E-FILED
Saturday, 18 February, 2023 12:47:45 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

ROCK ISLAND DIVISION

Yumbella Batey, individually and on behalf of all others similarly situated, Plaintiff, - against - GSK Consumer Health, Inc., Defendant	4:23-cv-04031 Class Action Complaint Jury Trial Demanded

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

1. GSK Consumer Health, Inc. ("Defendant") manufactures and sells cough syrup promising "cough relief," shelved next to traditional over-the-counter ("OTC") cough and cold medications, yet described as a "dietary supplement" under the Robitussin brand, synonymous with cough syrup for over 50 years ("Product").

I. CHANGING CONSUMER DEMAND FOR COUGH AND COLD PRODUCTS

2. The past 15 years have seen a steady decline in children's usage of traditional OTC cough and cold medications due to risks of side effects and incorrect dosing.

3. The Consumer Healthcare Products Association ("CHPA") and Food and Drug Administration ("FDA") have even recommended against giving these products to children under four and two years old.

4. According to Mintel's "Cough, Cold, Flu, and Allergy Remedies" report from April 2019, 37% of respondents said traditional OTC cough products posed safety risks and could cause unwanted side effects, regardless of age.

5. Moreover, the cough and cold category has not seen major switches from prescription to OTC in several years, resulting in a stagnant category in terms of annual sales.

6. Amidst or because of this distrust of OTC products, consumers have sought more nontraditional treatments for cough relief, with this market category expected to reach $4.5 billion by 2024.

7. Many consumers believe standard OTC and prescription products merely suppress symptoms, while natural alternatives work in concert with the body's healing mechanisms.

8. Almost 60% of the public believe that natural ingredients in this emerging class of products are equally, if not more effective, in treating cold and coughs.

9. Demand for natural and "unmedicated" products for children is attributed to their "particularly young well-educated moms [who] don't want to give their kids anything artificial or drug-related unless they have to."

10. This is consistent with how many purchasers are more likely to seek consumable products of any kind without long and complicated lists of ingredients, including synthetic components and additives.

11. According to trade publications, because "herbs [and] botanicals [are] traditionally associated with many natural remedies, it is not surprising that they are more frequently being used for purposes typically found in the OTC drug category."[1]

12. One academic publication cited "the increased consumption of [natural ingredients including]" in response to the coronavirus pandemic.[2]

13. This includes increased demand for ingredients associated with immune benefits, such as elderberry, lemon, honey and ivy leaf extract.[3]

II. "FREE FROM ARTIFICIAL COLORS, FLAVORS & PRESERVATIVES" IS MISLEADING

14. Consumers understand natural consistent with its dictionary definition as existing in or caused by nature and not made or caused by humankind.

15. Consumers consider artificial as made or produced by humans rather than occurring naturally.

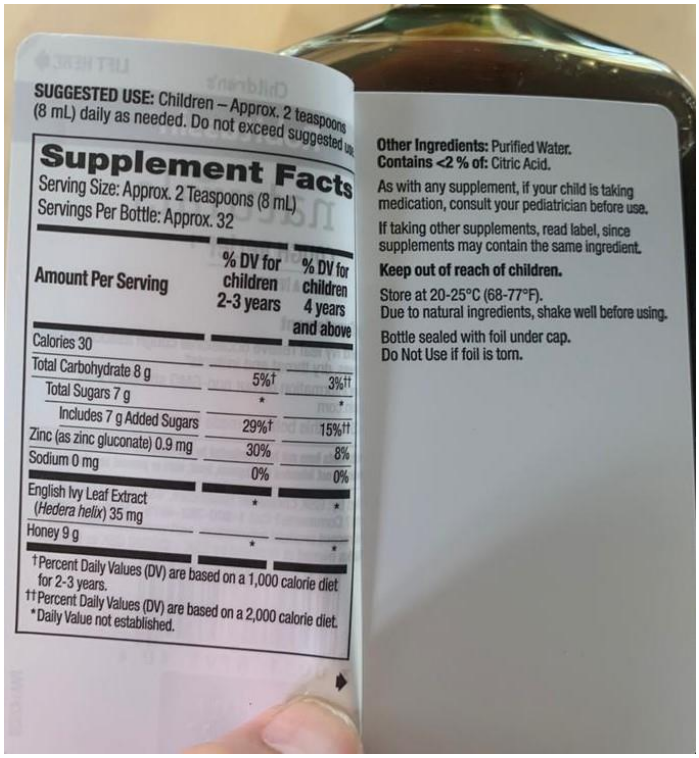
16. A preservative is something that preserves or has the power of preserving, i.e., to protect against decay, discoloration, or spoilage.

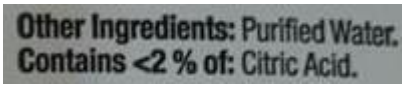
17. A chemical preservative is any chemical that when added to food, tends to prevent or retard deterioration. 21 C.F.R. § 101.22(a)(5).

18. The statement that the Product is "Free from artificial colors, flavors & preservatives" is false, deceptive and misleading because it contains citric acid, an artificial

[1] Dr. A. Elizabeth Sloan & Dr. Catherine Adams Hutt, Getting Ahead of the Curve: Herbs & Botanicals, Sloan Trends, Inc., Nutraceuticals World, July 1, 2016.
[2] Pieroni, Andrea, et al. "Taming the pandemic? The importance of homemade plant-based foods and beverages as community responses to COVID-19." Journal of ethnobiology and ethnomedicine 16.1 (2020): 1-9.
[3] Immunity boosters: Abundant opportunities for health halo ingredients as wellness trends prevail, Food Ingredients First, Sept. 14, 2022.

ingredient which serves multiple preservative functions.





19. Citric acid functions as a preservative by maintaining stability of the Product's ingredients as an excipient due to its antioxidant properties.[4]

20. An oxygen scavenger, citric acid prevents oxidation which would cause the Product to become spoiled by microorganisms, so it is consumable and shelf-stable for a longer period of time after being made.

21. Until demand outstripped supply in the early twentieth century, the only citric acid was natural, from citrus fruit.

22. For over a hundred years, the production of citric acid has not been natural because it is made beginning with fermentation from the Aspergillus niger mold.

23. The result is a broth containing citric acid, which must be recovered through

[4] https://pubchem.ncbi.nlm.nih.gov/compound/Citric-Acid

numerous chemical reactions and using chemical compounds.

24. These include treating the filtrate with lime solution or calcium carbonate.

25. This chemical reaction forms tri-calcium citrate tetra hydrate, that is treated with sulfuric acid in acidolysis reactors.

26. The citric acid is then purified by passing through columns of activated charcoal and ion exchangers.

27. The purified solution is evaporated to produce citric acid crystals that are dried and packaged for sale.

28. While fermentation may be in theory a natural process, the multiple chemical reactions, synthetic mineral salts and synthetic reagents required for extracting citric acid mean it is not a natural preservative, but an artificial one.

29. In 2010, the FDA warned a company selling pineapple products which failed to truthfully disclose "they contain[ed] the chemical preservative[s] [] citric acid [because] their label[s] fail[ed] to declare th[is] preservative with a description of [its] function" as a preservative, such as slowing spoilage or promoting color retention.

30. By adding the chemical preservative citric acid, the label is required to, yet fails, to disclose its function in a parenthetical, such as "'preservative', 'to retard spoilage', 'a mold inhibitor', 'to help protect flavor' or 'to promote color retention'." 21 C.F.R. § 101.22(j).[5]

III. MISLEADING "COUGH RELIEF" CLAIMS

31. FDA regulations prohibit dietary supplements from making make explicit or implicit "disease claims."

[5] For example, "Citric Acid (Preservative)"; FDA, Dietary Supplement Labeling Guide: Chapter V. Ingredient Labeling.

32. "Disease" is defined as damage to an organ, part, structure, or system of the body such that it does not function properly, or a state of health leading to such dysfunction. 21 CFR 101.93(g)(1).

33. A disease claim is a statement that a product has an effect on a specific disease or class of diseases or an effect on the characteristic signs or symptoms of a specific disease or class of diseases, using scientific or lay terminology. 21 CFR 101.93(g)(2)(i)-(ii).

34. By promoting the Product as providing "cough relief," it tells purchasers that it is effective for treating an upper respiratory infection ("URI"), which is the cause of the common cough.

35. "Cough relief" claims are only authorized for specific OTC products, because the FDA approval process is intended to prevent products from making claims that they are unable to meet.

36. This protects consumers from being misled by ineffective products, instead of seeking relief through prescription drugs or approved OTC medications.

37. If a product marketed as a dietary supplement contains a disease claim, it must be regulated as a drug.

38. Dietary supplements are composed of dietary ingredients like vitamins, minerals, herbs, botanicals, and other food like ingredients.

39. Their purpose is to augment the diet to promote health, and cannot legally be sold to treat or prevent disease or disease symptoms.

40. Even the back label fails to adequately disclaim the "cough relief" claim, by noting that "honey and ivy leaf relieve occasional cough associated with hoarseness, dry throat and irritants."

41. Purchasers of the Product are unlikely to choose one under the Robitussin brand for coughs brought on by "hoarseness, dry throat and irritants."

42. The Product's placement in drug stores next to OTC monograph cough products – at Defendant's directions – causes consumers to expect it is equivalent in effectiveness to those items when it is not.

IV. EFFICACY OF HONEY AND IVY EXTRACT ON COUGH RELIEF

43. No credible evidence supports honey and ivy leaf extract to provide cough relief.

44. These substances are not capable of providing cough relief because they are unable to act on the areas causing coughs.

Jurisdiction and Venue

45. Jurisdiction is based on the Class Action Fairness Act of 2005 ("CAFA"). 28 U.S.C. § 1332(d)(2).

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

47. Plaintiff is a citizen of Illinois.

48. Defendant's sole member is a citizen of Missouri.

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

50. The members of the classes Plaintiff seek to represent are more than 100, because the Product has been sold with the representations described here from thousands of locations including electronic stores, drug stores, convenience stores, big box stores, and/or online, across the States covered by the proposed classes.

51. Venue is in this District with assignment to the Rock Island Division because a substantial part of the events or omissions giving rise to these claims occurred in Warren County, including Plaintiff's purchase and use of the Product, reliance on the representations and omissions, and/or subsequent awareness they were false and misleading.

Parties

52. Plaintiff Yumbella Batey is a citizen of Monmouth, Warren County, Illinois.

53. Defendant GSK Consumer Health, Inc. is a Delaware corporation with a principal place of business in New Jersey.

54. Plaintiff purchased the Product on one or more occasions within the statutes of limitations for each cause of action alleged, at stores including Walmart, 659 Knox Square Dr,

Galesburg, Illinois between 2020 and 2022, among other times.

55. Plaintiff believed and expected the Product (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf.

56. Plaintiff relied on the words, terms coloring, descriptions, layout, placement, packaging, tags, and/or images on the Product, on the labeling, statements, omissions, claims, statements, and instructions, made by Defendant or at its directions, in digital, print and/or social media, which accompanied the Product and separately, through in-store, digital, audio, and print marketing.

57. As a result of the false and misleading representations, the Product is sold at premium price, approximately not less than $13.59 per 8.3 oz, excluding tax and sales.

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

59. Plaintiff paid more for the Product, would have paid less or not have purchased it had she known the representations and omissions were false and misleading.

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

61. Plaintiff chose between this Product and others represented similarly, but which did not misrepresent or omit their attributes, requirements, instructions, features, and/or components.

62. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance its representations are consistent with its abilities, attributes, and/or composition.

63. Plaintiff is unable to rely on the labeling and representations not only of this Product, but other natural cough treatments, because she is unsure whether those representations are truthful.

64. If Defendant's labeling were to be truthful, Plaintiff could rely on the labeling of other natural cough treatments.

Class Allegations

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

> **Illinois Class:** All persons in the State of Illinois 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 Arkansas, Montana, Wyoming, Utah, Idaho and Alaska who purchased the Product during the statutes of limitations for each cause of action alleged.

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

67. 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.

68. Plaintiff is an adequate representative because her interests do not conflict with other members.

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

70. 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.

71. Plaintiff's counsel is competent and experienced in complex class action litigation

and intends to protect class members' interests adequately and fairly.

72. Plaintiff seeks class-wide injunctive relief because the practices continue.

Illinois Consumer Fraud and Deceptive Business Practices Act
("ICFA"), 815 ILCS 505/1, *et seq.*
(Illinois Class)

73. Plaintiff incorporates by reference all preceding paragraphs.

74. Plaintiff expected the expected the Product (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf.

75. Plaintiff 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
(Consumer Fraud Multi-State Class)

76. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State Class are similar to the consumer protection statute invoked by Plaintiff and prohibit the use of unfair or deceptive business practices in the conduct of commerce.

77. The members of the Consumer Fraud Multi-State Class reserve their rights to assert their consumer protection claims under the Consumer Fraud Acts of the States they represent and/or the consumer protection statute invoked by Plaintiff.

78. Defendant intended that members of the Consumer Fraud Multi-State Class would rely upon its deceptive conduct, which they did, suffering damages.

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.*

79. The Product was manufactured, identified, marketed, and sold by Defendant and expressly and impliedly warranted to Plaintiff that it (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf.

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

81. Defendant knew the product attributes that potential customers like Plaintiff were seeking, such as cough treatments based on natural ingredients, without synthetic ingredients, which was effective like traditional OTC products but without the negative side effects or risks, and developed its marketing and labeling to directly meet their needs and desires.

82. The representations about the Product were conveyed in writing and promised it would be defect-free, and Plaintiff understood this meant it (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf.

83. Defendant's representations affirmed and promised that the Product (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided

cough relief through its use of honey and ivy leaf.

84. Defendant described the Product so Plaintiff believed that it (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf, which became part of the basis of the bargain that it would conform to its affirmations and promises.

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

86. This duty is based on Defendant's outsized role in the market for power banks, as custodian of the Robitussin brand, synonymous with traditional and effective OTC cough medicine.

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

88. Plaintiff provided or provides notice to Defendant, its agents, representatives, retailers, and their employees that it breached the Product's warranties.

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

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

91. 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 (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf.

92. The Product was not merchantable because Defendant had reason to know the particular purpose for which it was bought by Plaintiff, because she expected it (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf, and she relied on its skill and judgment to select or furnish such suitable product.

Negligent Misrepresentation

93. Defendant had a duty to truthfully represent the Product, which it breached.

94. This duty was non-delegable, and based on Defendant's position, holding itself out as having special knowledge and experience in this area, the custodian of the Robitussin brand, the most trusted name in cough relief, recommended by doctors for decades.

95. Defendant's representations regarding the Product went beyond the specific representations on its packaging and labels, as they incorporated its extra-labeling promises and commitments to quality Robitussin has been known for.

96. These promises were outside of the standard representations that other companies may make in a standard arms-length, retail context.

97. The representations took advantage of consumers' cognitive shortcuts made at the point-of-sale and their trust in Defendant.

98. Plaintiff reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, her purchase of the Product.

Fraud

99. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that it (1) would provide the promised "cough relief," because that is what the label said, it was shelved in proximity to traditional OTC cough products, and was sold under the Robitussin brand, associated for over 50 years with OTC cough medicines, (2) did not contain artificial preservatives and (3) provided cough relief through its use of honey and ivy leaf.

100. Defendant was aware the Product could not provide cough relief and that honey and ivy leaf were not capable of relieving coughs.

101. The records Defendant is required to maintain, and/or the information inconspicuously disclosed to consumers, provided it with actual and constructive knowledge of the falsity or deception, through statement and omission, of the representations.

Unjust Enrichment

102. 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. Certifying Plaintiff as representative and the undersigned as counsel for the classes;
2. Entering preliminary and permanent injunctive relief by directing Defendant to correct the challenged practices to comply with the law;
3. Awarding monetary, statutory and/or punitive damages and interest;

4. Awarding costs and expenses, including reasonable attorney and expert fees; and

5. Other and further relief as the Court deems just and proper.

Dated: February 18, 2023

Respectfully submitted,

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

JS 44 (Rev. 04/21)

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

Yumbella Batey, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Warren
(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 (516) 268-7080

DEFENDANTS

GSK Consumer Health, Inc.

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

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

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☑ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

Click here for: Nature of Suit Code Descriptions .

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☑ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent-Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX S UITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities-Employment
- ☐ 446 Amer. w/Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

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 U.S.C. § 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
February 18, 2023

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

Central District of Illinois

Yumbella Batey, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

GSK Consumer Health, Inc.,

Defendant(s)

Civil Action No. 4:23-cv-04031

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* GSK Consumer Health, Inc.

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 (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

Civil Action No. 4:23-cv-04031

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: