

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION**

BARBARA TRUSS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

BAYER HEALTHCARE
PHARMACEUTICALS INC., a Delaware
Corporation; BAYER HEALTHCARE LLC, a
Delaware limited liability company; BAYER
AG, a public limited company; BEIERSDORF,
INC., a Delaware corporation; BEIERSDORF
NORTH AMERICA, INC., a Delaware
corporation; and BEIERSDORF AG, a public
limited company,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Barbara Truss (“Plaintiff”) brings this Class Action Complaint against Defendants Bayer Healthcare Pharmaceuticals Inc., Bayer Healthcare LLC., Bayer AG, Beiersdorf, Inc., Beiersdorf North America, Inc., and Beiersdorf AG (collectively “Defendants”), individually and on behalf of all others similarly situated, and complain and allege upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by her attorneys:

NATURE OF THE ACTION

1. This is a civil class action (the “Action”) brought by Plaintiff on behalf of all consumers who purchased Coppertone Water Babies (SPF 50) (the “Product”) from Defendants for normal, household use. The Product is defective because, undisclosed to consumers, it contains the chemical benzophenone, a known mutagen, carcinogen, and endocrine disruptor. This dangerous chemical is present in the finished Product because the Product is formulated with the chemical octocrylene which over time degrades, resulting in an accumulation of benzophenone.

2. Over the course of several decades, Defendants gained the trust of consumers, who reasonably believe that Defendants’ products, including Coppertone Water Babies (SPF 50), are made with quality materials, and can be used safely, as intended. Defendants formulate, design, manufacture, market, advertise, distribute, and sell the Product to consumers throughout the United States, including in the State of New York. Defendants distribute and sell the Product through various authorized retailers in store and online.

3. Defendants represent that the Product is safe for its intended use. In reality, the Product contains benzophenone at the time of purchase because the active ingredient octocrylene, degrades into benzophenone.

4. Benzophenone is a mutagen, carcinogen, and endocrine disruptor.

5. Feasible alternative formulations, designs and materials, such as mineral-based sunscreen, were available to Defendants at the time the Product was formulated, designed, and manufactured, and such alternative formulations and designs were and are used by other manufacturers to produce and sell non-defective sunscreen.

6. Plaintiff seeks damages and equitable remedies for herself, and for the proposed Classes.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more putative Class Members, (ii) the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and (iii) there is minimal diversity because Plaintiff and Defendants are citizens of different states. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over Defendants because they have substantial aggregate contacts with this District, including engaging in conduct that has a direct, substantial, reasonably foreseeable, and intended effect of causing injury to persons throughout the United States, and purposely availed themselves of the laws of the United States and the State of New York.

9. In accordance with 28 U.S.C. § 1391, venue is proper in this District because a substantial part of the conduct giving rise to Plaintiff's claims occurred in this District, Defendants transact business in this District, and Defendants have intentionally availed themselves of the laws and markets within this District.

PARTIES

A. Plaintiff

10. Plaintiff Barbara Truss is a resident and citizen of Yonkers, New York who purchased and used the Product within the relevant time period.

B. Defendants

11. Defendant Bayer HealthCare Pharmaceuticals Inc. is a Delaware corporation with its principal place of business in Whippany, New Jersey, and was doing business in the State of

New York during all relevant times. Directly and through its agents, Bayer HealthCare Pharmaceuticals has substantial contacts with and receives substantial benefits and income from and through the State of New York. Bayer HealthCare Pharmaceuticals is one of the owners, manufacturers, or distributors of the Product, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling for the Product.

12. Defendant Bayer HealthCare LLC is a Delaware company with its principal place of business in Whippany, New Jersey, and was doing business in the state of New York during all relevant times. Directly and through its agents, Bayer HealthCare LLC has substantial contacts with and receives substantial benefits and income from and through the State of New York. Bayer HealthCare LLC is one of the owners, manufacturers, or distributors of the Product, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling for the Product.

13. Defendant Bayer AG is the parent company of Defendants Bayer HealthCare Pharmaceuticals Inc. and Bayer HealthCare LLC.

14. Defendant Beiersdorf, Inc. is a Delaware corporation with its principal place of business in Wilton, Connecticut, and was doing business in the State of New York during all relevant times. Directly and through its agents, Beiersdorf, Inc. has substantial contacts with and receives substantial benefits and income from and through the State of New York. Beiersdorf, Inc. is one of the owners, manufacturers, or distributors of the Product, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling for the Product.

15. Defendant Beiersdorf North America, Inc. is a Delaware corporation with its principal place of business in Wilton, Connecticut, and was doing business in the State of New York during all relevant times. Directly and through its agents, Beiersdorf North America, Inc. has

substantial contacts with and receives substantial benefits and income from and through the State of New York. Beiersdorf North America, Inc. is one of the owners, manufacturers, or distributors of the Products, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling for the Product.

16. Defendant Beiersdorf AG is the parent company of Defendants Beiersdorf, Inc. and Defendant Beiersdorf North America, Inc.

17. In September 2019, Bayer AG sold the Coppertone brand, which includes the Product, for \$550 million to Beiersdorf AG.¹

18. The term “Defendants,” as used herein, relates to each individual Defendant during the time period it was responsible for manufacturing, distributing, advertising, labeling, and selling the unlawful Product.

FACTUAL ALLEGATIONS

A. Coppertone

19. Coppertone has been a leader in the sunscreen market since it was founded in 1944.²

20. Coppertone products are sold in the United States as well as Canada and China.³

21. Coppertone products are sold at mass market retailers in the United States, including Walmart and Target, in addition to being sold online at retailers such as Amazon.

22. Coppertone has consistently positioned itself as “[a] trusted name in sun care” and a brand that “is committed to providing consumers with innovative, quality and safe sun care products based on science, rigorous testing and high standards.”⁴

¹ See <https://media.bayer.com/baynews/baynews.nsf/id/Bayer-completes-sale-of-iconic-Coppertone-brand-to-Beiersdorf> (last visited Sept. 16, 2021).

² See <https://www.beiersdorf.com/brands/coppertone> (last visited Sept. 21, 2021).

³ *Id.*

⁴ See <https://www.coppertone.com/sun-facts/science-and-testing> (last visited Sept. 21, 2021).

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