

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS, *ex rel.*
TIM GRIFFIN, ATTORNEY GENERAL

PLAINTIFF

v.

CASE NO. 23CV-24-_____

JOHNSON & JOHNSON

DEFENDANT

COMPLAINT

Plaintiff, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General brings this action and alleges that Defendant Johnson & Johnson (hereinafter referred to as “J&J”) violated the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et. seq.* as follows:

I. JURISDICTION AND STATUTORY AUTHORITY

1. This enforcement action is brought by Arkansas Attorney General Tim Griffin, in the name of the State of Arkansas and in the public interest, pursuant to the authority granted by Ark. Code Ann. § 4-88-113, upon the ground that J&J has engaged in unfair or deceptive acts and practices in or affecting commerce as declared unlawful by Ark. Code Ann. § 4-88-107(a).

2. This Court has jurisdiction over J&J because it has transacted business within the State of Arkansas at all times relevant to this Complaint within the applicable statute of limitations. Ark. Code Ann. §§ 4-88-104; 4-88-112; 16-4-101.

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

II. VENUE

4. Venue is proper pursuant to Ark. Code Ann. §§ 4-88-104, 4-88-112, and the common law of the State of Arkansas.

III. PARTIES

5. Plaintiff is the State of Arkansas (“State”), by Tim Griffin, Attorney General of the State of Arkansas.

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 Arkansas and nationwide by manufacturing, marketing, promoting, advertising, offering for sale, and selling, Johnson’s® Baby Powder® and Shower to Shower®.

7. J&J is a “person” who has engaged in unconscionable, false, or deceptive acts or practices in business, commerce, or trade. Ark. Code Ann. § 4-88-102(6).

IV. ACTS OF AGENTS

8. Whenever this Complaint alleges that J&J did any act, it means that:

- a. J&J performed or participated in the act; or
- b. J&J’s subsidiaries, officers, successors in interest, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of J&J.

V. TRADE AND COMMERCE

9. J&J and its agents have, at all times described below, engaged in trade or commerce in the State of Arkansas as defined in the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et. seq.*

VI. FACTUAL ALLEGATIONS

10. 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" or "Talc Products"). J&J marketed these products as safe for daily use by consumers all over their bodies, including female genitalia. 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."

11. 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 genitalia.

12. 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 did not. At all pertinent times during these periods, feasible and safe alternatives to the Talc 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.

13. 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 ensure that its powders were safe to use if tremolite in more than "unavoidable trace amounts" were present.

14. 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."

15. 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."

16. 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.

17. 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... [for a] 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.’”

18. 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 research on talc safety 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.

19. 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. J&J did not.

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

21. J&J attempted to neutralize the effects of the 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, a group of which J&J was a member, issued statements claiming these studies were insufficient to link between hygienic talc use and ovarian cancer.

22. 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.

23. 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)."

24. 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 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."

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

26. In October 2019, J&J issued a recall of Johnson’s Baby Powder after the FDA 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 ARKANSAS DECEPTIVE TRADE PRACTICES ACT
ARK. CODE ANN. § 4-88-101 ET. SEQ.**

27. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding paragraphs.

28. J&J, in the course of marketing, promoting, selling, and distributing its Talc Powder Products, has engaged in a course of trade or commerce that constitutes false, deceptive, or misleading acts or practices, and is therefore unlawful under the Arkansas Deceptive Trade Practices Act. J&J knowingly made false representations as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of its goods or as to whether its goods were of a particular standard, quality, grade, style, or model. Ark. Code Ann. § 4-88-107(a).

29. J&J, in the course of marketing, promoting, selling, and distributing its Talc Powder Products, has engaged in a course of trade or commerce that constitutes false, deceptive, or misleading acts or practices, and that is therefore unlawful under the Arkansas Deceptive Trade Practices Act, including but not limited to misrepresenting the safety of Talc Powder Products. Ark. Code Ann. § 4-88-107(a).

30. J&J, in the course of marketing, promoting, selling, and distributing its Talc Powder Products, has engaged in other unconscionable, false, or deceptive acts or practices in business, commerce, or trade. Ark. Code Ann. § 4-88-107(10).

VIII. PRAYER FOR RELIEF

31. WHEREFORE, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General respectfully requests that:

a. Pursuant to Ark. Code Ann. §§ 4-88-104, 4-88-113(a), 4-88-113(d)(1), the Court permanently enjoin and restrain J&J, 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 Ark. Code Ann. § 4-88-113(a)(3), J&J be ordered to pay civil penalties in the amount of \$10,000.00 for each violation of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et. seq.*

c. Pursuant to Ark. Code Ann. § 4-88-113(e), J&J be ordered to pay costs and reasonable attorneys' fees incurred by the State of Arkansas in connection with the investigation and litigation of this matter; and

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

33. The State demands a trial by jury.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By:

A handwritten signature in blue ink, appearing to read "M. M. Ford", is written over a horizontal line.

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