

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Tonya Akes and Samantha Kotcher,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

Beiersdorf, Inc.

Defendant.

Case No. 3:22-cv-869-SVN

Hon. Sarala V. Nagala

JURY TRIAL DEMANDED

Second Amended Class Action Complaint

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I. Introduction.

1. Defendant makes, distributes, sells, and markets “Coppertone Sport Mineral” sunscreen. Defendant sells several products in the “Coppertone Sport Mineral” line. One of those products, the “Coppertone Sport Mineral FACE” lotion, is prominently labelled “FACE.” The front of the product also prominently touts that the sunscreen “Won’t Run Into Eyes” and is “Oil Free.”



2. These prominent representations lead reasonable consumers to believe that the Sport Mineral FACE lotion is specifically designed for the face. And based on this reasonable belief, they are willing to pay more for the product. In fact, per ounce, the Sport Mineral FACE

lotion costs twice as much as Coppertone's regular (i.e., non-face) Sport Mineral lotion. But reasonable consumers buy it anyway, because they want a product that is specifically formulated for use on their face.

3. The truth, however, is that the Coppertone Sport Mineral FACE lotion is not specifically formulated for the face. There is nothing special about Coppertone Sport Mineral FACE that makes it any better for facial applications than regular Coppertone Sport Mineral (which is not specifically formulated for the face, and instead is designed for full-body applications.) In fact, Coppertone Sport Mineral FACE is exactly the same as the regular Coppertone Sport Mineral lotion. Defendant is putting the same sunscreen into two different bottles with different labels, and charging more for one of them. Consumers are being deceived and overcharged.

II. Parties.

4. Plaintiff Tonya Akes is a citizen of California (domiciled in Fresno).

5. Plaintiff Samantha Kotcher is a citizen of New York (domiciled in New York).

6. The proposed class(es) include citizens of numerous states.

7. Defendant Beiersdorf, Inc. is a Delaware corporation with its principal place of business in Stamford, Connecticut. Defendant makes, labels, distributes, sells, and markets the Coppertone Sport Mineral FACE products. Defendant is responsible for the making, labelling, distribution, selling, and marketing of the Coppertone Sport Mineral FACE products throughout the applicable statute of limitations period.

III. Jurisdiction and venue.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,

and the matter is a class action in which one or more members of the proposed class(es) are citizens of a state different from the Defendant.

9. The Court has personal jurisdiction over Defendant. Defendant has its principal place of business here.

10. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d). Defendant would be subject to personal jurisdiction in this District if this District were a separate state. Defendant has its principal place of business here. And Defendant sells the Coppertone Sport Mineral FACE products here.

IV. Facts.¹

A. Defendant makes, markets, distributes and sells Coppertone Sport Mineral and Coppertone Sport Mineral FACE sunscreen lotions.

11. Defendant makes, markets, distributes and sells the Coppertone Sport Mineral line of sunscreens.

12. The Coppertone Sport Mineral line of sunscreens includes various products such as lotions and spray bottles, each with various SPF ratings.

¹ By agreement with Defendant, Plaintiffs have limited their amendments to the following changes: (1) The addition of Ms. Kotcher as a new named Plaintiff and putative class representative from New York; (2) allegations regarding Ms. Kotcher's purchase of the accused product; (3) the addition of a New York Subclass on behalf of a subclass of consumers who, like Ms. Kotcher, purchased a Coppertone Sport Mineral FACE Product in New York; and (4) the addition of standalone claims under New York Gen. Bus. Law § 349 and § 350. As a result, Plaintiffs have not made any additional changes to the allegations raised in the First Amended Complaint. Accordingly, the remaining allegations in the Complaint are made as of the filing of the First Amended Complaint. As a result, some supporting details included in the First Amended Complaint (such as the specific price charged for a particular product by a particular retailer) may have changed since the filing of that Complaint.

13. One of the products in the Coppertone Sport Mineral line is the regular Coppertone Sport Mineral lotion. It comes in 5-ounce bottles. An example is shown below:²



² <https://www.walmart.com/ip/Coppertone-Sport-Mineral-Sunscreen-SPF-50-Lotion-Zinc-Oxide-UVA-UVB-Protection-5-fl-oz/286215538>

14. Another product in the Coppertone Sport Mineral line is the Coppertone Sport Mineral FACE lotion. It comes in smaller, 2.5-ounce bottles. An example is shown below:³



15. The label of the Coppertone Sport Mineral FACE lotion is almost identical to that of the regular Coppertone Sport Mineral lotion, with one important exception: the FACE lotion

³ <https://www.walmart.com/ip/Coppertone-Sport-Mineral-Face-Sunscreen-Lotion-SPF-50-2-5oz/789123873?athbdg=L1600>

is prominently labelled “FACE.” And it includes face-specific representations, such as “Won’t Run Into Eyes” and “Oil Free”.⁴

16. These representations are materially the same across all Coppertone Sport Mineral FACE lotions. That is, all the labels of all Coppertone Sport Mineral FACE lotions are substantially similar.

17. Both the regular Coppertone Sport Mineral and the Coppertone Sport Mineral FACE lotions recently got a “new look.” This is shown below:

⁴ “Oil-free” is important for face use because, as consumers know, oil can clog pores and lead to break outs on the face.

Regular⁵:



NEW LOOK!



SAME TRUSTED SUN PROTECTION

⁵ <https://www.walmart.com/ip/Coppertone-Sport-Mineral-Sunscreen-SPF-50-Lotion-Zinc-Oxide-UVA-UVB-Protection-5-fl-oz/286215538>

FACE⁶:



NEW LOOK!



SAME TRUSTED SUN PROTECTION

18. As the pictures show, the “old” labels are substantially similar to the “new” ones. In particular, both the old and new labels for the Coppertone Sport Mineral FACE lotion are

⁶ <https://www.walmart.com/ip/Coppertone-Sport-Mineral-Face-Sunscreen-Lotion-SPF-50-2-5oz/789123873?athbdg=L1600>

prominently labelled “FACE” and include the same prominent face-specific representations: “Won’t Run Into Eyes” and “Oil Free.”

B. The Coppertone Sport Mineral FACE label is misleading to reasonable consumers.

19. Based on the prominent “FACE” marking and face-specific representations on the front label of the Coppertone Sport Mineral FACE products, reasonable consumers believe that the lotion is specifically formulated for use on the face. In other words, reasonable consumers believe that there is something different about the Coppertone Sport Mineral FACE lotion that makes it better suited for use on the face, as compared to regular Coppertone Sport Mineral lotion.

20. The pricing of Coppertone Sport Mineral FACE reinforces this reasonable belief. Across retailers, a 2.5-ounce container of Coppertone Sport Mineral FACE costs the same as a 5-ounce container of “regular” Coppertone Sport Mineral. This means that per ounce, Coppertone Sport Mineral FACE costs twice as much as regular Coppertone Sport Mineral. For example, Walmart sells 2.5-ounce containers of SPF 50 Coppertone Sport Mineral FACE for \$9.98—\$3.99/ounce.⁷ And it sells 5-ounce containers of regular SPF 50 Coppertone Sport Mineral for \$9.98—\$1.99/ounce.⁸ The same is true for other retailers: per ounce, “FACE” costs twice as much as regular Coppertone Sport Mineral.⁹ In markets where different retailers sell the same product, the price retailers charge is correlated with and driven by the price that manufacturers

⁷ <https://www.walmart.com/ip/Coppertone-Sport-Mineral-Face-Sunscreen-Lotion-SPF-50-2-5oz/789123873?athbdg=L1600>

⁸ <https://www.walmart.com/ip/Coppertone-Sport-Mineral-Sunscreen-SPF-50-Lotion-Zinc-Oxide-UVA-UVB-Protection-5-fl-oz/286215538>

⁹ For example, on Amazon.com, regular Coppertone Sport Mineral and Coppertone Sport Mineral FACE were \$9.98—even though the bottle of regular Coppertone Sport Mineral is twice as large. Likewise, on Walgreens.com, regular Coppertone Sport Mineral and Coppertone Sport Mineral FACE were both \$11.99—even though the bottle of regular Coppertone Sport Mineral is twice as large.

charge retailers. Accordingly, this retail pricing is correlated with and driven by the pricing that retailers pay for Coppertone Sport Mineral FACE and Coppertone Sport Mineral, which is set by Defendant. Moreover, across retailers, the 2.5-ounce bottle of Coppertone Sport Mineral FACE costs the same as a 5-ounce bottle of Coppertone Sport Mineral. By contrast, as detailed below, other smaller bottles of Coppertone sunscreen without FACE-specific representations cost less than larger bottles of the same product. Based on this, it appears that the wholesale price that Defendant charges retailers for Coppertone Sport Mineral FACE is the same (i.e., is twice as much per ounce) as the “regular” Coppertone Sport Mineral.

21. The difference in pricing further indicates to reasonable consumers that the FACE product is specially formulated for the face, while the regular product is not, thus justifying the difference in price. In particular, although larger containers of sunscreens and other cosmetics may cost slightly less per ounce than smaller containers of the same sunscreen or other cosmetics due to volume discounts, honest retailers do not charge *the same* price for them. Smaller bottles of the same sunscreen cost less. Nor do honest retailers charge *double* per ounce for the same product just because it comes in a smaller bottle. In other words, reasonable consumers expect that for the same sunscreen or cosmetic, a smaller container will cost less than a larger container. So, the fact that a 2.5-ounce bottle of Coppertone Sport Mineral FACE costs *the same* as the 5-ounce bottle of “regular” Coppertone Sport Mineral—and double per ounce—tells reasonable consumers that Coppertone Sport Mineral FACE is different from “regular” Coppertone Sport Mineral. This makes sense: why would anyone pay (or charge) the same for *less* of the same thing?

22. Notably, this is true for TSA-compliant, “travel-size” sunscreens too. For example, another line of Coppertone sunscreen is the traditional (non-mineral) Coppertone Sport. Defendant sells that sunscreen in different containers, including a “regular” 7-ounce container

and a TSA-compliant, “travel-size” 3-ounce container.¹⁰ Unlike Coppertone FACE, however, the “travel-size” version does not contain different representations suggesting that it is specifically formulated for a special purpose such as facial application. Instead, for the “travel size” version, Defendant’s labels truthfully indicate to consumers that they are getting the exact same sunscreen in a smaller container appropriate for travel. And, although the 7-ounce container does cost slightly less per ounce than the “travel size” one, it does not cost *double* per ounce, or anywhere close to that. And the travel-size container overall costs far less than the regular 7-ounce container (from Walmart, \$8.26 for the “travel size” versus \$14.56 for the regular size). This confirms that, even for “travel size” sunscreens, reasonable consumers expect that smaller bottles of the same thing will cost less than larger bottles of the same thing.

23. As alleged above, Defendant is responsible for these differences in pricing.

24. In truth, however, Coppertone Sport Mineral FACE is not specially formulated for the face. Nor is it more expensive to manufacture. Quite the opposite, it is identical to regular Coppertone Sport Mineral, which costs half as much (or the same amount for a bottle twice the size). Defendant is taking the same exact product and putting it in two different bottles, one prominently marked “FACE” and one not. And then it is charging twice as much for the sunscreen in the bottle marked “FACE” (the same for both bottles, even though one is twice the size of the other). In short, Defendant is tricking consumers into thinking they are buying sunscreen lotion specially formulated for the face, when in reality, they are just buying

¹⁰ <https://www.walmart.com/ip/Coppertone-Sport-Sunscreen-Lotion-SPF-30-7-Fl-Oz/51222470> (“regular” 7-ounce); https://www.walmart.com/ip/Coppertone-Sport-Sunscreen-Lotion-SPF-30-3-fl-oz-Travel-Size/50346156?irgwc=1&sourceid=imp_z%3A6xXRQS7xyIWuQ1YIUngSoRUkDTdz3UKTnvXg0&veh=aff&wmlspartner=imp_392844&clickid=z%3A6xXRQS7xyIWuQ1YIUngSoRUkDTdz3UKTnvXg0&sharedid=63373662bc429350cb23bd2e&affiliates_ad_id=568852&campaign_id=9383 (“travel size” 3-ounce)

Defendant's regular Sport Mineral sunscreen in a smaller—and far more expensive—bottle. And through this trickery, Defendant is able to charge more for Coppertone Sport Mineral FACE than it otherwise could. Purchasers are paying more than they otherwise would for sunscreen as a direct result of Defendant's deception.

25. That Defendant is able to charge twice as much for Coppertone Sport Mineral sunscreen when it is prominently labelled "FACE" and includes face-specific representations demonstrates that Defendant's labelling is misleading. No reasonable consumer who understood that Coppertone Sport Mineral FACE is identical to regular Coppertone Sport Mineral would choose to pay twice as much for it. Notably, there are "travel-size" sunscreens that do not cost twice as much as a regular bottle of the same thing available for purchase to consumers who need a travel-size bottle of sunscreen. So the very fact that Defendant is able to sell Coppertone Sport Mineral FACE sunscreen demonstrates that its labelling is misleading consumers.

26. Defendant's deceptive practices increased the demand for Coppertone Sport Mineral FACE and allowed Defendant to charge a price premium for it. As explained above, Defendant's deceptive practices led reasonable consumers to believe that Coppertone Sport Mineral FACE was specifically formulated for use on the face. Based on this reasonable belief, consumers are willing to pay more, and do pay more, for Coppertone Sport Mineral FACE than they otherwise would. Moreover, as explained above, the retail pricing for Coppertone Sport Mineral FACE is correlated with and driven by the wholesale pricing set by Defendant. Accordingly, as a result of Defendant's deceptive practices, class members including Plaintiffs paid a price premium for the Coppertone Sport Mineral FACE products they purchased. As purchasers, Plaintiffs and each class member paid this price premium and sustained economic injury. In addition, if they had known the truth, class members could have purchased the same product for half as much per ounce as they paid. Accordingly, Plaintiffs and each class member

overpaid for the Coppertone Sport Mineral FACE product they purchased and sustained economic injury for this additional reason. Defendant is the proximate and but-for cause of Plaintiffs and the class's injuries.

C. Plaintiffs were misled by Defendant's misrepresentations.

27. In or around June 2022, Ms. Akes bought a 2.5-ounce bottle of Coppertone Sport Mineral FACE at a Walmart Supercenter in Fresno, CA. The package said "FACE" prominently on the label. The product also stated "Won't Run Into Eyes" and "Oil Free." A picture of the bottle is shown below:



28. Ms. Akes read and relied on the “FACE” statement, as well as the additional face-specific representations on the front label of the product, when she purchased the product. Based on these representations, Ms. Akes believed that the product was specially formulated for use on the face, and bought it specifically for this reason. Ms. Akes would not have purchased this product if she had known that the product was, in fact, identical to regular Coppertone Sport Mineral, which costs half as much. Moreover, the price Ms. Akes paid for this product was inflated due to the misleading FACE and face-specific representations. Had she known the truth, Ms. Akes could have purchased the same product for half as much per ounce as she paid. Accordingly, Ms. Akes suffered an economic injury as a result of Defendant’s deceptive conduct.

29. In or around summer 2023, Ms. Kotcher bought a 2.5-ounce bottle of Coppertone Sport Mineral FACE at a CVS in New York, NY. The package said “FACE” prominently on the label. The product also stated “Won’t Run Into Eyes” and “Oil Free.” A picture of the bottle is shown below:



30. When she purchased the product, Ms. Kotcher read and relied on the prominent “FACE” statement and the other face-specific representations on the product’s label. Based on these representations, Ms. Kotcher believed that the product was specially formulated for facial use, and she bought it specifically for this reason. Ms. Kotcher would not have made the purchase if she had known that the “FACE” product was actually identical to the regular Coppertone Sport Mineral product. Moreover, the price she paid was inflated because of Defendant’s deceptive labeling. Had she known the truth, she could have paid less for the same product. So, as a result of Defendant’s deception, Ms. Kotcher suffered an economic injury.

V. Class action allegations.

31. Plaintiffs bring certain claims on behalf of the proposed class of: all persons who purchased a Coppertone Sport Mineral FACE Product in the United States during the applicable statute of limitations (the “**Nationwide Class**”).

32. For certain claims, Plaintiffs bring those claims on behalf of a subclass of consumers who live in certain identified states (the “**Consumer Protection Subclass**”).

33. For certain claims, Plaintiff Akes brings those claims on behalf of a subclass of consumers who, like Plaintiff Akes, purchased a Coppertone Sport Mineral FACE Product in California (the “**California Subclass**”).

34. For certain claims, Plaintiff Kotcher brings those claims on behalf of a subclass of consumers who, like Plaintiff Kotcher, purchased a Coppertone Sport Mineral FACE Product in New York (the “**New York Subclass**”).

35. The following people are excluded from the Class and the Subclasses: (1) any Judge or Magistrate Judge presiding over this action and the members of their family; (2) Defendants, Defendants’ subsidiaries, parents, successors, predecessors, and any entity in which

the Defendants or its parents have a controlling interest and their current employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendants' counsel, and their experts and consultants; and (6) the legal representatives, successors, and assignees of excluded persons.

Numerosity

36. The proposed class(es) contain members so numerous that separate joinder of each member of the class is impractical. Based on the pervasive distribution of Coppertone Sport Mineral FACE products, there are hundreds of thousands of proposed class members (or more).

Commonality

37. There are questions of law and fact common to the proposed class(es). Common questions of law and fact include, without limitation:

- Whether the Coppertone Sport Mineral FACE products are formulated specifically for use on the face;
- Whether Defendant's labelling and pricing of the Coppertone Sport Mineral FACE products is misleading;
- Whether Defendant violated state consumer protection statutes;
- Damages needed to reasonably compensate Plaintiffs and the proposed class(es).

Typicality

38. Plaintiffs' claims are typical of those of the proposed class(es). Like the proposed class(es), Plaintiffs purchased Coppertone Sport Mineral FACE products. Like the proposed class(es), Plaintiffs would not have purchased the products, or would have paid less for them, had they known the truth.

Predominance and Superiority

39. The prosecution of separate actions by individual members of the proposed class(es) would create a risk of inconsistent or varying adjudication with respect to individual members, which would establish incompatible standards for the parties opposing the class. For example, individual adjudication would create a risk that the same label is found to be actionably misleading for some proposed class members, but not others.

40. Common questions of law and fact predominate over any questions affecting only individual members of the proposed class(es). These common legal and factual questions arise from certain central issues which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any particular class member. For example, a core liability question is common: whether Defendant's labelling is misleading to reasonable consumers.

41. A class action is superior to all other available methods for the fair and efficient adjudication of this litigation because individual litigation of each claim is impractical. It would be unduly burdensome to have individual litigation of thousands of individual claims in separate lawsuits, every one of which would present the issues presented in this lawsuit.

VI. Plaintiffs have no adequate remedy at law.

42. Plaintiffs seek damages and, in the alternative, restitution. Plaintiffs are permitted to seek equitable remedies in the alternative because they and the class have no adequate remedy at law.

43. To begin, the equitable restitution that Plaintiffs request may go beyond the damages available to themselves and the class. For example, it may permit Plaintiffs and the class to recover the entire purchase price of the products at issue, as opposed to merely the price premium attributable to Defendant's deception.

44. Moreover, the equitable remedies Plaintiffs request are more certain than the legal remedies Plaintiffs request. This is because obtaining damages requires additional showings not required for restitution. For example, to obtain damages under the CLRA, Plaintiff Akes must show that she complied with the CLRA's notice requirement for damages. No such requirement exists for Plaintiffs' unjust enrichment claims.

45. Finally, the remedies at law available to Plaintiffs are not equally prompt or otherwise efficient. The need to schedule a jury trial may result in delay. And a jury trial will take longer, and be more expensive, than a bench trial.

VII. Claims.

Count I: Violations of State Consumer Protection Acts **(on behalf of Plaintiffs and the Consumer Protection Subclass)**

46. Plaintiffs incorporate by reference each and every factual allegation set forth above.

47. As alleged below, Plaintiffs bring their individual and certain subclass claims based on California and New York consumer protection laws. At the motion to dismiss stage (pre-certification), their claims are governed by California and New York law. At certification, Plaintiffs intend to certify this count on behalf of the Consumer Protection Subclass, which includes consumers who live in the states listed below, which have materially-similar laws.

State	Statute
California	Cal. Bus. & Prof. Code § 17200, and the following; Id. §17500, and the following Cal. Civ. Code §1750 and the following.
Illinois	815 ILCS § 501/1, and the following.
Maryland	Md. Code Ann. Com. Law, § 13-301, and the following.
New York	N.Y. Gen. Bus. Law § 349, and the following.
Missouri	Mo. Rev. Stat. § 407, and the following.
Washington	Wash. Rev. Code § 19.86.010, and the following.

State	Statute
Connecticut	Conn. Gen. Stat. Ann. §§ 42-110, and the following.

48. Each of these statutes is materially similar to New York and California consumer protection law. Each broadly prohibits deceptive conduct in connection with the sale of goods to consumers. No state requires proof of individualized reliance, or proof of defendant’s knowledge or intent to deceive. Instead, it is sufficient that the deceptive conduct is misleading to reasonable consumers acting reasonably under the circumstances and that the conduct proximately caused harm. As alleged in detail above, Defendant’s conduct violates each statute’s shared prohibitions.

49. Defendant’s conduct, including the misleading labelling of the Coppertone Sport Mineral FACE products with the “FACE” representation and related face-specific misrepresentations, and the sale of those products to Plaintiffs and Class members, violates each statute’s prohibitions. Plaintiffs saw and relied on these representations.

50. Defendant’s representations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the Coppertone Sport Mineral FACE products. As alleged in detail above, these misrepresentations are important to consumers and affect their choice to purchase the products. And no reasonable consumer who knew the truth would choose to pay twice as much for the same thing.

51. Defendant’s misrepresentations were a substantial factor in Plaintiffs’ purchase decisions and the purchase decisions of class members, and were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and class members, including the price premium that Plaintiffs and class members paid.

52. Plaintiffs and class members were injured as a direct and proximate result of Defendant’s conduct because (a) they would not have purchased Coppertone Sport Mineral

FACE products if they had known the truth and (b) they overpaid for the products because the products are sold at a price premium due to the misrepresentation.

Count II: Violation of California's Unfair Competition Law (UCL)
(on behalf of Plaintiff Akes and the California Subclass)

53. Plaintiff Akes incorporates by reference and re-alleges each and every factual allegation set forth above as though fully set forth herein.

54. Plaintiff Akes brings this cause of action on behalf of herself and members of the California Subclass.

55. Defendant has violated California's Unfair Competition Law (UCL) by engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three prongs of the UCL).

56. The Unlawful Prong: Defendant engaged in unlawful conduct by violating the California Sherman Act, Cal. Health & Safety Code § 110390, which prohibits drug and cosmetics labelling that is "false or misleading in any particular." In addition, Defendant engaged in unlawful conduct by violating the FAL, as alleged below and incorporated here.

57. The Fraudulent Prong: As alleged in detail above, Defendant's representations were false and misleading. Defendant's misrepresentations were likely to deceive, and did deceive, Plaintiff Akes and reasonable consumers.

58. The Unfair Prong: Defendant violated established public policy by violating the CLRA and FAL, as alleged below and incorporated here. The unfairness of this practice is tethered to a legislatively declared policy (that of the Sherman Act and FAL).

59. The harm to Plaintiff Akes and the Subclass greatly outweighs the public utility of Defendant's conduct. There is no public utility to misleading consumers into thinking that sunscreen not specifically formulated for the face is formulated specifically for the face, and overcharging them for it. This injury was not outweighed by any countervailing benefits to

consumers or competition. Misleading labels only injure healthy competition and harm consumers.

60. Defendant's conduct, as alleged above, was immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

61. Plaintiff Akes and the Subclass could not have reasonably avoided this injury. As alleged above, Defendant's representations were deceiving to reasonable consumers like Plaintiff Akes.

* * *

62. For all prongs, Defendant's misrepresentations were intended to induce reliance, and Plaintiff Akes saw, read and reasonably relied on them when purchasing Coppertone Sport Mineral FACE sunscreen. Defendant's misrepresentations were a substantial factor in Plaintiff Akes' purchase decision.

63. Classwide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy Coppertone Sport Mineral FACE sunscreen.

64. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff Akes and Subclass members.

65. Plaintiff Akes and Subclass members were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Coppertone Sport Mineral FACE products if they had known the truth and (b) they overpaid for the products because the products are sold at a price premium due to the misrepresentation.

Count III: Violation of California's False Advertising Law (FAL)
(on behalf of Plaintiff Akes and the California Subclass)

66. Plaintiff Akes incorporates by reference and re-alleges each and every allegation

set forth above as though fully set forth herein.

67. Plaintiff Akes brings this cause of action on behalf of herself and members of the California Subclass.

68. As alleged more fully above, Defendant has falsely advertised Coppertone Sport Mineral FACE products by falsely representing that the products were specifically formulated for use on the face, when in fact the products are identical to regular Coppertone Sport Mineral.

69. Defendant's representations were likely to deceive, and did deceive, Plaintiff Akes and reasonable consumers. Defendant knew, or should have known through the exercise of reasonable care, that these statements were inaccurate and misleading.

70. Defendant's misrepresentations were intended to induce reliance, and Plaintiff Akes saw, read and reasonably relied on them when purchasing a Coppertone Sport Mineral FACE product. Defendant's misrepresentations were a substantial factor in Plaintiff Akes' purchase decision.

71. Classwide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy Coppertone Sport Mineral FACE.

72. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff Akes and Subclass members.

73. Plaintiff Akes and Subclass members were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Coppertone Sport Mineral FACE products if they had known the truth and (b) they overpaid for the products because the products are sold at a price premium due to the misrepresentation.

Count IV: Violation of California's Consumer Legal Remedies Act (CLRA)
(on behalf of Plaintiff Akes and the California Subclass)

74. Plaintiff Akes incorporates each and every factual allegation set forth above.

75. Plaintiff Akes brings this cause of action on behalf of herself and members of the California Subclass.

76. Plaintiff Akes and the other members of the California Subclass are “consumers,” as the term is defined by California Civil Code § 1761(d).

77. Plaintiff Akes, other members of the California Subclass, and Defendant have engaged in “transactions,” as that term is defined by California Civil Code § 1761(e).

78. The conduct alleged in this Amended Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

79. As alleged more fully above, Defendant has violated the CLRA by falsely representing to Plaintiff Akes and the other members of the California Subclass that the products were specifically formulated for use on the face, when in fact the products are identical to regular Coppertone Sport Mineral.

80. As a result of engaging in such conduct, Defendant has violated California Civil Code § 1770(a)(5), (a)(7), and (a)(9).

81. Defendant’s representations were likely to deceive, and did deceive, Plaintiff Akes and reasonable consumers. Defendant knew, or should have known through the exercise of reasonable care, that these statements were false and misleading.

82. Defendant’s misrepresentations were intended to induce reliance, and Plaintiff Akes saw, read and reasonably relied on them when purchasing the products. Defendant’s misrepresentations were a substantial factor in Plaintiff Akes’ purchase decision and the purchase decisions of Subclass members.

83. In addition, classwide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the products.

84. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff Akes and Subclass members.

85. Plaintiff Akes and Subclass members were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Coppertone Sport Mineral FACE products if they had known the truth and (b) they overpaid for the products because the products are sold at a price premium due to the misrepresentation.

86. Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiff Akes, on behalf of herself and all other members of the California Subclass, seeks injunctive relief.

87. CLRA § 1782 NOTICE. On July 6, 2022, a CLRA demand letter was sent to Defendant's headquarters and California registered agent, via certified mail (return receipt requested). This letter provided notice of Defendant's violation of the CLRA and demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices alleged here. Defendant did not respond to this letter within 30 days of mailing. Accordingly, Plaintiff Akes seeks all monetary relief available under the CLRA.

Count V: Violation of New York Gen. Bus. Law § 349
(on behalf of Plaintiff Kotcher and the New York Subclass)

88. Plaintiff Kotcher incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth therein.

89. Plaintiff Kotcher brings this cause of action individually and for the New York Subclass, seeking statutory damages available under New York Gen. Bus. Law § 349 (among other relief).

90. Plaintiff Kotcher and the Subclass purchased the Products in New York.

91. Defendant's false and misleading labeling is consumer-oriented. Defendant's misrepresentations have a broad impact on consumers at large, i.e., the multitude of New Yorkers that purchase Coppertone Sport Mineral FACE Products.

92. Defendant's "FACE" misrepresentations were material. As alleged in detail above, these "FACE" misrepresentations were important to consumers and drove their choice to purchase Coppertone FACE Products. And, as alleged in detail above, these misrepresentations were likely to mislead reasonable consumers under the circumstances.

93. Plaintiff Kotcher and Subclass members were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Coppertone Sport Mineral FACE products if they had known the truth and (b) they overpaid for the products because the products are sold at a price premium due to the misrepresentations.

94. Plaintiff Kotcher and the Subclass seek statutory damages of \$50, treble damages, an injunction, reasonable attorneys' fees, and all other available relief. *See* N.Y. Gen. Bus. Law § 349 (h).

**Count VI: Violation of New York Gen. Bus. Law § 350
(on behalf of Plaintiff Kotcher and the New York Subclass)**

95. Plaintiff Kotcher incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth therein.

96. Plaintiff Kotcher brings this cause of action individually and for the New York Subclass, seeking statutory damages available under New York Gen. Bus. Law § 350 (among other relief).

97. Plaintiff Kotcher and the Subclass purchased the Products in New York.

98. Defendant's false and misleading labeling is consumer-oriented. Defendant's

misrepresentations have a broad impact on consumers at large, i.e., the multitude of New Yorkers that purchase Coppertone FACE Products.

99. Defendant’s “FACE” misrepresentations were material. As alleged in detail above, these “FACE” misrepresentations were important to consumers and drove their choice to purchase Coppertone FACE Products. And, as alleged in detail above, these misrepresentations were likely to mislead reasonable consumers under the circumstances.

100. Plaintiff Kotcher and Subclass members were injured as a direct and proximate result of Defendant’s conduct because (a) they would not have purchased Coppertone Sport Mineral FACE products if they had known the truth and (b) they overpaid for the products because the products are sold at a price premium due to the misrepresentations.

101. Plaintiff Kotcher and the Subclass seek statutory damages of \$500, treble damages, an injunction, reasonable attorneys’ fees, and all other available relief. *See* N.Y. Gen. Bus. Law § 350-e (3).

Count VII: Quasi-Contract / Unjust Enrichment
(on behalf of Plaintiffs and the Nationwide Class)

102. Plaintiffs incorporate by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

103. Plaintiffs allege this claim individually and on behalf of the Nationwide Class.

104. As alleged in detail above, Defendant’s false and misleading labelling caused Plaintiffs and the Nationwide Class to purchase Coppertone Mineral Sport FACE to pay twice as much for these products.

105. In this way, Defendant received a direct and unjust benefit, at Plaintiffs and the Nationwide Class’s expense.

106. Plaintiffs and the Nationwide Class seek restitution.

VIII. Jury demand.

107. Plaintiffs demand a jury trial on all issues so triable.

IX. Relief.

108. Plaintiffs seek the following relief individually and for the proposed class(es):

- An order certifying the asserted claims, or issues raised, as a class action;
- A judgment in favor of Plaintiffs and the proposed class(es);
- Damages;
- Restitution;
- Disgorgement, and other just equitable relief;
- Pre- and post-judgment interest;
- Reasonable attorneys' fees and costs, as allowed by law;
- Any additional relief that the Court deems reasonable and just.

Date: January 18, 2024

Respectfully submitted,

By: /s/ Simon Franzini

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