

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAIAN ONAKA, TORSHIA WOODS,
SHELI ZELLER, MARGO FERGUSON,
and EVA BAILEY, individually and on behalf of
all others similarly situated,

Plaintiffs,

Case No. 1:21-cv-10665-PAC
Honorable Paul A. Crotty

v.

SHISEIDO AMERICAS CORPORATION,

Defendant.

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Daian Onaka, Torshia Woods, Sheli Zeller, Margo Ferguson, and Eva Bailey (“Plaintiffs”) bring this Second Amended Class Action Complaint against Defendant Shiseido Americas Corporation (“Shiseido” or “Defendant”), individually and on behalf of all others similarly situated, and complain and allege upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

NATURE OF THE ACTION

1. This is a civil class action brought by Plaintiffs on behalf of all consumers who purchased certain bareMinerals products, which are marketed as clean and natural beauty products for normal, everyday use, but which contain harmful per- and polyfluoroalkyl substances (“PFAS”) (collectively, “PFAS Makeup” or “Products”).¹

¹ The action concerns the following bareMinerals products that contain PFAS: BAREPRO[®] Performance Wear Liquid Foundation SPF 20, BAREPRO[®] 16-Hr Full Coverage Concealer, Original Liquid Mineral Foundation Broad Spectrum SPF 20, GEN NUDE[®] Matte Liquid

2. The bareMinerals brand differentiates itself in the highly competitive beauty market by uniformly advertising its products as being “free of harsh chemicals and unnecessary additives, and full of . . . natural minerals,”² “rigorously safety tested,” “pure”³ and “clean, conscious beauty that’s good to your skin, good for the community and good for the planet.”⁴ In fact, Defendant describes itself as the “Creators of Clean Beauty”⁵ and “the original creators of mineral makeup and clean beauty.”⁶ Defendant proclaims that “bareMinerals started the clean beauty revolution when it launched its best-selling mineral foundation in 1995, and since then, the brand has continued to create clean, cruelty-free makeup . . .”⁷

3. As one of the largest cosmetic companies in the world, with a portfolio including dozens of high-end brands, Defendant knows that when it comes to marketing and labeling, words matter. Defendant intentionally joins the words “bare” and “minerals” as its brand name to convince consumers that its products are clean and natural. The Merriam-Webster definition of “bare” is “having nothing left over or added” and connotes something that is basic or simple—without addition. The Merriam-Webster definition of “mineral” means “a naturally occurring homogenous substance,” and minerals are commonly known as substances essential for health and

Lipstick. As alleged herein, Defendant conceals the inclusion of PFAS in the Products from consumers.

² *About bareMinerals*, BAREMINERALS, <https://www.bareminerals.com/discover/about-us.html> (last visited Nov. 27, 2021).

³ *Id.*

⁴ *Our Purpose*, BAREMINERALS, <https://www.bareminerals.com/our-purpose/> (last visited Nov. 27, 2021).

⁵ *About bareMinerals*, *supra* note 2.

⁶ *bareMinerals Brand*, SHISEIDO, <https://corp.shiseido.com/en/brands/bareminerals/> (last visited Nov. 27, 2021).

⁷ *Id.*

meeting basic nutritional requirements. Reasonable consumers, therefore, fairly, and reasonably understand that a product named bareMinerals, which is marketed as clean and natural, would not contain human-made chemicals like PFAS. As a result of its brand name and marketing campaign, over the course of several decades, Defendant's bareMinerals brand of cosmetics has unfairly gained the trust of consumers, who reasonably believe that the PFAS Makeup are made without non-clean or non-natural ingredients, such as PFAS. Consumers, including Plaintiffs, relied upon the "bareMinerals" name in purchasing the PFAS Makeup.

4. Globally, the clean beauty market is estimated to reach \$22 billion by 2024, becoming a fast-growing category within the cosmetics industry.⁸ It is no surprise that cosmetic companies, like Defendant, are eager to garner market share in the incredibly lucrative and expanding "clean beauty" movement.

5. The clean beauty movement has caused a revolution in the beauty industry and is the result of increased demand for "clean" products that contribute to their overall health and wellness goals. Over the last 10-15 years, clean beauty products have emerged as key players in the ever-growing cosmetics market, leading companies, such as Defendant, to set themselves apart with attractive marketing claims, even if those claims are unsupported by what is actually in the product.

6. Defendant knows that consumers are focused on what they put on their face and how the products they use impact the environment.⁹

⁸ Kristin Larson, *Shopper Demand for Clean Beauty and Increased Transparency Continues*, FORBES.COM (June 30, 2021, 6:47 PM)

<https://www.forbes.com/sites/kristinlarson/2021/06/30/shopper-demand-for-clean-beauty-and-increased-transparency-continues/>.

⁹ *The Clean Beauty Trend is More Than Skin Deep*, NIELSENIQ (July 29, 2021) nielseniq.com/global/en/insights/education/2021/the-clean-beauty-trend-is-more-than-skin-deep/.

7. Consumers pay the price they do—and Plaintiffs paid the price they did—for bareMinerals’ self-proclaimed “clean beauty” makeup based upon Defendant’s pervasive marketing that centers on the importance of using “clean” and “natural” cosmetics for makeup application.

8. Through bareMinerals’ “clean beauty” campaign, Defendant capitalizes on ever increasing consumer demand for “clean” beauty products, which are generally understood to have eliminated ingredients shown or suspected to be harmful to human health. This generally accepted meaning of “clean” is supported by bareMinerals own descriptions of “clean beauty,” which refers to its products as “contain[ing] only what’s needed, and nothing else,”¹⁰ and “100% free” of various chemicals known to cause adverse health effects.¹¹

9. Defendant’s marketing campaign is replete with examples of its intention to convince consumers that its bareMinerals brand is a “clean,” natural mineral makeup that is good for skin and contains “only what’s needed, and nothing else.”¹²

10. Consumers expect the ingredient listing on the packaging and labels of cosmetics like the PFAS Makeup to accurately disclose all of the product’s ingredients. However, Defendant does not disclose that the Products contain PFAS, a chemical which is entirely inconsistent with its clean beauty campaign, the disclosure of which would inevitably impact its sales and standing in the rapidly growing clean beauty market. Defendant’s failure to disclose the presence of PFAS in the Products is driven by Defendant’s desire to maximize sales revenue.

¹⁰ *Our Purpose*, *supra* note 4.

¹¹ *Clean Beauty Makeup*, BAREMINERALS, <https://www.bareminerals.com/our-purpose/look-good/clean-beauty/> (last visited Nov. 27, 2021).

¹² *Id.*

11. In reality, the PFAS Makeup is not clean or natural as it contains potentially harmful chemicals that are in no way “clean” or “natural.”

12. The presence of PFAS in the Products is inconsistent with the bareMinerals brand name and its uniform, pervasive clean beauty marketing and advertising campaign, which leads reasonable consumers to believe that the Products do not contain potentially harmful chemicals that pose a risk to humans and the environment. No reasonable consumer would deem the PFAS Makeup clean or natural if they knew the Products contain harmful PFAS.

13. Further, the presence of PFAS in the PFAS Makeup renders it adulterated, misbranded, and illegal to sell under federal and state law.

14. Defendant’s misconduct is uniform and widespread. Defendant formulates, designs, manufactures, markets, advertises, distributes, and sells its bareMinerals-branded PFAS Makeup to consumers throughout the United States, including in the State of New York.

15. Defendant distributes and sells its bareMinerals line of cosmetics, including the PFAS Makeup, on its bareMinerals website, in its bareMinerals retail stores, and through various authorized brick-and-mortar and online retailers such as ULTA, Sephora, Macy’s, Nordstrom and Amazon.

16. The PFAS contained in the PFAS Makeup is not disclosed by Defendant on its website, in its ingredients, on its packaging, or in any other manner; however, Plaintiffs tested each of the Products they purchased, and all of the Products contained undisclosed PFAS.

17. Plaintiffs retained a third-party independent lab, which is accredited by the American Association for Laboratory Accreditation (A2LA), to conduct this testing.

18. Plaintiffs conducted testing on each of the PFAS Makeup, which were purchased by Plaintiffs, proximate in time to Plaintiffs’ purchases. On September 9, 2021, Plaintiffs

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.