

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

BROOKLYN COURTHOUSE

Nicholas Vaglica, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Reckitt Benckiser LLC,

Defendant

2:22-cv-05730-NGG-ARL

First Amended
Class Action Complaint

Jury Trial Demanded

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

1. Reckitt Benckiser LLC (“Defendant”) manufactures laundry sanitizer marketed as able to “[k]ill[] 99.9% of bacteria” under the Lysol brand (“Product”).



2. The Product’s website, which the Environmental Protection Agency (“EPA”) considers part of its label, states that it “is specially formulated to kill 99.9% of bacteria that detergents leave behind.*”



Lysol® Laundry Sanitizer

Lysol Laundry Sanitizer is specially formulated to kill 99.9% of bacteria that detergents leave behind*

3. In a video on the Product and YouTube page, “How and Where to Use Lysol Laundry Sanitizer,” Defendant tells the public that:

Sheets, clothes and towels can pick up bacteria and can spread to other items in your Laundry, even in the machine. Detergent alone does not always kill bacteria. To kill bacteria, use Lysol Laundry Sanitizer...¹



How and Where to Use Lysol Laundry Sanitizer



Lysol
19.5K subscribers

Subscribe

Like Share Download Save ...

¹ Lysol Laundry Sanitizer, [How and Where to Use Lysol Laundry Sanitizer](#).

4. What the front label and other advertising fails to tell consumers is that standard laundering at hot, warm or even cold temperatures, followed by drying, is sufficient to achieve a reduction in 99.9% of bacteria, and that Lysol laundry sanitizer is not needed “[T]o kill bacteria.”

5. This is tacitly acknowledged in the small print on the back of the container through the statements, “Works In Cold Water” and “When you wash your clothes in cold water, bacteria can survive,” which show the Product is intended for use by those who wash their clothes in cold water.



6. The inability of laundry sanitizer to achieve any meaningful benefit in the laundering process was highlighted by Corey McMullan of McMullan Appliance and Mattress in Ontario, Canada.

7. As the leader of one of North America’s leading sellers of washers and dryers, McMullan’s practical knowledge and blunt approach are valued by his almost half a million followers on the social media platform TikTok, where he explained why “Laundry sanitizer is BS.”²

8. McMullan began by analogy to antibacterial soap, which the Food and Drug Administration (“FDA”) and other public health bodies have determined is unnecessary and even harmful, in light of the efficacy of standard soap and water to combat bacteria and viruses.

² McMullan Appliance and Mattress, [Laundry sanitizer is BS](#), Dec. 30, 2021.

9. In the context of laundering, detergent functions as soap, albeit from petrochemical ingredients, consisting of molecules with two ends, “one [] that’s attracted to water and [another] that’s attracted to fats.”

10. Viruses, on the other hand, “are held together within a membrane that’s made of a fatty lipid. And when this membrane comes into contact with [detergent], it rips apart the fatty membrane which destroys the virus or bacteria.”

11. McMullan’s conclusion was that “if you’re washing your clothes in detergent, you don’t need laundry sanitizer,” especially in light of how “most dryers nowadays are set to reach 125 - 135° [with] [] some [] hav[ing] a sanitization cycle that takes them over 140 and that temperature eliminates most bacteria.”

12. While McMullan may not have the polish of a traditional expert, his conclusion is supported by the Centers for Disease Control and Prevention (“CDC”), which determined that diseases and infections linked to contaminated fabrics are so few that any risk of transmission as a result of the laundering process is less than negligible.³

13. This was evaluated in the context of the five billion pounds annually laundered in healthcare settings in the United States, where the entire population is sick, infected or at-risk.

14. Carol McLay, an Infection Prevention Consultant with Association for Professionals in Infection Control and Epidemiology, Inc. (“APIC”), concurred with the CDC’s findings.

15. McLay stated that transmission of infectious diseases from laundered textiles is so rare that during the past 43 years, only 12 instances have been reported worldwide.⁴

16. McLay further analyzed these studies and reports in the media and literature,

³ CDC, “Guidelines for environmental infection control in health-care facilities: recommendations of CDC and Healthcare Infection Control Practices Advisory Committee (HICPAC),” (2003) (Updated: July 2019).

⁴ Carol McLay, Healthcare Textile Services, APIC Text of Infection Control and Epidemiology, Mar. 10, 2016.

concluding that the infections thought to have originated from laundering processes were from direct contact with bacteria or aerosols from non-washed linens due to improper handling, such as shaking out soiled linens.

17. Moreover, there have been no published reports of patient-to-patient transmission of infection associated with laundered textiles.

18. Other presumed occupational infections associated with laundered textiles were found to be community-acquired.

19. The conclusion of McLay and other infection transmission experts is that domestic laundering poses virtually no risk of bacteria and viral transmission, because its antimicrobial effect follows the principles introduced by H. Sinner, who identified the four key variables as temperature, mechanical action, chemistry and time.

20. For temperature, the majority of Americans wash clothes in hot water, with temperatures of 60 degrees Celsius or 140 degrees Fahrenheit.

21. At these temperatures, washing inactivates microorganisms, accelerates activation of detergents (chemistry) and facilitates mechanical removal of soil and other particulates.

22. The drying stage, whether a standard tumble drier or exposure to sunlight outdoors further reduces the potential for bacteria to survive and cause harm.

23. Even the fine print “cold water” disclaimers on the back label are misleading, because no credible and accepted studies of domestic laundry practices has shown that washing clothes with hot, warm, or even cold water with detergent followed by a standard drying cycle are insufficient to prevent the spread of bacteria and cause any harm.

24. While the Product may be authorized to claim it can achieve a reduction in 99.9% of bacteria, such a claim is misleading in light of the absence of any evidence that survival of bacteria

from a standard laundering process poses any risk.

25. Consumers will wrongly expect the Product can provide a meaningful benefit beyond the standard laundering process when it does not.

26. This is especially so for the majority of Americans who rely on hot and warm water for washing their clothes.

Jurisdiction and Venue

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

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

29. Plaintiff Nicholas Vaglica is a citizen of New York.

30. Defendant Reckitt Benckiser LLC is a Delaware limited liability company with a principal place of business in Parsippany, Morris County, New Jersey,

31. Defendant’s members are identified through public records as citizens of New Jersey.

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

33. The members of the class Plaintiff seeks to represent are more than 100, because the Product has been sold with the representations described here for several years, from grocery stores, warehouse club stores, convenience stores, big box stores, and online in the States covered by Plaintiff’s proposed classes.

Parties

34. Plaintiff Nicholas Vaglica is a citizen of Hicksville, New York, Nassau County.

35. Defendant Reckitt Benckiser LLC is a Delaware limited liability company with a

principal place of business in Parsippany, New Jersey, Morris County.

36. Defendant is a leading seller of home cleaning products.

37. The Lysol brand is known worldwide for its ability to reduce bacteria and keep environments safe and hygienic.

38. Plaintiff bought the Product on one or more occasions within the statute of limitations for each cause of action alleged, at stores including Stop & Shop, 132 Fulton Ave, Hempstead, NY 11550, between April 2022 and July 2022, among other times.

39. The Product is sold for a price premium compared to other similar products, no less than \$4.99 for 90 oz, a higher price than it would otherwise be sold for, absent the misleading representations and omissions.

40. Plaintiff relied on the front label representations the Product would “sanitize” his laundry and that it would kill 99.9% of bacteria.

41. Plaintiff bought the Product because he was not aware his laundry was sufficiently sanitized through the standard laundering process, and expected it could achieve more than detergent, whether he used hot, warm or cold water.

42. Plaintiff read that the Product kills 99.9% of bacteria and believed this meant it provided a meaningful benefit in terms of safety in the laundering process.

43. Plaintiff does not use cold water to wash his clothes, but hot and warm water, which meant the Product’s purported ability to kill bacteria in the context of cold water was not relevant to him, and he did not view the cold water statements on the back of the container.

44. Plaintiff was unaware that no credible studies on domestic laundry practices show any potential risk of bacteria survival and transmission from hot, warm or cold water, detergent, and a drying cycle.

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

46. Plaintiff paid more for the Product than he otherwise would have paid had he known the truth, as he would have paid less or not bought it.

47. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

48. Plaintiff chose between Defendant's Product and products represented similarly, but which did not misrepresent their attributes or provide incomplete information.

Class Allegations

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

New York Class: All persons in the State of New York 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 New Mexico, West Virginia, Iowa, Arkansas, Wyoming, Utah, Montana, Idaho and Alaska who purchased the Product during the statutes of limitations for each cause of action alleged.

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

51. 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.

52. Plaintiff is an adequate representative because his interests do not conflict with other members.

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

54. 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.

55. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

New York General Business Law ("GBL") §§ 349 and 350
(New York Class)

56. Plaintiff incorporates by reference all preceding paragraphs.

57. Plaintiff sought to purchase a product that would provide a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria.

58. Plaintiff and class members 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

59. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State Class prohibit the use of unfair or deceptive business practices in the conduct of trade or commerce.

60. Defendant intended that Plaintiff and each of the other members of the Consumer Fraud Multi-State Class would rely upon its deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

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.

61. The Product was manufactured, labeled, and sold by Defendant and expressly and impliedly warranted to Plaintiff and class members that it provided a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria.

62. Defendant directly marketed the Product to Plaintiff and consumers through its advertisements and marketing, through various forms of media, on the packaging, in print

circulars, direct mail, product descriptions, and targeted digital advertising.

63. Defendant knew the product attributes that potential customers like Plaintiff were seeking and developed its marketing and labeling to directly meet those needs and desires.

64. Defendant's representations about the Product were conveyed in writing and promised it would be defect-free, and Plaintiff understood this meant it provided a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria.

65. Defendant's representations affirmed and promised that the Product provided a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria.

66. Defendant described the Product so Plaintiff and consumers believed it provided a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria, which became part of the basis of the bargain that it would conform to its affirmations and promises.

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

68. This duty is based on Defendant's outsized role in the market for this type of product, the globally trusted Lysol brand, known for the highest-quality cleaning products.

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

70. Plaintiff provides or will provide notice to Defendant, its agents, representatives, retailers, and their employees that it breached the Product's express and implied warranties.

71. Defendant had notice from the studies of the CDC, McLay and the McMullan video, that its laundry sanitizer provided no meaningful or legitimate benefit to consumers.

72. Like most big companies, Defendant monitors social media for topics of interest, and is likely to have been notified promptly of the McMullan video through “keyword” alerts it receives, such as “laundry sanitizer.”

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

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

75. 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 provided a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria.

76. The Product was not merchantable because Defendant had reason to know the particular purpose for which the Product was bought by Plaintiff, because he expected it provided a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria, and he relied on Defendant’s skill and judgment to select or furnish such a suitable product.

77. Plaintiff would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

Fraud

78. Defendant misrepresented and/or omitted the attributes and qualities of the Product relative to the efficacy of the standard laundering process, which conveyed to Plaintiff it provided

a meaningful benefit beyond the standard laundering process in terms of sanitizing laundry and reducing bacteria.

Unjust Enrichment

79. 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. Declaring this a proper class action, certifying Plaintiff as representative and the undersigned as counsel for the class;
2. Awarding monetary, statutory and/or punitive damages, and interest;
3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: March 24, 2023

Respectfully submitted,

/s/ Spencer Sheehan

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