

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

<p><b>CHRISTIAN GARCIA-CATALAN,</b> <b>Individually on his own behalf and others</b> <b>similarly situated,</b></p> <p>v.</p> <p><b>JOHNSON &amp; JOHNSON</b> <b>CONSUMER</b> <b>COMPANIES, INC.,</b></p> <p>Defendants.</p>	<p>CIVIL NO.</p> <p>[CLASS ACTION FAIRNESS ACT]</p> <p><b>JURY TRIAL DEMANDED</b></p>
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**CLASS ACTION COMPLAINT**

Plaintiff Christian Garcia-Catalan, (“Plaintiff”), on behalf of himself and all others similarly situated, by and through his undersigned counsel, alleges the following based upon his own personal knowledge and the investigation of his counsel.

**PRELIMINARY STATEMENT**

1. Defendant Johnson & Johnson Consumer Companies, Inc. (“J&J” or “Defendant”), manufactures, markets, and sells Johnson & Johnson Bedtime Products, including JOHNSON’S® BEDTIME® Bath (“Bedtime Bath”) and JOHNSON’S® BEDTIME® Lotion (“Bedtime Lotion”) (collectively, “Bedtime Product(s)” or “Product(s)”), which purport to aid, or 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.” J&J also markets and advertises, on the back of the bottles, that it has created a “clinically proven” nighttime 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 Products, Defendant's nationwide advertising campaign for the Bedtime 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 has utilized a wide array of media to convey its deceptive claims about the Bedtime Products over time, including television, magazines, the Internet, and on the Product labels. Through this massive marketing campaign, Defendant has worked to convey a singular message: the Bedtime Products are clinically proven to help babies sleep better. Each person who has purchased the Bedtime 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 to induce consumers to buy the Bedtime Products. Defendant knew or should have known, at the time it began selling the Products, that there are no studies showing that the Bedtime Products are *clinically proven* to provide any results, and Defendant has no basis to make the claims about its Products.
4. As a result of its deceptive conduct, J&J charges a premium of at least \$1.00 for Bedtime Products over its other baby washes and lotions, which Plaintiff 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 Products, either alone or in connection with the "clinically proven" nighttime routine, will help babies sleep better. As a result of seeing these false and misleading representations, Plaintiff and Consumers bought the Bedtime Products, paid more for the Bedtime Products than they otherwise would have paid absent the wrongful conduct, and have been damaged as a result of the wrongful conduct.
5. This circuit wise class action seeks to provide redress to consumers in the United States (except

New York), Puerto Rico, and U.S. Territories, who have been harmed by the false and misleading marketing practices Defendant has engaged in with respect to the Bedtime Products. Defendant's conduct has included the systematic and continuing practice of disseminating false and misleading information throughout the United States via pervasive multi-media advertising and the Product packaging. These actions were and are intended to induce unsuspecting consumers, including Plaintiff and the members of the Class, into purchasing the more expensive Bedtime Products, which Products are not *clinically proven* at all, much less proven to have the benefits that are represented. Those supposed benefits serve as the basis for consumers' decisions to purchase the Bedtime Products, instead of the less expensive J&J baby washes and lotions that have long been sold on the market and do not purport to provide such "clinically proven" benefits.

6. Plaintiff brings this action to obtain redress for those who have purchased the Bedtime Products. Plaintiff brings claims for violations of the provisions of Section 5 of the Trade Commission Act, as adopted by Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of the Puerto Rico Department of Consumer affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other State and territorial Consumer Fraud Protection Acts, and for unjust enrichment.
7. Though this action, Plaintiff seeks injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys' fees, costs, and all other relief available to the putative Class as a result of Defendant's unlawful conduct.

#### **NATURE OF THE ACTION**

8. Plaintiff brings this circuit wise action individually and on behalf of a proposed class ("Class"), as more fully defined below, of similarly situated consumers, in Puerto Rico, and all U.S. Territories, seeking to redress the pervasive pattern of fraudulent, deceptive, false and otherwise improper advertising, sales and marketing practices Defendant deceptively informed and led its

customers to believe that they were purchasing, for a premium price, products containing “clinically proven” products that will help babies sleep better while failing to adequately disclose that such products were not *clinically proven* to help babies sleep better at all. Defendant obtained substantial profits from these unlawful and deceptive sales.

### **JURISDICTION, PARTIES AND VENUE**

9. Original jurisdiction of this Court exists by virtue of 28 U.S.C. § 1332(d) (2) and the Class Action Fairness Act ("CAFA"). See 28 U.S.C. § 1711, et. seq. The Plaintiff and certain of the Defendants in this action are citizens of different U.S. jurisdictions and territories and the amount in controversy in this action exceeds five million dollars (\$5,000,000.00), exclusive of interest and costs. Jurisdiction is also appropriate as Defendant Johnson & Johnson Consumer Companies, Inc. otherwise intentionally avails itself of the Commonwealth of Puerto Rico market through its marketing and sales of the products in the Commonwealth of Puerto Rico and/or by having such other contacts with Puerto Rico so as to render the exercise of jurisdiction over it by the District of Puerto Rico court consistent with traditional notions of fair play and substantial justice.
10. Venue is proper in this District under 28 U.S.C. § 1391(a), (b), and (c) because a substantial part of the events giving rise to these claims occurred in the District of Puerto Rico; Defendants and/or their agents were doing business in Puerto Rico; and/or Defendants are otherwise subject to personal jurisdiction in this judicial district.

### **PLAINTIFFS**

11. For purposes of clarity, the Plaintiff is asserting claims on behalf of all consumers of Johnson & Johnson Consumer Companies, Inc. products in the United States, (excluding New York), Commonwealth of Puerto Rico and all other U.S. territories, who do not appear herein as named Plaintiffs.
12. The named plaintiff Christian Garcia-Catalan is a resident of the Commonwealth of Puerto

Rico. Plaintiff has been purchasing the Product in Puerto Rico for the last four (4) years of the filing of this Complaint. Specifically, Plaintiff last purchased JOHNSON'S® BEDTIME® Lotion on July 18, 2015 at a Walgreens Pharmacy located in Humacao, Puerto Rico. (See exhibit 2). At all times he purchased the Product, the plaintiff relied upon the express and implied claim made by the Defendant that the Products were *clinically proven* to help his baby sleep better.

13. Had the Plaintiff known that, contrary to the clear labeling and advertising, the Bedtime Products themselves are not *clinically proven*, he would not have never purchased the product.

#### **“DEFENDANTS**

14. 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. J&J sold the Bedtime Products through retail stores, the Internet, and through television and other advertisements, all of which led consumers to purchase the Bedtime Products throughout the United States, including in New Jersey. J&J knew, or should have known, that the representations made regarding the Bedtime Products were false and misleading at the time that it began distributing the Bedtime Products in the United States, Puerto Rico, and U.S. Territory markets.

#### **GENERAL ALLEGATIONS**

15. J&J launched its Bedtime 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. <http://www.johnsonsbaby.com/difference/baby->

science#sleep.

16. Indeed, a majority of families report that sleep, or lack of, for that matter, is the number one challenge they face. *See* [www.babycenter.com](http://www.babycenter.com) > Expert Advice, Americas Sleep Crisis, July 2012, <http://www.babycenter.com/sleepstudy> (last visited July 1, 2015).
17. When Defendant introduced its Products, Defendant knew that its target audience would be eager to accept claims that the Products could help babies sleep better. Defendant used this opportunity to lure customers into paying a premium price for the Product by making prominent representations in the marketing materials for the Products, and especially the front labels for the Products, that simply using the Products would help babies fall asleep more easily and sleep better.
18. J&J has had baby washes and lotions on the market for years. In order to sell more products and attempt to capitalize on this perceived market to improve baby's sleep, J&J introduced its Bedtime Products. Indeed, J&J launched these Products and claimed it had expanded its **product line** to introduce new and innovative **products** to help a baby sleep better.
19. The Bedtime 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 pay a premium to buy the new products, *i.e.*, the Bedtime Products, unless and until they are exposed to Defendant's labeling and other pervasive messages about the purported properties and benefits of the Products. The label itself, as well as the marketing material disseminated by Defendant, both make the false and misleading representations about the Product's benefits and properties. 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 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 before did not do – here, it is that the Bedtime Products were (and are) clinically proven to help baby sleep better.

20. For example, the Products themselves are touted by Defendant, in its Infant Sleep Guide, which cites to its own “baby care experts” at J&J, Defendant stated 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).

(Emphasis added).

21. Prior to January 2013, Defendant’s websites provided. *inter alia*, Baby Sleep Guides, New Parent’s Guide to Better Sleep, and various “*studies*” to support its misleading claims. While the language on some of these materials has changed slightly between January 2013 and the present, the wording on the Product label has remained constant to this day: that the Bedtime Products are *clinically proven* to help babies sleep better.
22. 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. These core representations alleged to be false and misleading, that the Products themselves are *clinically proven* to help babies sleep better, are also all contained on the Product label itself for every purchaser, or proposed purchaser, to read.
23. 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.)
24. J&J claims that its Bedtime Bath and Bedtime Lotion are *clinically proven* to help babies and

toddlers fall asleep better, and are now labeled as able to help babies who have “trouble sleeping” achieve a “better night’s sleep.” (Exhibits 1-2.)

25. Defendant therefore expressly and impliedly represented that the Products were *clinically proven* to help baby sleep better.

26. As Defendant knows, however, contrary to the clear labeling and advertising, the Bedtime Products themselves are **not** clinically proven.

27. J&J further states, on the back label of the Bedtime Product bottles, that it has also created a “clinically proven” nighttime routine of a warm bath (with the Products), gentle massage (with the Products), and quiet activities (e.g., reading, cuddling, and singing lullabies):

Treat your baby to a bath **with JOHNSON’S® BEDTIME BATH®**, a gentle massage **with JOHNSON’S® BEDTIME LOTION®**, a few minutes of quiet time, and your baby will drift off to a better night’s sleep.

(See Exhibits 1, 2)(emphasis added).

28. Thus, in addition to the false representation that the Products themselves are *clinically proven*, Defendant also has carefully created the misleading and deceptive impression that consumers can use the *clinically proven* Product and the *clinically proven* “nighttime routine” to help baby sleep better.

29. 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); and
- c. the nighttime routine is clinically proven to help babies and toddlers



sleep better (Exhibits 1, 2).

30. 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 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 the Bedtime Products. See <http://www.johnsonsbaby.com/difference/baby-science#sleep>.
31. Not surprisingly, and consistent with its goal of selling **products** (not routines), Defendant has recently added a new **product** to its line - the JOHNSON’S® Baby BEDTIME® Washcloths. The front of the package proclaims that the washcloths are “clinically proven help baby sleep better.”<sup>4</sup> The label also states that the customer should “Try our other JOHNSON’S® Baby BEDTIME® **products** to help baby sleep better.” (emphasis added).
32. Defendant has also repeated its unfair and/or deceptive representations about its Products on its websites: [www.johnsonsbaby.com](http://www.johnsonsbaby.com), [www.jnj.com](http://www.jnj.com), and [www.johnsonspromotional.com](http://www.johnsonspromotional.com). The content of the websites contains materially the same message about the Products that Defendant has included on the labels of the Bedtime Products and disseminated since its launch.
33. Defendant’s website advertising states that the Products are formulated with NATURALCALM™, a “special blend of calming aromas.”<sup>5</sup> See also <https://www.johnsonsbaby.com/babywash/johnsons-bedtime-lotion> (NATURALCALM™ is a special blend of gentle and calming aromas).
34. At some point since January 2013, Defendant changed this language from its prior representation, that it was 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 Products, J&J has claimed that NATURALCALM™ is a “patent-pending blend of gentle and soothing aromas” proven to promote calming and a relaxed state. However, Defendant is well

aware that the patent for NATURALCALM™ was never tested with babies or children.

35. Defendant also states that the Bedtime Lotion is “clinically shown to last all night long.”

36. Since the launch of the Products and to the present, J&J has consistently and uniformly stated on its labeling and in its other advertisements that the Products are *clinically proven* to help babies sleep better. J&J intended the statement to appear “scientific” and, thus, give the claims a special significance, when in reality, J&J knew that the Products themselves are not *clinically proven*. J&J did not test the “routine” with products other than the Bedtime Products, such as J&J’s long-sold ordinary bath products, another company’s products, or with no products at all.

37. 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 over seven months old. The Advertising Standards Authority 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.” See ASA Adjudication on Johnson & Johnson Ltd, Apr. 30, 2008, formerly available at [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>7</sup>

38. All of these representations made by J&J on the Product labels are deceptive, false, and misleading. Moreover, as a result of these representations, Defendant was able to sell, to Plaintiff and other consumers, the Bedtime 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 percent (25%) less than the

Bedtime Products. In other words, Plaintiff purchased the Products at a premium price over other baby bath and lotion products, strictly premised on Defendant's misrepresentations..

39. Had Plaintiff and other members of the proposed Class been aware of the truth, they would not have purchased the more expensive Bedtime Products or would have paid substantially less for them.
40. Plaintiff's claims are based on the Products' labels. Within the past 5 years, Plaintiff, while shopping for baby wash, viewed the claims on the label of the bottles of the Bedtime Products. In particular, at a Walgreens store in Humacao, Puerto Rico Plaintiff recalls reading Defendant's claims on the labels 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.
41. Plaintiff also noticed that the labels of other baby wash and lotion products, including J&J's long-sold regular products and other brand name products, did not contain claims that the products were "clinically proven" to help babies sleep better. As a result, the labels on the Products convinced Plaintiff to purchase the Bedtime Products, instead of any other similar baby wash and lotion products, to help his baby sleep better.
42. In reliance on the label's claims that the Bedtime Products were clinically proven to help his baby sleep better, Plaintiff purchased the Bedtime Products for a premium price. Plaintiff used the Bedtime Bath, in conjunction with the Bedtime Lotion, in accordance with J&J's 3-step *routine*.
43. The labeling of the Product bottles, and the representations therein, were made by Defendant. Reasonably relying on the claims made 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 Products as directed.

44. After using the Bedtime Products as part of the 3-step nightly *routine* for a period of time with his child, Plaintiff discontinued use, as he determined that the use of the Bedtime Products (included in the “routine”) did not help his baby sleep any better.

45. Plaintiff suffered actual damages and loss, in the amount of the total price of the Bedtime Products purchased and/or the price premium of the Products, as a result of the improper actions described herein.

46. Defendant’s false, misleading, and deceptive misrepresentations and omissions, as described herein, are likely to continue to deceive and mislead reasonable consumers and the general public.

47. In making the false, misleading, and deceptive representations and omissions, that their product is “CLINICALLY PROVEN, HELP BABY SLEEP BETTER”, Defendant knew, and intended, that consumers would pay a premium for the Products over comparable products that did not make such claims about helping babies sleep better.

48. During the course of their false, misleading, and deceptive advertising campaign, Defendants have sold hundreds of thousands of units or more of the Product based upon Defendants’ false promises.

49. Plaintiffs and the Class have suffered injury in fact and have lost money as a result of Defendants’ false representations, all of which entitled the plaintiff and the class to recover damages under Article 1802, et seq, of the Puerto Rico Civil Code.

50. Had Defendant not misrepresented (by omission and commission) the true nature of its products, Plaintiff would not have purchased Defendant’s product or, at a very minimum, he would have paid much less for the product.

## CLASS ACTION ALLEGATIONS

51. Plaintiff brings this suit as a class action on behalf of himself and on behalf of other similarly situated persons pursuant to Fed.R.Civ.P.23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Classes may be expanded or narrowed. The proposed Classes are defined as follows:
52. **Class:** All persons who purchased **JOHNSON'S® BEDTIME LOTION®** product in the United States (except New York), District of Puerto Rico, and all U.S. territories, within the applicable statutory limitations period, including the period following the filing date of this action.
53. Excluded from the Classes are: (1) Defendant, Defendant's subsidiaries, affiliates, officers, directors, assigns and successors, and any entity which Defendant has a controlling interest; (2) the Judge to whom this case is assigned and any member of the judge's immediate family; (3) anyone who purchased the **JOHNSON'S® BEDTIME LOTION®** product for the purpose of resale; and (4) anyone asserting claims for personal injury. Plaintiff reserves the right to modify the Class and Subclass definitions as further investigation and/or discovery so warrant.
54. This action has been brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23 and case law thereunder.
55. **Numerosity:** The members of the Classe are so numerous that joinder of all members is impracticable. Plaintiff reasonably believes that the Class is comprised of tens of thousands of consumers throughout Puerto Rico, the United States except New York, and the United States territories.
56. **Commonality:** Common questions of law and fact exist as to all members of the Class. These common questions predominate over any questions affecting only individual Class members.

These common legal and factual questions include, but are not limited to, the following:

- a. whether Defendants' claims regarding **JOHNSON'S® BEDTIME LOTION®** as "**CLINICALLY PROVEN, HELP BABY SLEEP BETTER.**" is deceptive or misleading;
- b. whether Defendants engaged in false or misleading advertising;
- c. whether Defendants' conduct as alleged herein violates the Puerto Rico Deceptive Acts and Practices Act and/or other State and U.S. territories unfair trade practices acts;
- d. whether Defendants' conduct as alleged herein constitutes a breach of warranty;
- e. whether Defendants' conduct as alleged herein constitutes unjust enrichment;
- f. whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- g. whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

These and other questions of law or fact which are common to the members of the Class and predominate over any questions affecting only individual members of the Class.

57. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class, as all Class members are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Class, purchased **JOHNSON'S® BEDTIME LOTION®** after exposure to the same material misrepresentations and/or omissions appearing on the product packaging and on or in Defendants' marketing and advertising, and received a product that was not as represented. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent members of the Class.
58. **Adequacy:** Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.

59. Plaintiff is similarly situated in interest to all members of the proposed Class and is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class.
60. This suit may be maintained as a class action under Fed. R. Civ. P. 23(b) (2) because Defendant has acted, and/or refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief. Specifically, injunctive relief is necessary and appropriate to require Defendant to: (i) discontinue advertising, marketing, packaging and otherwise representing **JOHNSON'S® BEDTIME LOTION®** as *clinically proven* to help babies sleep better (ii) undertake an immediate public information campaign to inform members of the proposed Class as to their prior practices; and (iii) to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of **JOHNSON'S® BEDTIME LOTION®** including, without limitation, the placement of corrective advertising and providing written notice to the public.
61. In addition, this suit may be maintained as a class action under Fed. R. Civ. P. 23 (b)(3) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such litigation, the Court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense

to all parties, and to the Court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents no management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## COUNT I

### **(Breach of Express Warranty) Deceptive and Unfair Marketing**

62. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-61 above as if fully set forth herein.
63. Plaintiff, and each member of the Class, formed a contract with Defendant at the time they purchased Defendant's **JOHNSON'S® BEDTIME LOTION®**. The terms of that contract include the promises and affirmations of fact made by Defendant on the labels of Defendant's **JOHNSON'S® BEDTIME LOTION®** as "**CLINICALLY PROVEN, HELP BABY SLEEP BETTER**" and through the advertising and marketing campaign, as alleged above. The product's labeling and advertising constitute express warranties, are part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the members of the Class, on the one hand, and Defendant, on the other.
64. Alternatively, privity was established between Defendant, and Plaintiff and Class Members, because Defendant, and/or its agents, were substantially, if not completely responsible for directly promoting and marketing Defendant's **JOHNSON'S® BEDTIME LOTION®** product to Plaintiff and Class Members and Plaintiff and Class Members were directly promoted to and marketed to by Defendant prior to purchasing **JOHNSON'S® BEDTIME LOTION®** product resulting in the purchase of Defendant's product by Plaintiff and Class Members. By virtue of this direct promotion and marketing to Plaintiff and Class Members, Defendant directly made an



express warranty of **JOHNSON'S® BEDTIME LOTION®** attributes and benefits to Plaintiff and Class Members.

65. All conditions precedent to Defendant.s liability under the warranty have been performed by Plaintiff and the Class.
66. Defendant breached the terms of the express warranty by not providing a product that provided the benefits promised. The statements made by Defendant that warranted Defendant.s claims of **JOHNSON'S® BEDTIME LOTION®** as of superior nature, attributes and benefits were not "puffery" or mere opinion -they were statements and affirmations of specific benefits and superior performance over alternative and lower priced sources of Baby Lotions constitute violations of the provisions of Section 5 of the Trade Commission Act and Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of the Puerto Rico Department of Consumer affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.
67. Plaintiffs and Class Members relied on these representations by Defendant in purchasing Defendant's **JOHNSON'S® BEDTIME LOTION®** instead of less expensive, but equally or more effective, alternative sources for baby bedtime lotions.
68. As a result of Defendant.s breach of warranty, Plaintiff and the Class have been damaged in the amount of the purchase price of Defendant's **JOHNSON'S® BEDTIME LOTION®**, and have suffered other damages to be determined by proof at trial.

## **COUNT II**

### **(Unjust Enrichment)**

69. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-68 above as if fully set forth herein.

70. Plaintiff and Class members conferred a tangible economic benefit upon Defendant by purchasing **JOHNSON'S® BEDTIME LOTION®**. Plaintiff and Class members would have expected remuneration from Defendant at the time this benefit was conferred had they known that **JOHNSON'S® BEDTIME LOTION®** was not "**CLINICALLY PROVEN, TO HELP BABY SLEEP BETTER**".
71. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched at the expense of Plaintiff and Class members.
72. It would be inequitable for Defendant to retain the profits, benefits and other compensation obtained by its wrongful conduct in marketing and selling of **JOHNSON'S® BEDTIME LOTION®**.
73. Plaintiff, on behalf of himself and Class members, seeks restitution from Defendant, and an order of this Court disgorging all profits, benefits and other compensation obtained by Defendant from its wrongful conduct.
74. The Defendant's acts and omissions as well as its failure to use reasonable care in this matter as alleged in this Complaint, including but not limited to, the knowing misrepresentation or failure to disclose the source, affiliation, origin, characteristics, ingredients, standards and quality of **JOHNSON'S® BEDTIME LOTION®** product constitute violations of the provisions of Section 5 of the Trade Commission Act and Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of the Puerto Rico Department of Consumer affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.
75. The Defendant's unconscionable, unfair, and deceptive acts and practices set forth in this Complaint are likely and reasonably foreseeable to mislead Plaintiff and members of the Class

acting reasonably in their reliance on Defendant's acts and practices, and to their detriment.

76. The Defendant engaged in the unconscionable, unfair, and deceptive acts or practices set forth in this Complaint in the conduct of trade or commerce, in violation of the provisions of Section 5 of the Trade Commission Act, Rules 5 and 7 of the Regulations against Deceitful and Misleading Advertising of the Puerto Rico Department of Consumer affairs, and other State and Territorial applicable Consumer laws
77. The Defendant's misrepresentations or omissions as set forth in this Complaint are material in that they relate to matters which are important to consumers or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members regarding Defendant's products.
78. The Defendant's business practice, in its advertising, marketing, packaging, labeling and sales of its **JOHNSON'S® BEDTIME LOTION®** as "**CLINICALLY PROVEN, TO HELP BABY SLEEP BETTER**" justifying substantially higher prices over alternative sources of baby bedtime products is an unconscionable, unfair, and deceptive act or practice, in violation of the applicable Consumer Protection Acts, in that it (1) offends established public policy, (2) is immoral, unethical, oppressive, or unscrupulous, and/or (3) is substantially injurious and caused actual damages to consumers, including Plaintiff and Class Members who purchased **JOHNSON'S® BEDTIME LOTION®** product because of Defendant's representations and conduct.
79. Plaintiff and Class Members have suffered actual damages as a result of Defendant's violation of in violation of the provisions of Section 5 of the Trade Commission Act and Rules 5 and 7 of the Regulations against Deceitful and Misleading Advertising of the Puerto Rico Department of Consumer affairs and are entitled to relief, under Articles I, II, and III of the Puerto Rico Civil

Code, and other applicable Consumer Protection Laws.

80. As a direct and proximate cause of Defendant's violations of various applicable Consumer Protection Acts, Plaintiff and Class Members have incurred harm and damages as described herein, and are entitled to recover for those damages, including but not limited to, actual damages, costs, attorneys' fees, and injunctive relief, pursuant to the Class Action Fairness Act and the various other Consumer Protection Acts.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and all members of the Class defined herein, prays for judgment as follows:

- a. Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and his counsel as Class counsel;
- b. A temporary, preliminary and/or permanent order for injunctive relief requiring Defendant to: (i) discontinue advertising, marketing, packaging and otherwise representing **JOHNSON'S® BEDTIME LOTION®** as having benefits that it does not have; (ii) undertake an immediate public information campaign to inform members of the proposed Class as to the prior practices; and (iii) to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of **JOHNSON'S® BEDTIME LOTION®** product, including without limitation, the placement of corrective advertising and providing written notice to the public;
- c. An order requiring imposition of a constructive trust and/or disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all members of

the Class and to restore to the Plaintiff and members of the Class all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a violation of laws, statutes or regulations, or constituting unfair competition or false advertising, in an amount no less than FIVE MILLION DOLLARS (\$5,000,000.00);

- d. Distribution of any moneys recovered on behalf of members of the Class via fluid recovery or cy pres recovery where necessary and as applicable, to prevent Defendant from retaining the benefits of their wrongful conduct;
- e. Compensatory and other damages for economic and non-economic damages identified herein, including all damages allowed by governing statutes;
- f. Statutory pre-judgment and post-judgement interest
- g. Reasonable attorneys' fees.

**RESPECTFULLY SUBMITTED**, in San Juan, Puerto Rico, on this the 23<sup>rd</sup> day of July, 2015.

*/s/ José R. Franco-Rivera*

**JOSE R. FRANCO-RIVERA, Esq.**

**USDC #129014**

P.O. Box 16834, San Juan, Puerto Rico 00907-6834

Tel. 787/407-7041; E mail address: [jfrancolaw@gmail.com](mailto:jfrancolaw@gmail.com)

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

**CATEGORY SHEET**

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI): FRANCO - RIVERA, JOSE R.

USDC-PR Bar Number: 129014

Email Address: jrfrancolaw@gmail.com

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Christian Garcia - Catalan

Defendant:

Johnson + Johnson Consumer Companies, Inc.

2. Indicate the category to which this case belongs:

Ordinary Civil Case

Social Security

Banking

Injunction

3. Indicate the title and number of related cases (if any).

None

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

Yes

No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

Yes

No


6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

Yes

No

Date Submitted: July 20, 2015

rev. Dec. 2009



José R. Franco-Rivera, Esq.

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 NEXT PAGE OF THIS FORM.)

(a) PLAINTIFFS

CHRISTIAN GARCIA-CATALAN and others similarly situated

(b) County of Residence of First Listed Plaintiff

UNITED STATES

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

JOSE R. FRANCO RIVERA
P.O. BOX 16834, SAN JUAN, P.R. 00907-6834
787-407-7041

DEFENDANT

JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

UNKNOWN

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)

- (For Diversity Cases Only)
DEF PTF DEF PTF
Citizen of This State 'X PTF Incorporated or Principal Place of Business In This State
Citizen of Another State XX DEF Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country '3 '3 Foreign Nation '6 '6

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

Table with 5 main columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Marine, Tort, Real Property, etc.



446 (Rev. 12/12)  
 28 USC 1332(d)(2)  
 560 Civil Detainee  
 Conditions of  
 Confinement

**V. ORIGIN** (Place an "X" in one box only)  
 XXX' 1 Original State Court    '2 Removed from Appellate Court    '3    Remanded from Reopened    '4 Reinstated or Reopened    '5 Transferred from Another District    '6    Multidistrict Proceeding Litigation (specify)

**VI. CAUSE OF ACTION**  
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 USC § 1332(d)(2) and 28USC § 1711 et.seq.

Brief description of cause:  
 Cause of action arising out of consumers' misrepresentation

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION    DEMAND \$5,000,000.00    CHECK YES only if demanded in complaint: YES

**VIII. RELATED CASE(S) IF ANY** NONE (See instructions):  
 JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: July 20, 2015    SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

FOR OFFICE USE ONLY  
 RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_  
 UNDER RULE 23, F.R.Cv.P.    JURY DEMAND: \_\_\_\_\_ 'Yes 'No  
 JS 44 Reverse (Rev. 12/12)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**  
 Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

	)	
	)	
	)	
<i>Plaintiff(s)</i>	)	
v.	)	Civil Action No.
	)	
	)	
<i>Defendant(s)</i>	)	

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: