

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP COURTHOUSE**

Nicholas Vaglica, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Reckitt Benckiser LLC,

Defendant

2:22-cv-05730

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. Reckitt Benckiser LLC (“Defendant”) manufactures, markets, and sells laundry sanitizer marketed as able to “[K]ill[s] 99.9% of Bacteria” under the Lysol brand (the “Product”).



2. The representation that the Product “[K]ill[s] 99.9% of Bacteria” in laundry is misleading for several reasons.

3. First, no credible and accepted studies on domestic laundry practices indicate that the spread of bacteria and/or infection from laundry is a potential risk of bacteria transmission.

4. Second, most Americans utilize hot water for washing clothes, with temperatures of 60 degrees Celsius or 140 degrees Fahrenheit.

5. The antimicrobial effect of laundering follows the principles introduced by H. Sinner, who concluded that a washing process is determined by the four variables of temperature, mechanical action, chemistry and time.

6. At hot and warm temperatures, the washing process inactivates microorganisms, accelerates the activation of detergents and facilitates the mechanical removal of soil and other particulates.

7. However, the front label of the Product fails to inform consumers that standard use of a washing machine at hot or warm temperatures is sufficient to achieve a reduction in 99.9% of bacteria.

8. This information is only indirectly disclosed on the back label, through the statements, “Works In Cold Water,” and “When you wash your clothes in cold water, bacteria can survive.”



9. By identifying the conditions of use as “In Cold Water” on the back, consumers who only see the front label will expect the Product can provide a meaningful benefit to them, even though they may already only use hot or warm water for laundry.

10. The “cold water” disclaimers are a tacit acknowledgement that for most consumers, who use hot or warm water, the Product provides no benefits beyond what they already receive from their water temperature and standard detergent.

11. Even the “cold water” disclaimers are misleading, because washing in cold water with detergent, followed by a normal drying cycle, reduces and minimizes any risk of bacteria survival to a negligible level.

12. No credible and accepted studies of domestic laundry practices indicate that the use of cold water and detergent are insufficient to eliminate bacteria such that adding the Product would provide any meaningful benefit.

13. The value of the Product that Plaintiff purchased was materially less than its value as represented by Defendant.

14. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

15. Plaintiff paid more for the Product than he otherwise would have paid had he known the truth, or would not have bought the Product.

16. The Product is sold for a price premium compared to other similar products, no less than \$4.99 for 90 oz, a higher price than they would otherwise be sold for, absent the misleading representations and omissions.

Jurisdiction and Venue

17. Jurisdiction is based on the Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C.

§ 1332(d)(2).

18. The aggregate amount in controversy exceeds \$5 million, including any statutory and punitive damages, exclusive of interest and costs.

19. The aggregate amount in controversy exceeds \$5 million, including sales, statutory and punitive damages, injunctive relief, and attorney's fees, exclusive of interest and costs.

20. Plaintiff Nicholas Vaglica is a citizen of New York.

21. Defendant Reckitt Benckiser LLC is a Delaware limited liability company with a principal place of business in Parsippany, Morris County, New Jersey,

22. Defendant's members are identified through public records as citizens of New Jersey.

23. The class of persons Plaintiff seeks to represent includes persons who are citizens of different states from which Defendant is a citizen.

24. The members of the class Plaintiff seeks to represent are more than 100, because the Product has been sold with the representations described here for several years, from grocery stores, warehouse club stores, convenience stores, big box stores, and online in the States covered by Plaintiff's proposed classes.

25. Venue is in this District, and this action should be assigned to Central Islip, because a substantial part of the events or omissions giving rise to these claims occurred in Nassau County, including Plaintiff's purchase and use of the Product, exposure to and reliance on the representations, and his awareness that they were misleading

Parties

26. Plaintiff Nicholas Vaglica is a citizen of Hicksville, New York, Nassau County.

27. Defendant Reckitt Benckiser LLC is a Delaware limited liability company with a principal place of business in Parsippany, New Jersey, Morris County.

28. Defendant is a leading seller of home cleaning products.

29. The Lysol brand is known worldwide for its ability to reduce bacteria and keep environments safe and hygienic.

30. Plaintiff bought the Product on one or more occasions within the statute of limitations for each cause of action alleged, at stores including Stop & Shop, 132 Fulton Ave, Hempstead, NY 11550, between April 2022 and July 2022, among other times.

31. Plaintiff bought the Product because he expected it provided a meaningful benefit in reduction of bacteria regardless of whether his laundry was washed in hot or cold water.

32. Plaintiff did not read the back label which alluded to its efficacy only in cold water washing.

33. Plaintiff is like most Americans who primarily use hot water for laundry.

34. Even if Plaintiff did read the back label mentioning cold water, he still would have been misled because no credible studies on domestic laundry practices show any potential risk of bacteria survival and transmission from cold water and detergent, sufficient for the Product to provide a meaningful benefit.

35. Plaintiff bought the Product at or exceeding the above-referenced price.

36. Plaintiff relied on the front label representations about how the Product kills 99.9% of bacteria without any reference to the water temperature used.

37. Plaintiff chose between Defendant's Product and other similar products which were represented similarly, but which did not misrepresent their attributes and/or lower-priced products which did not make the claims made by Defendant.

38. Plaintiff paid more for the Product than he would have, and the Product was worth less than what he paid and he would not have paid as much absent Defendant's false and

misleading statements and omissions.

Class Allegations

39. Plaintiff seeks certification under Fed. R. Civ. P. 23 of the following classes:

New York Class: All persons in the State of New York who purchased the Product during the statutes of limitations for each cause of action alleged; and

Consumer Fraud Multi-State Class: All persons in the States of New Mexico, West Virginia, Iowa, Arkansas, Wyoming, Utah, Montana, Idaho and Alaska who purchased the Product during the statutes of limitations for each cause of action alleged.

40. Common questions of law or fact predominate and include whether Defendant's representations were and are misleading and if Plaintiff and class members are entitled to damages.

41. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair, misleading, and deceptive representations, omissions, and actions.

42. Plaintiff is an adequate representative because his interests do not conflict with other members.

43. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

44. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

45. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

New York General Business Law ("GBL") §§ 349 and 350

46. Plaintiff incorporates by reference all preceding paragraphs.

47. Plaintiff sought to purchase a product that would provide a meaningful benefit to

bacteria reduction in laundry, whether hot or cold water was used.

48. Given that the Product tacitly acknowledges its efficacy only in cold water, notwithstanding the other allegations that such claims were misleading, it failed to provide any benefit for Plaintiff that he did not already receive through using hot water and detergent.

49. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

Violation of State Consumer Fraud Acts

50. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State Class prohibit the use of unfair or deceptive business practices in the conduct of trade or commerce.

51. Defendant intended that Plaintiff and each of the other members of the Consumer Fraud Multi-State Class would rely upon its deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

52. As a result of Defendant's use or employment of artifice, unfair or deceptive acts or business practices, Plaintiff, and each of the other members of the Consumer Fraud Multi-State Class, have sustained damages in an amount to be proven at trial.

Breaches of Express Warranty,
Implied Warranty of Merchantability/Fitness for a Particular Purpose and
Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

53. The Product was manufactured, labeled, and sold by Defendant and expressly and impliedly warranted to Plaintiff and class members that it provides a meaningful benefit in bacteria reduction regardless of whether it was used in hot or cold water.

54. Defendant directly marketed the Product to Plaintiff and consumers through its advertisements and marketing, through various forms of media, on the packaging, in print circulars, direct mail, product descriptions, and targeted digital advertising.

55. Defendant knew the product attributes that potential customers like Plaintiff were seeking and developed its marketing and labeling to directly meet those needs and desires.

56. Defendant's representations about the Product were conveyed in writing and promised it would be defect-free, and Plaintiff understood this meant it provided a meaningful benefit in bacteria reduction regardless of whether it was used in hot or cold water.

57. Defendant's representations affirmed and promised that the Product provided a meaningful benefit in bacteria reduction regardless of whether it was used in hot or cold water.

58. Defendant described the Product so Plaintiff and consumers believed it provided a meaningful benefit in bacteria reduction regardless of whether it was used in hot or cold water, which became part of the basis of the bargain that it would conform to its affirmations and promises.

59. Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Product.

60. This duty is based on Defendant's outsized role in the market for this type of product, the globally trusted Lysol brand, known for the highest-quality cleaning products.

61. Plaintiff recently became aware of Defendant's breach of the Product's warranties.

62. Plaintiff provides or will provide notice to Defendant, its agents, representatives, retailers, and their employees that it breached the Product's express and implied warranties.

63. Defendant received notice and should have been aware of these issues due to complaints by third-parties, including regulators, competitors, and consumers, to its main offices, and by consumers through online forums.

64. The Product did not conform to its affirmations of fact and promises due to Defendant's actions.

65. The Product was not merchantable because it was not fit to pass in the trade as advertised, not fit for the ordinary purpose for which it was intended and did not conform to the promises or affirmations of fact made on the packaging, container, or label, because it was marketed as if it provided a meaningful benefit in bacteria reduction regardless of whether it was used in hot or cold water.

66. The Product was not merchantable because Defendant had reason to know the particular purpose for which the Product was bought by Plaintiff, because he expected it provided a meaningful benefit in bacteria reduction regardless of whether it was used in hot or cold water, and he relied on Defendant's skill and judgment to select or furnish such a suitable product.

67. Plaintiff would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

Fraud

68. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that it provided a meaningful benefit in bacteria reduction regardless of whether it was used in hot or cold water.

69. The records Defendant is required to maintain, the information inconspicuously disclosed to consumers, and its internal surveys, provided it with actual and constructive knowledge of the falsity and deception.

Unjust Enrichment

70. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of Plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and the undersigned as counsel for the class;
2. Awarding monetary, statutory and/or punitive damages, interest, and restitution;
3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: September 25, 2022

Respectfully submitted,

/s/ Spencer Sheehan

Sheehan & Associates, P.C.
60 Cuttermill Rd Ste 412
Great Neck NY 11021
(516) 268-7080
spencer@spencersheehan.com

Kleinman LLC
Abraham Kleinman
626 RXR Plz
Uniondale NY 11556
(516) 522-2621
akleinman@kleinmanllc.com

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

Nicholas Vaglica, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 412 Great Neck NY 11021-3104 (516) 268-7080

DEFENDANTS

Reckitt Benckiser LLC

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

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

Attorneys (If Known)

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 (For Diversity Cases Only.)

(Check one box, only for plaintiff and one box for defendant.)

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

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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

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:
False advertising

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 9/25/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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

UNITED STATES DISTRICT COURT

for the Eastern District of New York

Nicholas Vaglica, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Reckitt Benckiser LLC,

Defendant(s)

Civil Action No. 2:22-cv-05730

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Reckitt Benckiser LLC
c/o Corporation Service Company
251 Little Falls Dr
Wilmington, DE 19808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 412 Great Neck NY 11021-3104 (516) 268-7080

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

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:22-cv-05730

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: