

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA

HEATHER MAGRUDER,  
on behalf of herself and all others similarly situated,

Plaintiff,

v.

CASE NO.: \_\_\_\_\_

BELLABU BEAR LLC,  
a California Limited Liability Company

Defendant.

\_\_\_\_\_ /

**CLASS ACTION COMPLAINT**

Plaintiff, Heather Magruder, sues Defendant, Bellabu Bear LLC (“Bellabu”), on behalf of herself and all others similarly situated, and alleges:

**Introduction and Summary of Claims**

1. This lawsuit addresses the unfair, deceptive, and unlawful business practices of Bellabu in its marketing and sale of synthetic rayon textile products as “Bamboo Apparel.”

2. Bellabu actively targets Florida consumers, like Plaintiff, with deceptive misrepresentations about the composition of its “Bamboo Apparel,” which time and again it describes (on its website and in targeted advertisements) as “organically grown bamboo,” “soft bamboo fabric,” and “premium bamboo sleepwear,” that is “eco-friendly” and “free of chemicals.”<sup>1</sup>

3. Only in small print, accessible on the website only by expanding a drop down menu accessible on only some of the Shopify product subpages, does Bellabu disclose its textiles are actually composed of ninety-five percent (95%) rayon, and five percent (5%) spandex. In most of

<sup>1</sup> <https://bellabubear.com/pages/about>.

its greenwashed advertising and website descriptions, Bellabu represents that its apparel is made from environmentally friendly, chemical-free, organic bamboo.

4. Bamboo can be made into textiles in various ways. Natural bamboo fabric can be processed mechanically, without the use of harsh chemicals, to create a textile that is 100% natural bamboo that can be lawfully marketed and sold as such.

5. Rayon, is a synthetic fabric made by dissolving cellulose from bamboo pulp in chemicals and using the solution to create a viscose used to manufacture, in this case, clothing. In practice, most “bamboo” textiles are products made from viscose (like rayon), which is typically manufactured overseas (under significantly less strict regulations and standards) using toxic chemicals and hazardous pollutants.

6. Likewise, while natural bamboo fibers and textiles retain anti-microbial and other qualities from the plant source, the chemical processing needed to create rayon usually eliminates any such vestigial characteristics from the final product. The Federal Trade Commission (“FTC”) makes clear that if a company makes claims, like Bellabu does, regarding the environmental impact and/or the characteristics of its fabrics (e.g. that they are anti-microbial or hypoallergenic), those claims must be substantiated by scientific testing and analysis.

7. In 2009, the FTC issued a Warning Letter titled “How to Avoid Bamboozling Your Customers,”<sup>2</sup> which discussed regulations prohibiting companies from calling any textile not made directly from bamboo fibers (i.e. mechanically processed bamboo), bamboo.

8. Bellabu knew or should have known that the FTC prohibits marketing rayon textiles as bamboo. Nevertheless, Bellabu meticulously, knowingly, and unlawfully describes their

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<sup>2</sup> <https://www.ftc.gov/business-guidance/resources/how-avoid-bamboozling-your-customers>.

products as bamboo, and hides or altogether omits that they are, in fact, synthetic rayon and spandex.

9. Bellabu goes so far as to compare its products to those made from organic cotton, without any attempt to explain its products are made from chemically processed rayon – not natural bamboo. It also makes claims that its products are antimicrobial and hypoallergenic, and that its products are tested, but the results of those tests are not available on its website.

WHY BAMBOO?

	Bamboo	Cotton
Buttery Soft	✓	–
Hypoallergenic	✓	–
Eco-Friendly	✓	–
Thermo-Regulated	✓	–
Antimicrobial	✓	–

10. Ms. Magruder, and the class she seeks to represent, were exposed to Bellabu’s greenwashed advertisements and representations regarding its “Bamboo Apparel,” and read and justifiably relied on those misstatements in purchasing its products. In doing so they were damaged.

**PARTIES, JURISDICTION, AND VENUE**

- 11. Plaintiff is a resident of Orange County, Florida.
- 12. Bellabu is a California limited liability company doing business in Florida.

13. This Court has personal jurisdiction over Bellabu because it conducts business in Florida by actively marketing its products to Florida consumers, including via targeted social media advertising, and sells and ships its products to Florida consumers via its interactive website.

14. This Court has subject matter jurisdiction under Section 26.012(a) and 34.01(c)(3), Florida Statutes, because the aggregate amount in controversy excluding attorneys' fees and interest exceeds \$50,000.

15. Venue is proper in this forum under Section 47.011, Florida Statutes, because the cause of action for Ms. Magruder occurred in Orange County, Florida.

#### **ADDITIONAL BACKGROUND ON BAMBOO-BASED TEXTILES**

16. Rayon is the generic name for a type of chemically manufactured fiber made from bamboo. Rayon is manufactured by dissolving cellulose from a plant and processing it into a viscous solution using chemicals (typically the toxic solvents sodium hydroxide or carbon disulfide). The chemical solution is then spun in acid to create solid, fine fibers that can be further processed into textile components. The process varies by manufacture, but most of the chemical solvents and waste products involved are environmentally toxic and hazardous. Regardless of how well the manufacturer handles and disposes of the pollutants, the chemical processing removes all natural bamboo fibers from the synthetic product, which is nothing like mechanically processed natural bamboo fabric that can lawfully be described as "bamboo."

17. The United States Legislature passed the Textile Fiber Products Identification Act (the "TFPIA"), which regulates the manner in which textile manufactures and sellers must label and market textile products. In implementing the TFPIA, the FTC published regulations governing the labeling and marketing of textiles, like rayon and natural bamboo fabric. Specifically, the FTC prohibits the use of "[w]ords, coined words, symbols or depictions... which constitute or imply



the name or designation of a fiber which is not present in the product.” 16 C.F.R. § 303.18. Companies, like Bellabu, may not use in advertising (including advertising via internet sources), any terms that constitute or connote the name or presence of a textile fiber not actually present in the product.

18. Since adopting these and other similar regulations, the FTC has conducted extensive litigation, and imposed criminal penalties, on companies that market and sell rayon (and other viscose-based bamboo products) as bamboo.<sup>3</sup> Most recently, the FTC announced settlements with Kohls and Walmart, imposing millions of dollars in penalties and enjoining the companies from using deceptive green claims and false advertising in the sale of bamboo-viscose products.

19. In short, since 2009 the FTC has made clear:

If you make, advertise, or sell bamboo-based textiles, the Federal Trade Commission, the nation’s consumer protection agency, wants you to know that unless a product is made directly with bamboo fiber – often called “mechanically processed bamboo” – it can’t be called bamboo. Indeed, to advertise or label a product as “bamboo,” you need competent and reliable evidence, such as scientific tests and analysis, to show that it’s made of actual bamboo fiber. Relying on other people’s claim isn’t substantiation. The same standard applies to other claims, like a claim that rayon fibers retain natural antimicrobial properties from the bamboo plant.

If you sell clothing, linens, or other textile products, you’re responsible for making truthful disclosures about the fiber content. If your product isn’t made directly from bamboo fiber – but is manufactured fiber for which bamboo was the plant source – it should be labeled and advertised using proper generic name for the fiber, such as rayon, or “rayon made from bamboo.”

20. Bellabu does not comply with this guidance and the regulations to the detriment of its customers. Bellabu’s misconduct is particularly nefarious as it primarily markets and sells clothing for infants and children, which it claims without substantiation (in addition to its false

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<sup>3</sup> <https://www.ftc.gov/bamboo-textiles>.

statements about the textile composition of its fabric) that they are eco-friendly, antimicrobial, and hypoallergenic.

21. In fact, in support of its claim that it makes the “Best Bamboo Baby Pajamas in 2022,” Bellabu explains why “Bamboo is the Best Fabric for Babies!”<sup>4</sup> stating:

Bellabubear is unique in that all pajamas and clothes are made out of bamboo, which doesn't irritate the baby's skin at all. Conditions such as eczema, psoriasis, and rosacea are uncomfortable for your baby and they need fabric that will be soft enough but not something too constricting as babies with these conditions tend to itch a lot or just cry! Bamboo makes sure these little ones are too comfortable in their skin. Another huge factor that makes Bellabubear the best bamboo baby pajamas is that the owner has out of her own baby's conditions designed each piece. The design and functionality of these pajamas go hand in hand. (emphasis on Bellabu's website).

22. Of course, these claims are false. Bellabu baby pajamas are made from rayon and spandex, likely without any vestige of natural bamboo fibers and the associated characteristics of the bamboo plant.

### **Bellabu's Deceptive and Unlawful Business Practices**

23. Bellabu markets and sells bamboo-based textiles throughout Florida, that it repeatedly and overtly calls “Bamboo Apparel.” The following are examples from its website (in addition to the screenshot in Paragraph 10) of Bellabu's false, deceptive, and misleading advertising:

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<sup>4</sup> <https://bellabubear.com/blogs/bellabu-bear-blog/best-bamboo-baby-pajamas-in-2022>.

**Bamboo Pajamas on Sale**



**Bamboo Convertible Footie Pajamas**



**Bamboo Baby and Kids Pajamas**



24. In the actual shop screen from which customers add products to their virtual shopping cart, Bellabu describes the rayon/spandex products as bamboo, and does not disclose their true composition:

**PANDA BAMBOO CONVERTIBLE FOOTIE**  
 \$39.00  
 Free Fast Shipping

SIZE  
 Newborn 0-3 Months 3-6 Months 6-9 Months 9-12 Months 12-18 Months  
 18-24 Months 2/3T

QUANTITY - 1 +

**ADD TO CART**

Pay in 4 interest-free installments for orders over \$50.00 with [shopPay](#) [Learn more](#)

Your purchase makes a difference.

presented by [daisykarma](#) Choose your causes

DESCRIPTION

SIZE CHART

25. In fact, the word “rayon” only appears on Bellabu’s website when you click into the dropdown “DESCRIPTION” menu (visible above), and then only at the very bottom of a list of bolded points (including the touting of bamboo textiles), in which the actual fabric disclosure is the only non-bolded item. This disclosure does not appear for many of the products for sale on the website, and it is only viewable by customers who actively expand the drop-down menu.



DESCRIPTION

Introducing the **"All in One-sie"**. Super soft bamboo fabric paired with extreme functionality and one of a kind designs. Our standards are the highest when it comes to safety, comfort, function, and design. This adorable pajama can convert from a romper to a footie, two outfits in one!

- **Awarded the Seal of Acceptance** from the National Eczema Association with a 5 Star Rating as a skin-friendly product Great for Kids.
- **Convertible footies** that ease the transition from night to day, cold to warm, feet in or out, and even prolong the use of the garment (included in ALL onesies).
- **Slip resistant grip** on the feet of every sleeper giving even our youngest an advantage against falls.
- **Two-way zipper** to make those nighttime changes as easy as possible (snaps? forget it!) with the added benefit of not having to expose babies chest or belly to the cold.
- **Hand Covers** are included in ALL sizes to prevent those tiny nails from scratching.
- Oeko-Tex Certified to be completely **free of chemicals** and pesticides.
- **Tagless!** Free of all things irritating to our babies ever so sensitive skin.
- **Why Bamboo?** Softest fabric, Breathable, Thermo-Regulating, Hypoallergenic, Moisture Absorbing...Perfect for any climate and even more perfect for our babies skin.
- **Donate with each purchase.** Baby2Baby provides children living in poverty, ages 0-12 years, with diapers, clothing and all the basic necessities that every child deserves.
- 95% Rayon from Bamboo, 5% Spandex for Stretch.

\*Our pajamas are true to size, but for extra room to grow, size up! We encourage you to try on our products before washing them.

26. Bellabu conducts social media marketing that is similarly deceptive and targets Florida consumers with claims and descriptions like “Premium Bamboo Valentine’s Day Pajamas – Incredible soft bamboo fabric – hypoallergenic & eczema-friendly.”

27. Even Bellabu’s description of its manufacturing process under the heading “How are Your Bamboo Pajamas Made?”<sup>5</sup> completely omits any reference to rayon, spandex, and the harsh chemical solvents and acids necessary to produce rayon, and instead uses greenwashed claims completely detached from the actual, toxic manufacturing process by which synthetic rayon is made.

HOW ARE YOUR BAMBOO BABY PAJAMAS MADE?

Our yarn comes from organically grown bamboo and our entire outfit, not just the fabric, is Oeko-Tex Certified to be free of chemicals. We have been awarded the Seal of Acceptance from the National Eczema Association. I have made it Our Mission to dress every child in a pajama that is safer and more comfortable for bedtime.

Our super soft bamboo fabric comes only from the most reliable source grown organically without the use of pesticides. The fabric is then certified by Oeko-Tex and Eco-Cert to guarantee that our sleepers are safe for infants as well as for the environment.

Our zippers come from YKK, the leader in the market, and have passed all safety tests for babies. You can be sure they can not be pulled off to become a choking hazard. Our two-way zipper is also free from chemicals and harmful substances guaranteed safe with the Oeko-Tex Certification. Our garments are constructed to be pinch free and worry free.

Our printing method is unlike others to make sure we don’t compromise the softness of our fabric.

Each design is hand drawn and an original work of art that through much effort becomes the beautiful prints you see displayed on our bamboo baby clothes.

28. Contrary to these claims, Bellabu’s products, including those purchased by Plaintiff, are made from bamboo derivative fibers (rayon) and spandex.

29. At all relevant times, Bellabu knew or should have known that its marketing practices violated the TFPIA and the implementing FTC regulations, which are incorporated expressly into FDUTPA.

30. All of Bellabu’s customers were exposed to its deceptive marketing, and could not have purchased any product without being exposed to the deceptive marketing.

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<sup>5</sup> <https://bellabubear.com/pages/about>.

**Plaintiff's Purchase and Discovery that Bellabu's Product are Actually Rayon and Spandex**

31. Ms. Magruder and her family try their best to purchase products that are environmentally friendly. Because of its fast growth and other factors, bamboo is largely considered to be a sustainable material for many household goods and clothing, and natural bamboo products are usually more expensive than less sustainable alternatives.

32. Ms. Magruder tries to buy products made from bamboo when feasible, and often pays a premium for the peace of mind and satisfaction of knowing she is making responsible choices as an environmentally conscious consumer.

33. With two children under four, Ms. Magruder was exposed to Bellabu's marketing in Florida, and after reading Bellabu's claims that its products were environmentally friendly bamboo textiles, and understanding the environmental and health benefits of natural bamboo materials, she purchased two sets of pajamas from Bellabu's website for her daughters.

34. On December 21, 2022, Ms. Magruder purchased Misty Green Bamboo Kids Pajamas and Mermaid Bamboo Baby Pajamas.

35. When the pajamas arrived, the outer label on the packaging described them as bamboo, but the inner label disclosed they were made of 95% rayon and 5% spandex. Based on review of Bellabu's website, FTC explanations, and internet sources, it appears likely that there are no natural bamboo fibers in the Bellabu products she purchased.

36. That, in and of itself, is unlawful. But, it also casts doubt as to Bellabu's other claims that its products retain the characteristics of the bamboo plant (e.g. antimicrobial, hypoallergenic, and eczema-friendly characteristics) through the chemical process by which synthetic rayon is manufactured.



37. Ms. Magruder has engaged the undersigned attorneys to prosecute this action and has agreed to pay such attorneys a reasonable fee.

38. All conditions precedent to the maintenance of this action have occurred, have been performed or have been waived.

39. All damages alleged herein are the direct and proximate result of Bellabu's wrongful conduct.

### **Class Representation Allegations**

40. Plaintiff brings this action on behalf of herself, and all other persons similarly situated pursuant to Florida Rule of Civil Procedure 1.220.

41. The Class that Plaintiff seeks to represent is defined as follows:

All persons who, in Florida, on or after four years preceding the filing of this Complaint, purchased from Bellabu, whether online, via any website, store, or other sale, any product labeled or otherwise described as "Bamboo," but was, in fact, made from rayon or other synthetic viscose (the "Class").

42. Excluded from the Class are:

- a. Bellabu, including any entity in which it has a controlling interest, and its representatives, officers, directors, employees, assigned, and successors; and
- b. the judge and judicial staff to whom this case is assigned.

43. Plaintiff reserves the right to expand, contract, or modify the class, or create subclasses before her motion for class certification is heard.

44. **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous that joinder of all member would be impracticable. The proposed Class includes, at a minimum, hundreds (likely thousands) of members. Bellabu represents online that it makes the "Best Bamboo Baby Pajamas in 2022" and has over 26,000 Instagram followers, and publishes



over 1000 customer reviews on its website. The precise number and identities of the Class members can be ascertained by review of sales data and other documents within the custody and control of Bellabu.

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

- a. Whether Bellabu engaged in a pattern of deceptive and unfair marketing, targeting the public for the purpose of selling products it mislabeled;
- b. Whether Bellabu made material misrepresentations of fact or omitted material facts to Plaintiff and the Class in the marketing and sale of its products;
- c. Whether Bellabu's deceptive practices, misleading advertising, and purposeful omissions were intended to deceive Florida consumers;
- d. Whether the actual value of the products sold to Plaintiff and the Class was less than the value of the goods Bellabu represented it sold;
- e. Whether Bellabu's representations regarding the sustainability, and the antimicrobial, hypoallergenic, and eczema-friendly qualities of its products are scientifically substantiated and true;
- f. Whether Plaintiff and the class are entitled to injunctive relief and damages; and
- g. Whether Plaintiff and the class have sustained ascertainable damages as a result of Bellabu's misconduct.

46. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class she seeks to represent. Plaintiff and all Class members have been injured by the same unlawful

practices of Bellabu. Plaintiff's claims arise from the same practices and course of conduct that gives rise to all Class member claims and are based on the same legal theories.

47. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of the Class and has retained Class counsel who are experienced and qualified in litigating class actions. Neither Plaintiff nor her attorneys have any interests that conflict with the Class. Plaintiff and Plaintiff's counsel have the resources to adequately and vigorously litigate this class action and the Plaintiff and her counsel are aware of their fiduciary obligations and responsibilities to the Class members and will diligently discharge those duties by seeking the maximum recovery for the Class.

48. **Superiority:** A class action is superior to all other available methods for the fair and efficient resolution of this lawsuit because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are likely high, the individual damages incurred by each Class member resulting from Bellabu's misconduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of each case. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and the Court. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

**Count I – FDUTPA Violation**

49. Ms. Magruder re-alleges and incorporates by reference the allegations in Paragraphs 1 through 48 above.

50. Bellabu’s business practices are deceptive practices under FDUTPA. Specifically, the following practices violated FDUTPA:

- a. Bellabu actively and intentionally omits and hides the fact that its “Bamboo Apparel” is actually made from synthetic rayon and spandex;
- b. Bellabu knowingly and intentionally mischaracterizes its products as bamboo, when in fact they are made from the synthetic, bamboo derivative rayon, and spandex;
- c. Bellabu uses terminology and greenwashed marketing to imply the presence of natural bamboo fibers in its products, when in fact there are no natural bamboo fibers in its products, in violation of FTC regulations;
- d. Bellabu makes other dubious claims related to its products, like they are antimicrobial, hypoallergenic, eczema-friendly, and chemical-free that are not substantiated and are unlikely given the lack of natural bamboo fibers and the chemical processing from which rayon is produced.

51. Each of these practices violate the TFPIA and the implementing FTC regulations, which are incorporated into FDUTPA. § 501.203(3)(a), Flat. Stat.

52. By committing these acts and omissions, Bellabu misled Plaintiff and the members of the proposed Class, who reasonably relied on Bellabu’s advertising, labeling, and statements when purchasing its products.

53. Plaintiff and the members of the Class were damaged as a direct and proximate result of Bellabu's unlawful conduct.

**WHEREFORE**, Plaintiff respectfully requests this Court to certify the Class, and enter judgment against Bellabu for violations of FDUTPA and enjoining Bellabu from continued violations and awarding Plaintiff and the Class damages and attorneys' fees and costs.

**Count II – Fraud in the Inducement**

54. Plaintiff re-alleges and incorporates by reference the allegations in Paragraphs 1 through 49 as if fully set forth herein.

55. Bellabu made false statements and representations concerning material facts to the Plaintiff and Class members, as more fully described in Paragraphs 10, 21, 23-27.

56. Bellabu intended those false statements to induce Plaintiff and the Class members to purchase its products.

57. Plaintiff and the Class members would not have purchased Bellabu's products, but for the false statements, and reasonably relied on those statements in forming the decision to purchase the products.

58. As a direct and proximate cause of Bellabu's misstatements, Plaintiff and the Class members have been damaged.

**WHEREFORE** Plaintiff respectfully requests this Court to certify the Class, and enter judgment against Bellabu and awarding Plaintiff and the Class damages, attorneys' fees, and costs.

**COUNT III – Negligent Misrepresentation**

59. Plaintiff re-alleges and incorporates by reference the allegations in Paragraphs 1 through 49 as if fully set forth herein.

60. Bellabu made false statements and representations, more thoroughly described in

Paragraphs 10, 21, 23-27.

61. Bellabu negligently made these false statements, which are not substantiated and false, to induce Plaintiff and the Class members to purchase its products.

62. Bellabu knew or should have known that its statements were false and misleading.

63. Plaintiff and the Class members justifiably relied on Bellabu's statements, which caused them damages.

**WHEREFORE** Plaintiff respectfully requests this Court to certify the Class, and enter judgment against Bellabu and awarding Plaintiff and the Class damages, attorneys' fees, and costs.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for all claims asserted in this Complaint.

Respectfully submitted this 20th day of January, 2023.

**GRAYROBINSON, P.A.**

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