically the addition of Johnsons' Bedtime Bath and Bedtime Lotion to the routine that produced the results. We considered that the claim "Putting your baby down for the night can now be the highlight of the day thanks to Johnson's Baby" and "Our new Bedtime Bath and Bedtime Lotion routine has NaturalCalm, a unique blend of gentle, soothing aromas" suggested that Johnson's products played a key part in helping babies sleep better, rather than the nature of the routine itself, i.e. a baby having a bath, a massage and 'quiet time' before bed.

We also noted the study had only been carried out on babies aged seven months and older. We acknowledged there were safety reasons why babies of that age had been



used in the study but we considered that, in the absence of qualification, and because the image of the baby in the ad was not noticeably older than seven months, readers were likely to infer from the ad that the routine had been proven to work for babies of any age.

Because Johnsons had not specifically demonstrated that it was the use of their products in the suggested bedtime routine that was proven to help babies sleep better, and because the ad did not make clear that the routine had only been proven to work for babies over seven months old, we concluded that the ad was likely to mislead.

On this point, the ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness) and 50.1 (Health & beauty products and therapies).

### **Action**

We noted Johnson's did not intend to repeat the ad. We told them to ensure that any similar advertising did not suggest that Johnson's products, as part of the bedtime routine, had been proven to help babies sleep better and to make clear that the routine had been proven to work only for babies over seven months. We advised Johnsons to seek guidance from the CAP Copy Advice team on similar advertising in future.

Adjudication of the ASA Council (Non-broadcast)

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