

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ANGELA MUNSELL, individually and on behalf of all others similarly situated,

Plaintiff,

v.

COLGATE-PALMOLIVE CO., and TOM'S OF MAINE INC.

Defendants.

C.A. No.

CLASS ACTION COMPLAINT

Plaintiff Angela Munsell (“Plaintiff”), by and through her undersigned counsel, as and for her Complaint against Defendants Colgate-Palmolive Co. (“Colgate”) and Tom’s of Maine Inc. (“Tom’s” or “Tom’s of Maine”) (collectively “Defendants”), alleges as follows:

PRELIMINARY STATEMENT

1. This is a class action brought by Plaintiff on behalf of herself and all other individuals who purchased toothpaste and deodorant products in Massachusetts and Rhode Island sold by Defendants under the Tom’s of Maine brand (herein “the Products”) which deceptively, falsely and misleadingly represent that such products are “natural” when the Products actually contain artificial, synthetic and/or chemically processed ingredients. A list of the Products is attached hereto as Exhibit 1.

2. In marketing the Products, Defendants target consumers whose purchasing decisions are driven by health and environmental concerns. Defendants deliberately market the Products as being “natural” because it allows them to sell the Products at a price premium over products that are

not represented as natural. Defendants know that consumers will choose the Products over competing products because the Products are represented as “natural”.

3. While Defendants sell the Products under the Tom’s of Maine brand and market them as being “natural”, the Products are not in fact “natural.” The reality is that the Products contain a host of artificial, synthetic and/or chemically processed ingredients including but not limited to Glycerin, Propylene Glycol, Sodium Lauryl Sulfate, Aluminum Chlorohydrate, Xanthan Gum, Sorbitol, Ascorbic Acid and Xylitol.

4. For years, Defendants have been deceiving and misleading their customers, including Plaintiff and the members of the Classes (as defined below), by mislabeling and misrepresenting their Products as “natural” despite knowing otherwise. They have done so to convince consumers that Tom’s of Maine Products are better than competing products and to induce the purchase of the Products at a price premium associated with “natural” products.

5. As a direct and proximate result of Defendants’ actions, Plaintiff and members of the Classes purchased Tom’s of Maine Products at a price premium. Because of Defendants’ actions, Plaintiff and the Classes have been harmed because they overpaid for the Products and received products that contained artificial, synthetic and/or chemically processed ingredients that rendered them not “natural,” contrary to Defendants’ representations.

6. Defendants’ conduct alleged herein constitutes unfair and deceptive acts and practices in the conduct of trade and commerce in violation of M.G.L. c. 93A and R.I. G.L. §6-13.1-1 *et seq.*

7. As a result of Defendants’ unlawful conduct, Plaintiff seeks the greater of statutory damages or recessionary damages for the Tom’s of Maine Products that she and the members of the Classes purchased from Defendants, along with any and all equitable, injunctive or further relief as provided by applicable law or as ordered by the Court.

PARTIES

8. Plaintiff resided in Taunton, Massachusetts until the spring of 2016. Since the spring of 2016, she has resided in Pawtucket, Rhode Island. Since at least the end of 2015, Plaintiff has regularly purchased Tom's of Maine brand toothpaste marketed as "natural," including without limitation the Cinnamon Clove toothpaste and the Sweet Mint whitening toothpaste as well as Tom's of Maine deodorant marketed as "natural." Plaintiff purchased these Tom's of Maine Products from stores in both Massachusetts and Rhode Island, including Target, Walmart and Whole Foods. Plaintiff purchased these Products because she specifically wanted natural toothpaste and deodorant products. When purchasing the Tom's of Maine Products Plaintiff paid a price premium over and above the price for similar toothpaste and deodorant that did not claim to be "natural."

9. Defendant Colgate is a Delaware corporation with its principal place of business at 300 Park Avenue, New York, New York 10022. Colgate is in the business of manufacturing, marketing and selling a wide array of oral, personal and home care products including toothpaste and deodorant, throughout the United States, including in Massachusetts and Rhode Island.

10. Defendant Tom's is a subsidiary of Colgate. In 2006, Colgate conducted an all cash acquisition of an 84% stake in Tom's for approximately \$100 million. Tom's maintains its principal place of business in Kennebunk, Maine. In conjunction with Colgate, Tom's markets, labels, brands and sells personal care products such as deodorant and toothpaste as "natural" under the Tom's of Maine brand throughout the United States including in Massachusetts and Rhode Island.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because this is a class action that seeks certification of classes of consumers; the Classes consist of more than

one hundred proposed class members; the citizenship of at least one class member is different from Defendants' citizenship; and the aggregate amount in controversy of the claims of Plaintiff and the putative Classes exceeds \$5,000,000, exclusive of interest and costs.

12. This Court has personal jurisdiction over Defendants because many of the actions giving rise to the claims at issue took place in this District and Defendants regularly conduct business in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in this District, and the claims at issue arise from actions by Defendants causing injury to consumers in this District.

FACTUAL ALLEGATIONS

The Market for Natural Products

14. There is a large and growing worldwide market for personal care products that are (or are perceived to be) safer and more environmentally friendly than traditional mainstream personal care products.

15. Whether products are in fact "natural" and whether they contain artificial, synthetic and/or chemically processed ingredients is important to a reasonable consumer. In fact, consumers often pay a substantial premium to purchase personal care products that are represented to be "natural".

16. Merriam-Webster's Dictionary defines "natural" as "existing in or produced by nature: not artificial".¹

17. In March, 2006, when Colgate acquired Tom's of Maine, the press release issued on Tom's of Maine's website noted that the "U.S. Market for Natural oral and personal care products is

¹ <https://www.merriam-webster.com/dictionary/natural>.

valued at \$3 billion and is growing at 15 percent per year.”² The release also highlighted that Tom’s of Maine toothpaste was the “clear market leader commanding 60% share of that channel.” The release acknowledged that Colgate had acquired Tom’s of Maine specifically to benefit from this sector of the personal care market.

18. According to a 2016 Wall Street Journal article, “U.S. sales of beauty, household and personal care products that make natural claims have grown 35% since 2012, versus 4% growth for the broader industry.”³

19. A 2019 report indicates that the global organic and natural personal care market is expected to continue its large growth and that North America accounts for over 35% of the global market for organic and natural personal care products, driven in large part by consumers’ desire to avoid artificial, synthetic or chemically formulated products.⁴ The article states that companies in the natural personal care market “are using ‘Fear-based product marketing’ as a strategy for promoting their organic product line to the customer. Consumers give into this strategy as a consequence of a strong perception about the long-term effects of chemical or synthetic personal care items, due to which they choose organic over synthetic. As a consequence, this trend has been favoring the organic and natural personal care market demand in the last couple of years.”

² <https://www.tomsofmaine.com/news/colgate-purchasing-toms-of-maine>.

³ <https://www.wsj.com/articles/natural-product-claims-can-be-murky-1459296027> (citing Bernstein Research analysis of Nielsen data).

⁴ <https://www.globenewswire.com/news-release/2019/04/23/1807675/0/en/Organic-and-Natural-Personal-Care-Market-will-grow-at-a-CAGR-of-8-during-forecast-period-2018-2025-Global-Analysis-by-Trends-Size-Share-Business-Opportunities-and-Key-Developments.html>.

Defendants Prominently Marketed and Labeled Tom's of Maine Products as "Natural" Despite the Fact that they Contain Artificial, Synthetic and/or Chemically Processed Ingredients

20. For years, Defendants have sought to capitalize on the profitable market for "natural" products by marketing and selling Tom's of Maine Products as "natural," in an effort to differentiate those Products from other products.

21. The Tom's of Maine Products prominently display the "natural" claim on the labels.

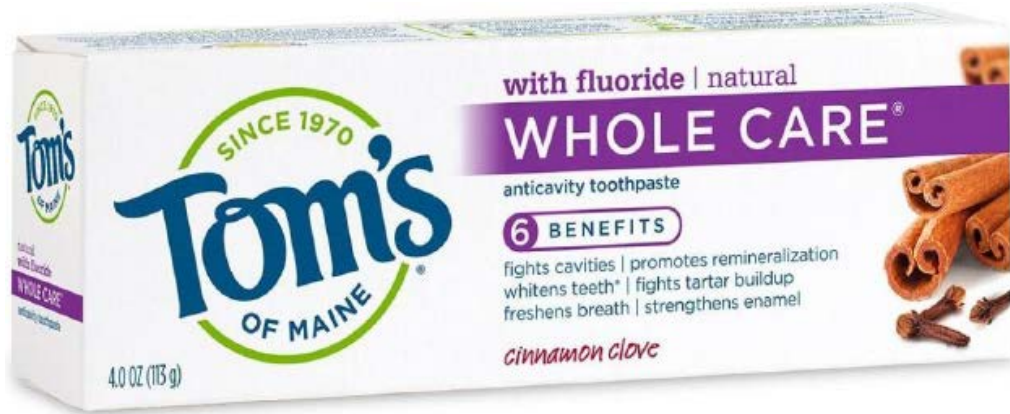
22. Defendants have marketed and sold their Products as "natural", despite the fact that they contain ingredients that are artificial, synthetic and/or chemically processed. Defendants have done so in order to sell their Products to consumers, like Plaintiff, who are looking to purchase "natural" products that are safe and environmentally friendly. Defendants know that consumers will pay a price premium for "natural" products and accordingly sell their Products as "natural" with the corresponding price premium above other comparable products that are not marketed as natural.

23. Defendants have spent millions of dollars over the years marketing the Tom's of Maine Products as "natural," not only through labeling and packaging, but also in print and television advertisements, internet advertisements and social media. In fact, as recently as September 26 of this year, Tom's of Maine posted the following on its Instagram account, which has over 20,000 followers:



24. Below are examples of Tom's of Maine toothpaste packaging and labeling that deceptively, falsely and misleadingly represent that such products are "natural".





25. Similarly, below are examples of Tom's of Maine deodorant packaging and labels that deceptively, falsely and misleadingly represent that such products are "natural".



26. It is through this widespread marketing strategy over the years that Defendants have convinced customers that Tom's of Maine Products are "natural" and that Tom's of Maine is a company that is trustworthy, socially responsible and responsive to the health, safety and environmental concerns of its customers.

27. While the Tom's of Maine Products are labeled and marketed as "natural", Tom's of Maine toothpaste Products contain artificial, synthetic and/or chemically processed ingredients including but not limited to xylitol, sodium lauryl sulfate, glycerin, xantham gum and sorbitol. Likewise, Tom's of Maine deodorant Products contain artificial, synthetic and/or chemically processed ingredients such as glycerin, glyceryl laurate, propylene glycol, ascorbic acid, and aluminum chlorohydrate. Exhibit 1 sets forth the artificial, synthetic and/or chemically processed ingredients contained in each of the Products despite the "natural" claim by Defendants on the labels. Because the Products contain artificial, synthetic and/or chemically processed ingredients, the

representations on the packaging and labels of Tom's of Maine Products that they are "natural" are deceptive, false and misleading to consumers.

28. Defendants falsely, deceptively and misleadingly misrepresented the Products as "natural" while delivering to consumers products that had synthetic, artificial and/or chemically processed ingredients. The "natural" products promised to consumers were substantially more valuable than the Products Defendants actually delivered to consumers. Accordingly, Plaintiff and the Classes were economically harmed because they paid for products that were inferior to the products that Defendants has represented them to be.

29. To this day, Defendants continue to market, brand, label and sell Tom's of Maine Products as "natural" despite containing artificial, synthetic and/or chemically processed ingredients.

CLASS ACTION ALLEGATIONS

30. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above. The Massachusetts Class and Rhode Island Class as defined below are referred to herein collectively as the "Classes."

The Massachusetts Class

31. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23 and Massachusetts General Laws Chapter 93A, § 2, 9, on behalf of herself and a class (the "Massachusetts Class") consisting of: All persons who have purchased Tom's of Maine toothpaste or deodorant Products in Massachusetts that were labeled "natural" yet contained artificial, synthetic and/or chemically processed ingredients between December 5, 2015 and the present. A non-exclusive list of those products is set forth in Exhibit 1 hereto.

32. Excluded from the Massachusetts Class are Defendants and their employees, any affiliated companies or entities Defendants control, as well as employees and officers of the Court.

33. Plaintiff reserves the right to amend the definition of the Massachusetts Class.

34. This action is properly maintainable as a class action.

35. A large quantity of Tom's of Maine Products have been sold to thousands of Massachusetts consumers at stores throughout the Commonwealth and online, and the members of the Massachusetts Class are so numerous that joinder of all members is impractical.

36. Common questions of law and fact exist as to all the Massachusetts Class Members and predominate over any questions solely affecting individual Members of the Massachusetts Class. Among the questions of law and fact common to the Massachusetts Class are:

- a. Whether, where and when Defendants marketed and sold Tom's of Maine Products as "natural" in Massachusetts;
- b. The manner in which Defendants marketed, branded, labeled and sold the Tom's of Maine Products as "natural" in Massachusetts;
- c. Whether Defendants' representations of Tom's of Maine Products as "natural" were false, deceptive and misleading;
- d. Whether a reasonable consumer would be deceived or misled by Defendants' marketing, branding, labeling and selling of Tom's of Maine Products as "natural";
- e. Whether the representation that a product is "natural" is material to a reasonable consumer;
- f. Whether Defendants had knowledge that their representations regarding Tom's of Maine Products as "natural" were false, deceptive and misleading;
- g. Whether Defendant's marketing, branding, labeling and selling of the Tom's of Maine Products as "natural" constituted unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Chapter 93A, § 2 and 9;

- h. Whether and the extent to which Plaintiffs and the Massachusetts Class were harmed by Defendants' false, deceptive and misleading marketing of Tom's of Maine Products as "natural";
- i. The proper measure of damages; and
- j. Whether Plaintiff and the Massachusetts Class are entitled to multiple damages.

37. Plaintiff's claims are typical of the claims of the Massachusetts Class because, like each Massachusetts Class Member, Plaintiff purchased Tom's of Maine Products in Massachusetts that were labeled "natural" but contained artificial, synthetic and/or chemically processed ingredients, entitling them to the same relief.

38. Plaintiff will fairly and adequately protect the interests of the Massachusetts Class Members and has retained counsel with extensive experience prosecuting consumer class actions, and who, with Plaintiff, are fully capable of, and intent upon, vigorously pursuing this action. Plaintiff does not have any interest adverse to the Massachusetts Class.

39. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Furthermore, the damage that has been suffered by any individual Massachusetts Class Member is likely not substantial, and the expense and burden of individual litigation would make it impracticable for all Massachusetts Class Members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

40. The prosecution of separate actions by Massachusetts Class Members against Defendants would create a risk of inconsistent or varying adjudications with respect to individual class members which could establish incompatible standards of conduct for Tom's of Maine Products. In addition, adjudications with respect to individual Massachusetts Class Members could, as a practical matter, be dispositive of the interests of the other Massachusetts Class Members not

parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

41. The members of the Massachusetts Class are readily identifiable through Tom's of Maine and/or other records, and Plaintiff is a member of the Massachusetts Class.

42. Defendants have acted on grounds generally applicable to the Massachusetts Class with respect to the matters complained of herein, thereby making appropriate relief sought herein with respect to the Massachusetts Class as a whole.

The Rhode Island Class

43. Plaintiff also brings this action pursuant to Federal Rule Civil Procedure 23 and Rhode Island General Laws § 6-13.1-5.2 on behalf of herself and a class (the "Rhode Island Class") consisting of: All persons who have purchased Tom's of Maine toothpaste or deodorant Products in Rhode Island that were labeled "natural" yet contained artificial, synthetic and/or highly chemically processed ingredients between December 5, 2015 and the present. A non-exclusive list of those products is set forth in Exhibit 1 hereto.

44. Excluded from the Rhode Island Class are Defendants and their employees, any affiliated companies or entities Defendants control, as well as employees and officers of the Court.

45. Plaintiff reserves the right to amend the definition of the Rhode Island Class.

46. This action is properly maintainable as a class action.

47. A large quantity of Tom's of Maine Products have been sold to thousands of Rhode Island consumers at stores throughout the State of Rhode Island and online, and the members of the Rhode Island Class are so numerous that joinder of all members is impractical.

48. Common questions of law and fact exist as to all the Rhode Island Class Members and predominate over any questions solely affecting individual Members of the Rhode Island Class. Among the questions of law and fact common to the Rhode Island Class are:

- a. Whether, where and when Defendants marketed and sold Tom's of Maine Products as "natural" in Rhode Island;
- b. The manner in which Defendants marketed and sold the Tom's of Maine Products as "natural" in Rhode Island;
- c. Whether a reasonable consumer would be deceived or misled by Defendants' marketing, branding, labeling and selling of Tom's of Maine Products as "natural";
- d. Whether Defendant's marketing, branding, labeling and selling of the Tom's of Maine Products as "natural" constituted unfair or deceptive acts or practices in the conduct of trade or commerce in violation of §6-13.1-1 *et seq.*;
- e. Whether and the extent to which Plaintiffs and the Rhode Island Class were harmed by Defendants' false, deceptive and misleading marketing of Tom's of Maine Products as "natural";
- f. The proper measure of damages; and
- g. Whether Plaintiff and the Rhode Island Class are entitled to punitive damages.

49. Plaintiff's claims are typical of the claims of the Rhode Island Class because, like each Rhode Island Class Member, Plaintiff purchased Tom's of Maine Products in Rhode Island that were labeled "natural" but contained artificial, synthetic and/or chemically processed ingredients, entitling them to the same relief.

50. Plaintiff will fairly and adequately protect the interests of the Rhode Island Class Members and has retained counsel with extensive experience prosecuting consumer class actions, and who, with Plaintiff, are fully capable of, and intent upon, vigorously pursuing this action. Plaintiff does not have any interest adverse to the Rhode Island Class.

51. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Furthermore, the damage that has been suffered by any individual Rhode Island Class Member is likely not substantial, and the expense and burden of individual litigation would make it impracticable for all Rhode Island Class Members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

52. The prosecution of separate actions by Rhode Island Class Members against Defendants would create a risk of inconsistent or varying adjudications with respect to individual class members which could establish incompatible standards of conduct for Tom's of Maine Products. In addition, adjudications with respect to individual Rhode Island Class Members could, as a practical matter, be dispositive of the interests of the other Rhode Island Class Members not parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

53. The members of the Rhode Island Class are readily identifiable through Tom's of Maine and/or other records, and Plaintiff is a member of the Rhode Island Class.

54. Defendants have acted on grounds generally applicable to the Rhode Island Class with respect to the matters complained of herein, thereby making appropriate relief sought herein with respect to the Rhode Island Class as a whole.

COUNT I

(Violation of M.G.L. c. 93A on behalf of Plaintiff and the Massachusetts Class)

55. Plaintiff incorporates the forgoing allegations as if fully set forth herein.

56. At all relevant times, Defendants were engaged in trade or commerce within the Commonwealth of Massachusetts, including the trade or commerce of marketing, selling and causing to be sold Tom's of Maine Products as "natural" within the Commonwealth of Massachusetts.

57. By conducting the unfair and deceptive marketing and branding efforts described herein, through deceptive, false and misleading labeling and marketing of Tom's of Maine Products as "natural", despite the Products containing artificial, synthetic and/or chemically processed ingredients, Defendants have engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Chapter 93A, § 2.

58. Defendants' conduct was objectively deceptive, and had the capacity to deceive reasonable consumers under the circumstances. The fact that the Products were not "natural" and instead contained artificial, synthetic and/or chemically processed ingredients was a material fact that a reasonable consumer would attach importance at the time of purchase.

59. By engaging in the conduct described above, Defendants violated as least the following regulations promulgated by the Massachusetts Attorney General pursuant to M.G.L. C. 93A, § 2(c):

a. 940 C.M.R. 3.02(2), which states:

No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

b. 940 C.M.R. 3.05(1), which states:

No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

- c. 940 C.M.R. 3.16(1)-(2), (4) which make any act or practice a violation of Chapter 93A, Section 2 (and thus Section 9) if:

(1) It is oppressive or otherwise unconscionable in any respect; or

(2) Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction

(4) It violates the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of M.G.L. c. 93A, § 2.⁵

- d. 940 C.M.R. 6.03(2), which states:

Sellers shall not use advertisements which are untrue, misleading, deceptive, fraudulent, falsely disparaging of competitors, or insincere offers to sell.⁶

- e. 940 C.M.R. 6.04(1)-(2), which state:

(1) Misleading Representations. It is an unfair or deceptive act for a seller to make any material representation of fact in an advertisement if the seller knows or should know that the material representation is false or misleading or has the tendency or capacity to be misleading, or if the seller does not have sufficient information upon which a reasonable belief in the truth of the material representation could be based.

(2) Disclosure of Material Representations. It is an unfair or deceptive act for a seller to fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers. . . .

60. The Defendants' violation of the regulations enumerated above constitute violations of Chapter 93A, Section 2(a) because regulations promulgated by the Massachusetts Attorney General under Chapter 93A, Section 2(c) provide that any act or practice violates Chapter 93A,

⁵ Defendants' actions also violate 15 U.S.C. § 45(a)(1), which provides: "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." *See also* 16 C.F.R. § 260.2.

⁶ "An unfair or deceptive representation may result not only from direct representations and the reasonable inferences they create, but from the seller's omitting or obscuring a material fact." 940 C.M.R. 6.03(4).

Section 2 if “[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection...” 940 C.M.R. 3.16(3).

61. In addition, violations of federal consumer protection statutes, including Section 5 of the Federal Trade Commission (“FTC”) Act, 15 U.S.C. § 45(a)(1), are also violations of Chapter 93A. *See* 940 C.M.R. 3.16(4); Chapter 93A, § 2(b).

62. The FTC’s Guides For The Use Of Environmental Marketing Claims provide the FTC’s interpretation of Section 5 of the FTC Act in the context of environmental marketing and advertising claims:

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers’ decisions. *See* FTC Policy Statement on Deception, 103 FTC 174 (1983). To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims. *See* FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984). In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

16 C.F.R. § 260.2.

63. The conduct described herein is in clear violation of this guidance from the FTC and thus violates Section 5 of the FTC Act and Chapter 93A.

64. The violations of Chapter 93A by Defendants in connection with their marketing and sale of Tom's of Maine Products as described herein were done willfully, knowingly, and in bad faith.

65. As a direct and proximate result of Defendants' conduct in connection with the branding, labeling, marketing and selling of Tom's of Maine Products in Massachusetts, Plaintiff and the Massachusetts Class were harmed.

66. Plaintiff and the other Massachusetts Class Members have suffered ascertainable losses, which include but are not limited to, the costs they incurred paying for a product which was not the one that had been represented to them, and the fact that the product they received (one that contained synthetic, artificial and/or chemically processed ingredients) was less valuable than the product represented to them (a "natural" one). Accordingly, Plaintiff and the other members of the Massachusetts Class were harmed by, and Defendants are liable for, Defendants' actions in violation of Chapter 93A.

67. On November 4, 2019, Plaintiff sent Defendants a written demand for relief pursuant to Chapter 93A, Section 9, identifying the claims Plaintiff asserts on her own behalf and the Massachusetts Class, and reasonably describing the unfair acts or practices relied upon and the injuries suffered. Defendants did not include a reasonable offer of relief to Plaintiff and the Massachusetts Class.

68. As a result of the conduct described herein, Defendants violated Chapter 93A and are liable to Plaintiff and the Massachusetts Class for up to three times the damages that Plaintiff and the Massachusetts Class incurred, or at the very least the statutory minimum award of \$25 for each purchase of Tom's of Maine Products, whichever is greater, together with all related court costs, attorneys' fees, and interest.

COUNT II

(Violation of Rhode Island G.L. § 6-13.1-1 *et seq.* on behalf of Plaintiff and the Rhode Island Class)

69. Plaintiff incorporates the forgoing allegations as if fully set forth herein.

70. At all relevant times, Defendants were engaged in trade or commerce within the State of Rhode Island, including the trade or commerce of marketing, selling and causing to be sold Tom's of Maine Products as "natural" within the State of Rhode Island.

71. By conducting the unfair and deceptive marketing and branding efforts described herein, through deceptive, false and misleading labeling and marketing of Tom's of Maine Products as "natural", despite the Products containing artificial, synthetic and/or chemically processed ingredients, Defendants have engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Rhode Island G.L. § 6-13.1-2 *et seq.*

72. As set forth in Rhode Island G.L. § 6-13.1-1, a defendant commits an unfair or deceptive act or practice by, among other things:

- a. (ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
 - b. (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
 - c. (vii) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
 - d. (xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding;
 - e. (xiii) Engaging in any act or practice that is unfair or deceptive to the consumer;
- and

- f. (xiv) Using any other methods, acts, or practices that mislead or deceive members of the public in a material respect.

73. Section 6-13.1-3 provides that “It is the intent of the legislature that in construing Sections 6-13.1-1 and 6-13.1-2 due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. Section 45(a)(1), as from time to time amended.”

74. The FTC’s Guides For The Use Of Environmental Marketing Claims provide the FTC’s interpretation of Section 5 of the FTC Act in the context of environmental marketing and advertising claims:

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers’ decisions. *See* FTC Policy Statement on Deception, 103 F.T.C. 174 (1983). To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims. *See* FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 839 (1984). In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

16 C.F.R. § 260.2.

75. The conduct described herein is in clear violation of this guidance from the FTC and thus violates Section 5 of the FTC Act and Rhode Island § 6-13.1-1 *et seq.*

76. As a direct and proximate result of Defendants’ conduct in connection with the branding, labeling, marketing and selling of Tom’s of Maine Products in Rhode Island, Plaintiff and the Rhode Island Class were harmed.

77. Plaintiff and the other Rhode Island Class Members have suffered ascertainable losses, which include but are not limited to, the costs they incurred paying for a product which was not the one that had been represented to them, and the fact that the product they received (one that contained synthetic, artificial and/or chemically processed ingredients) was less valuable than the product represented to them (a “natural” one). Accordingly, Plaintiff and the other members of the Rhode Island Class were harmed by, and Defendants are liable for, Defendants’ actions in violation of Rhode Island § 6-13.1-1 *et seq.*

78. As a result of the conduct described herein, Defendants violated Section 6-13.1-1 *et seq* and are liable to Plaintiff and the Rhode Island Class for actual damages that Plaintiff and the Rhode Island Class incurred, punitive damages or at the very least the statutory minimum award of \$200 per purchase of Tom’s of Maine Products, whichever is greater, together with all related court costs, attorneys’ fees, and interest.

Jury Demand

Plaintiff demands a trial by jury on all claims so triable.

Prayers for Relief

WHEREFORE, Plaintiff prays for relief in the form of an order as follows:

- 1) Allowing this action to proceed as a class action under Federal Rule Civil Procedure 23, Massachusetts G.L. c. 93A, §9, and Rhode Island G.L. § 6-13.1-5.2 *et seq.*;
- 2) Determining that Defendants’ conduct in connection with Tom’s of Maine Products as described herein, and as will be established at trial, violated the law as stated above;
- 3) Awarding restitution, including disgorgement of profits obtained by Defendants from Tom’s of Maine Products, as a result of its violations of the law;

- 4) Awarding Plaintiff and the class members further monetary damages including treble damages (for the Massachusetts Class), punitive damages (for the Rhode Island Class), statutory damages (for both Classes), interest, and costs;
- 5) Awarding counsel for the Plaintiff and the Classes their reasonable attorneys' fees and costs;
- 6) Enjoining Defendants from using false and deceptive marketing, branding and labeling of its Tom's of Maine Products as "natural" as described herein; and
- 7) Any such other and further relief which the Court finds just and proper.

Dated: December 13, 2019

By her attorneys,

/s/ Ian J. McLoughlin
Edward F. Haber (BBO# 215620)
Ian J. McLoughlin (BBO # 647203)
Adam M. Stewart (BBO# 661090)
SHAPIRO HABER & URMY LLP
Seaport East
Two Seaport Lane
Boston, MA 02210
Telephone: (617) 439-3939
Facsimile: (617) 439-0134
ehaber@shulaw.com
imcloughlin@shulaw.com
astewart@shulaw.com

***Counsel for Plaintiff Angela Munsell and the
Putative Classes***

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.)

I. (a) PLAINTIFFS

ANGELA MUNSELL, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Out of State (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Ian J. McLoughlin Two Seaport Ln, Boston, MA 02210 617-439-3939

DEFENDANTS

COLGATE PALMOLIVE CO., and TOM'S OF MAINE INC.

County of Residence of First Listed Defendant USA (IN U.S. PLAINTIFF CASES ONLY)

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 - Transfer
8 Multidistrict Litigation - Direct File

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
Brief description of cause: Misrepresentation of products to consumers

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/13/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Ian McLoughlin

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Angela Munsell v. Colgate-Palmolive Co.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.

III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

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

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Ian J. McLoughlin

ADDRESS Two Seaport Lane, Boston, MA 02210

TELEPHONE NO. 617-439-3939

Tom's of Maine Product Listing

DESCRIPTION	UNNATURAL INGREDIENT(S)
TOOTHPASTE	
Whole Care Pastes & Gels	
Cinnamon Clove Whole Care Paste	Sodium Lauryl Sulfate, Xylitol, Glycerin
Peppermint Whole Care Paste	Sodium Lauryl Sulfate, Xylitol, Glycerin
Spearmint Whole Care Paste	Sodium Lauryl Sulfate, Xylitol, Glycerin
Wintermint Whole Care Paste	Sodium Lauryl Sulfate, Xylitol, Glycerin
Orange Mango Whole Care Gel	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan Gum
Peppermint Whole Care Gel	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan Gum
Spearmint Whole Care Gel	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan Gum
Cavity Protection	
Peppermint Baking Soda Cavity Protection	Sodium Lauryl Sulfate, Xylitol, Glycerin
Spearmint Cavity Protection	Sodium Lauryl Sulfate, Xylitol, Glycerin
Simply White	
Clean Mint Simply White Paste	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan Gum, Sodium Hydroxide
Sweet Mint Simply White Gel	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan Gum
Activated Charcoal	
Activated Charcoal Toothpaste Peppermint	Sorbitol, Glycerin, Xylitol, Xanthan Gum, Sodium Cocoyl Glutamate
Flouride Free Activated Charcoal Toothpaste Peppermint	Sorbitol, Glycerin, Xylitol, Sodium Cocoyl Glutamate, Xanthan Gum
Wicked Cool!	
Wicked Cool Mild Mint	Sodium Lauryl Sulfate, Glycerin
Children's	
Outrageous Orange-Mango	Sodium Lauryl Sulfate, Glycerin
Silly Strawberry	Sodium Lauryl Sulfate, Glycerin
Fluoride-Free Silly Strawberry	Sodium Lauryl Sulfate, Glycerin
Fluoride-Free Toddler Training Toothpaste Mild Mint	Xylitol, Glycerin, Propanediol
Fruitylicious Gel	Glycerin, Sorbitol, Xylitol, Sodium Lauryl Sulfate, Xanthan Gum, Propanediol
Mild Fruit Paste	Glycerin, Propanediol, Xylitol
Wicked Fresh!	
Wicked Fresh Spearmint Ice	Sodium Lauryl Sulfate, Xylitol, Glycerin
Wicked Fresh Cool Peppermint	Sodium Lauryl Sulfate, Xylitol, Glycerin

Enamel Strength	
Enamel Strength Peppermint	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan Gum, Sodium Hydroxide
Luminous White	
Luminous White Clean Mint	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan Gum
Luminous White Spearmint	Glycerin, Sorbitol, Xylitol, Sodium Lauryl Sulfate, Xanthan Gum,
Botanically Fresh	
Botanically Fresh Herbal Mint	Sodium Cocoyl Glutamate, Xylitol, Glycerin, Sorbitol, Xanthan Gum
Botanically Bright Fluoride Free	
Botanically Bright Peppermint	Sodium Cocoyl Glutamate, Xylitol, Sorbitol, Glycerin, Xanthan Gum
Botanically Bright Spearmint	Sorbitol, Glycerin, Xylitol, Sodium Cocoyl Glutamate, Xanthan Gum
Antiplaque & Whitening	
Fluoride-Free Antiplaque & Whitening Peppermint	Sodium Lauryl Sulfate, Xylitol, Glycerin
Fluoride-Free Antiplaque & Whitening Spearmint	Sodium Lauryl Sulfate, Xylitol, Glycerin
Fluoride-Free Antiplaque & Whitening Fennel	Sodium Lauryl Sulfate, Xylitol, Glycerin
Fluoride-Free Antiplaque & Whitening Spearmint Gel	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan gum
Fluoride-Free Propolis & Myrrh	
Cinnamint w/ Propolis & Myrrh	Sodium Lauryl Sulfate, Xylitol, Glycerin, Xanthan Gum
Fennel w/ Propolis & Myrrh	Sodium Lauryl Sulfate, Xylitol, Glycerin, Xanthan Gum
Peppermint Baking Soda w/ Propolis & Myrrh	Sodium Lauryl Sulfate, Xylitol, Glycerin
Spearmint w/ Propolis & Myrrh	Sodium Lauryl Sulfate, Xylitol, Glycerin, Xanthan Gum
Peppermint Activated Charcoal Toothpaste	
Sea Salt Toothpaste	
Refreshing Mint	Sorbitol, Xylitol, Glycerin, Sodium Lauryl Sulfate, Xanthan Gum
Sensitive Formulas	
Fluoride-Free Sensitive Wintermint	Potassium Nitrate, Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan gum
Maximum-Strength Sensitive Soothing Mint	Potassium Nitrate, Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan gum
Flouride Free Rapid Relief Sensitive Fresh Mint	Sodium Lauryl Sulfate, Sorbitol, Xylitol, Xathan Gum
Travel Size	
Flouride Free Natural Toothpaste	Sorbitol, Glycerin, Xylitol, Sodium Lauryl Sulfate, Xanthan gum
Fresh Mint Natural Toothpaste	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan gum
Fresh Mint Natural Fluoride-Free Toothpaste	Sodium Lauryl Sulfate, Xylitol, Sorbitol, Glycerin, Xanthan gum

DEODORANT	
Women's Long Lasting Deodorant	
Unscented	Propylene Glycol, Ascorbic Acid
Fresh Apricot	Propylene Glycol, Ascorbic Acid
Wild Lavender	Propylene Glycol, Ascorbic Acid
Refreshing Lemongrass	Propylene Glycol, Ascorbic Acid
Soothing Calendula	Propylene Glycol, Ascorbic Acid
Beautiful Earth	Propylene Glycol, Ascorbic Acid, Propanediol, Glycerin
Maine Woodspice	Propylene Glycol, Ascorbic Acid
Honeysuckle Rose	Propylene Glycol, Ascorbic Acid
Natural Powder	Propylene Glycol, Ascorbic Acid
Tea Tree	Propylene Glycol, Ascorbic Acid
Coconut Lavender	Propanediol, Glycerin, Ascorbic Acid
Women's Original Care	
Original Care Unscented	Propylene Glycol, Ascorbic Acid
Women's Naturally Dry	
Naturally Dry Unscented	Aluminum Chlorohydrate
Naturally Dry Natural Powder	Aluminum Chlorohydrate
Naturally Dry Fresh Meadow	Aluminum Chlorohydrate
Mineral Confidence Roll-On	
Citrus Zest	Xanthan Gum
Fragrance Free	Xanthan Gum
Wicked Cool! Kids Deodorant	
Girls Summer Fun	Propylene Glycol, Ascorbic Acid
Boys Freestyle	Propylene Glycol, Ascorbic Acid