

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA ex rel.)
JOSHUA H. STEIN, ATTORNEY GENERAL)
Plaintiff,)
)
v.)
)
JOHNSON & JOHNSON,)
Defendant.)

CASE NO.:

Plaintiff State of North Carolina, by and through Attorney General Joshua H. Stein, brings this action complaining of Defendant Johnson & Johnson (hereinafter referred to as “J&J”) for violating the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, and alleges as follows:

I. JURISDICTION AND STATUTORY AUTHORITY

1. This enforcement action is brought by Attorney General Joshua H. Stein, in the name of the State of North Carolina and in the public interest pursuant to the authority granted by N.C.G.S. §§ 75-14 and 75-15, upon the ground that Defendant has engaged in unfair or deceptive acts and practices in or affecting commerce, as declared unlawful by N.C.G.S. § 75-1.1.

2. This Court has jurisdiction over the Defendant pursuant to N.C.G.S. §§ 1-75.3 and 1-75.4 (i) because the Defendant committed the acts and omissions complained of within North Carolina, and (ii) because Defendant’s out of state acts and omissions caused injury in North Carolina and at that time, items manufactured by Defendant were used and consumed within North Carolina in the ordinary course of trade.

3. Plaintiff has reason to believe that Defendant has caused and will cause immediate, irreparable injury, loss, and damage to the State of North Carolina. Therefore, these proceedings are in the public interest.

II. VENUE

4. Venue for this action properly lies in Wake County pursuant to N.C.G.S. § 75-14.

III. PARTIES

5. Plaintiff is the state of North Carolina (“State”), by and through Joshua H. Stein, Attorney General of North Carolina.

6. Defendant Johnson & Johnson is a New Jersey company and its principal place of business and executive offices are located at One Johnson & Johnson Plaza, New Brunswick, NJ, 08933. J&J transacts business in North Carolina and nationwide by manufacturing, marketing, promoting, advertising, offering for sale, and selling, Johnson’s Baby Powder and Shower to Shower.

IV. ACTS OF AGENTS

7. Whenever this Complaint alleges that Defendant did any act, it means that Defendant:

- a. Performed or participated in the act; or
- b. Its subsidiaries, officers, successors in interest, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of Defendant.

V. TRADE AND COMMERCE

8. J&J and its agents have, at all times described below, engaged in commerce in North Carolina as defined in N.C.G.S. § 75-1.1.

VI. FACTUAL ALLEGATIONS

9. Since the 1890s, J&J and various subsidiaries have manufactured, marketed, and sold talc body powder products such as Johnson’s Baby Powder and Shower to Shower

(collectively, “Talc Powder Products”). J&J marketed these products as safe for daily use by consumers all over their bodies, including female genitals. The products were marketed and intended to be used to maintain a fresh, dry, and clean feeling; to eliminate friction on the skin; and to absorb excess moisture. J&J’s talc powder products were advertised as “clinically proven gentle and mild.”

10. In advertisements, J&J at times encouraged primarily women and teenage girls to use Talc Powder Products to mask and avoid odors. Bottles of Johnson’s Baby Powder specifically stated, “for use every day to help feel soft, fresh and comfortable.” Shower to Shower’s advertisements stated “Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh and comfortable throughout the day.” In short, J&J knew and intended that women would use the Talc Powder Products on and in their genitals.

11. Since the 1980s, J&J knew of studies and other support information demonstrating that Talc Powder Products were sometimes tainted with carcinogenic asbestos and that women who used talc-based powders in the genital area had an increased risk of ovarian cancer compared to those women who do not. At all pertinent times during these periods, feasible and safe alternatives to the Talc Powder Products existed (e.g., cornstarch powders). Despite this knowledge, J&J continued marketing of Talc Powder Products as safe, pure, and gentle, and as suitable for use in and on female genitals.

12. J&J’s knowledge of the potential presences of asbestos in its Talc Powder Products dates to at least the 1950s, when J&J discovered that the chief source mine for talc in the U.S. market contained tremolite. Tremolite is one of the six different minerals that take the form of crystalline fibers known as asbestos. Through the 1960s, J&J searched for “clean” talc deposits but kept finding tremolite fibers in the deposits. As early as 1969, J&J expressed internal concern

in a memo that the tremolite fibers in its talc posed a safety risk, and that J&J would not be able to assure that its powders were safe to use if tremolite in more than “unavoidable trace amounts” were present.

13. In the 1970s, there was growing public awareness of the dangers of asbestos with the federal Food and Drug Administration (“FDA”) recognition of asbestos as the primary cause of mesothelioma. During this time, J&J repeatedly met with the FDA and shared “evidence that their talc contains less than 1%, if any, asbestos.”

14. Meanwhile, J&J’s own scientists were conducting studies showing that J&J’s talc contained trace amounts of asbestos fibers. J&J’s research director warned that J&J should “protect our powder franchise” by eliminating as many tiny fibers that can be inhaled in airborne talc dust as possible, but that “no final product will ever be made which will be totally free from respirable particles.”

15. Moreover, a 1973 J&J memo made clear that the company was “confident” that asbestiform minerals could be located even at a mine the company considered “very clean,” and that talc used in J&J’s baby powder at times contained identifiable amounts of tremolite and actinolite, two types of asbestos fibers.

16. J&J knew, from the results of funded studies, that asbestos was present in talc. However, citing costs and fear of public reaction, they failed to disclose this knowledge to the government, media or the public. Instead, the lobbying organization Cosmetic Toiletry and Fragrance Association (hereinafter “CTFA”), which J&J was a part of, stated, “there is no basis to Petitioner’s request that cosmetic talc products should bear warning labels to the effect that talcum powder causes cancer in laboratory animals or the ‘frequent talc application in the female genital area increases the risk of ovarian cancer’.”

17. J&J also engaged in an effort to influence research on talc safety. J&J commissioned a 1974 mortality study of Italian talc miners, which found no mesothelioma among the subject population. The study was then repeatedly published along with other J&J-commissioned studies, including one testing baby powder on a doll to show that powdering provided low exposure, touting the safety of talc without disclosing J&J's connections. J&J reported on the success of its efforts to influence in a 1977 internal report on J&J's "Defense of Talc Safety" strategy, noting that independent authorities had been "enjoy[ing] confirming reassurance" that cosmetic talc products were "free of hazard," in part due to the effective dissemination of "favorable data from the various J&J sponsored studies" to the scientific and medical communities in the United States and Britain.

18. Meanwhile, a 1982 Harvard study found that the use of talc increased a women's risk of ovarian cancer by 92%. The authors of that study advised J&J to place a warning on its talc products. It did not.

19. Since 1982, multiple studies found an increased risk of ovarian cancer caused by the use of talc products for feminine hygiene.

20. J&J took part in efforts to neutralize the effects of the unfavorable studies. For instance, the United States National Toxicology Program published a study in 1993 on the toxicity of non-asbestiform talc that found clear evidence of carcinogenic activity. In response, CTFA's Talc Interested Party Task Force TIPTF, a group of which J&J was a member, issued statements claiming these studies were insufficient to link hygienic talc use and ovarian cancer.

21. Despite knowledge of the dangers associated with the use of its Talc Powder Products, J&J failed to warn consumers and continued to market Talc Powder Products for use in the manner most likely to increase the risk of ovarian cancer.

22. In the 1990s, J&J specifically targeted African American and Hispanic women in its marketing campaigns in order to reverse declines in sales of its baby powders. J&J's internal memo describing this marketing strategy acknowledged that baby powder had problems such as "negative publicity from the health community on talc (inhalation, dust, negative doctor endorsement, cancer linkage)."

23. By the 2000s, other manufacturers began placing warnings on their talc products about the risk of developing ovarian cancer as a result of genital talc use. The safety documents provided to J&J by its then-current talc supplier included a statement that the International Agency for Research on Cancer "has concluded that perineal use of talc-based body powder is possibly carcinogenic to humans." Despite knowing for over 30 years of studies linking the use of Talc Products in the genital area with increased risk of ovarian cancer, J&J continued to refuse to include any warning or information in its marketing of the Talc Products. Instead, J&J continued to market the products as safe for daily use on all areas of the body. For example, contemporaneous Shower to Shower advertisements suggested that "a sprinkle a day keeps odors away" that the product "can be used all over your body."

24. In 2012, J&J sold Shower to Shower to Valeant Pharmaceuticals North America, LLC, a wholly-owned subsidiary of Valeant International. In July 2018, Valeant International changed its name to Bausch Health Companies, Inc. ("Bausch"). In 2018, Bausch reformulated Shower to Shower by replacing talc with corn starch.

25. In October 2019, J&J issued a recall of Johnson's Baby Powder after the United States Food and Drug Administration discovered asbestos in a bottle. J&J finally discontinued the manufacturing, sale, and distribution of talc-based Johnson's Baby Powder in May 2020 in the United States.

VII. VIOLATION OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT

26. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding paragraphs 1 to 25.

27. Defendant, in the course of marketing, promoting, selling, and distributing its talc products, has engaged in a course of trade or commerce which constitutes deceptive acts or practices, which are unlawful under N.C.G.S. § 75-1.1, by misrepresenting the sponsorship, approval, characteristics, benefits or qualities of their talc powder products.

28. Defendant, in the course of marketing, promoting, selling, and distributing its talc products, has engaged in a course of trade or commerce which constitutes deceptive acts or practices, which are unlawful under N.C.G.S. § 75-1.1, including but not limited to misrepresenting the safety of talc products.

VIII. PRAYER FOR RELIEF

29. WHEREFORE, the State of North Carolina respectfully requests that:

- a. Pursuant to N.C.G.S. § 75-14, the Court permanently enjoin and restrain Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in false, misleading, or deceptive practices in the marketing, promotion, selling, and distributing of their Talc Powder Products;
- b. Pursuant to N.C.G.S. § 75-15.2, the Defendants be ordered to pay civil penalties in the amount of \$5,000 for each and every violation of N.C.G.S. § 75-1.1;
- c. Pursuant to N.C.G.S. § 75-16.1, the Defendants be ordered to pay costs and reasonable attorneys' fees incurred by the State of North Carolina in connection with the investigation and litigation of this matter; and

30. Plaintiff further requests that this Court grant all other relief to which the Plaintiff is entitled.

Respectfully submitted,

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