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JUDY VAN WYK , individually)	SUPERIOR COURT OF NEW JERSEY
and on behalf of all others similarly)	LAW DIVISION
situated,)	HUDSON COUNTY
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	DOCKET NO. _____
THE HARTZ MOUNTAIN CORP.,)	
)	
Defendant.)	
)	
_____)	

CLASS ACTION COMPLAINT

Plaintiff, by her attorneys, alleges as follows upon information and belief pursuant to the investigation of Her counsel, except as to the allegations that pertain to Plaintiff which are based upon Plaintiff’s personal knowledge:

1. This is an action for economic damages and equitable relief relating to Defendant’s, The Hartz Mountain Corp.’s (“Hartz’s” or the “Company’s”) sale, marketing, advertising, promotion and/or distribution of Hartz Advanced Care Brand Flea & Tick Drops for Cats (referred to herein as the “Drops”). Plaintiff brings the action on behalf of herself and all other consumers of Drops who have been deceived and injured by Defendants' improper acts and practices as set forth in this Complaint.

THE PARTIES

2. Plaintiff Judy Van Wyk is a resident of Rhode Island who has purchased Drops and has been damaged as a result of the acts alleged in this Complaint.

3. Defendant The Hartz Mountain Corporation (“Hartz” or the “Company”) is a New Jersey corporation with its principal place of business at 400 Plaza Drive, Secaucus, New Jersey 07094. At all relevant times, Defendant Hartz manufactured, sold, marketed, advertised, promoted and/or distributed Drops nationally, including in New Jersey. At all relevant times Hartz was authorized to conduct business and did substantial business in the State of New Jersey including the marketing and sale of Drops in New Jersey and the distribution of Drops from New Jersey to Rhode Island where they were sold to Plaintiff.

4. At all relevant times, Defendant acted by and through its agents and/or employees who were acting within the course, scope and authority, apparent or actual, of such agency and/or employment. Where it is alleged in this Complaint that the defendant committed any act and/or omission or engaged in any conduct, it is meant that the Defendant committed that act and/or omission or engaged in that conduct by and through its agents and/or employees, and that the act, omission or conduct, occurred with the full authorization or ratification of Defendant and/or occurred in the normal and routine course and scope of the agency or employment of Defendant's agent or employee.

JURISDICTION AND VENUE

5. This case is filed pursuant to R. 4:3-2(A), with jurisdiction in Hudson County where Defendant Hartz has its headquarters and where the causes of actions arose that are set forth in this Complaint.

6. This suit is brought under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* (hereinafter the "Consumer Fraud Act") and other legal theories to recover damages and obtain equitable and other relief, including the costs of suit as well as reasonable attorney fees and expert fees, for the damages Plaintiffs has sustained as a result of Defendant's acts and omissions in violation of the Consumer Fraud Act and other laws.

CLASS ACTION ALLEGATIONS

7. Plaintiff brings this action as a class action for monetary and equitable relief on behalf of a class of all persons who purchased Drops (the "Class"). Plaintiff expressly disclaims any intent to seek any recovery for personal injuries suffered or which may be suffered by any Class member.

8. Excluded from the Class is the Defendant, the officers and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which the Defendant has or had a controlling interest.

9. Plaintiff is a member of the Class she seeks to represent.

10. The Class is so numerous that joinder of all members is impractical. Although Plaintiff does not yet know the exact size of the Class, upon information and belief based on published reports, the Class includes at least thousands, and probably tens of thousands, purchasers of Drops. Accordingly, joinder is impracticable.

11. There are numerous questions of law and fact common to the Class which predominate over any individual actions, including:

(a) Whether Defendants negligently designed, manufactured, promoted and/or marketed Drops; and

(b) Whether Defendant breached implied and express warranties of merchantability and fitness for intended use;

(c) Whether Defendant violated the Product Liability Act of New Jersey by selling, manufacturing, marketing and distributing a defectively designed product;

(d) Whether Defendant violated the Consumer Fraud Act in the manufacture, distribution, sale and promotion of Drops;

(e) Whether Plaintiff and the Class are entitled to monetary and/or equitable relief; and

(f) Whether Defendant should be required to recall Drops.

12. Plaintiff's claims are typical of the claims of the Class in that Plaintiff and the members of the Class purchased Drops.

13. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class and common issues predominate. Plaintiff has retained counsel competent and experienced in complex class actions.

14. Notice can be provided to Class members by a combination of published notice, Internet notice and/or first-class mail using techniques and forms of notice similar to those customarily used in consumer class actions.

15. Class certification is appropriate because defendant has acted, or refused to act, on grounds generally applicable to the Class. A class action is also superior to other available methods for the fair and efficient adjudication of this action.

SUBSTANTIVE ALLEGATIONS

A. Defendants Have Designed, Manufactured, Promoted, Distributed and Sold An Unreasonably Dangerous Product

16. Founded nearly 75 years ago, The Hartz Mountain Corporation (previously identified herein as “Hartz”) is one of the world’s largest manufacturers, distributors and sellers of pet pharmaceuticals.

17. In March 2000, Hartz began over the counter (“OTC”) sales of its adulticide plus ovacide drops for flea and tick control for cats – Hartz Advanced Care Brand Flea & Tick Drops for Cats (previously identified herein as “Drops”).

18. Hartz’ OTC sales were accompanied by a marketing campaign to promote Drops with direct to consumer (“D-T-C”) marketing.

19. Since at least mid-2000, Hartz has had notice of a severe adverse reactions by cats to Drops, including death.

20. Hartz has also known since at least March 2001, that adverse reactions in cats to the Drops is a common problem.

21. In announcing the launch of Drops, Hartz issued a press release which stated in pertinent part:

SECAUCUS, N.J. – (March 24, 2000) – Building on its heritage as the pioneer in flea and tick research, Hartz is launching its Flea Control Capsules and the Advanced Care Brand: a new line of products that brings the flea and tick technology previously available only in veterinary offices to stores nationwide.

“At a time when the media is full of reports about the escalating costs of pet health care in the U.S., the Hartz Flea Control Capsules and Advanced Care line delivers the same efficacy and safety of flea and tick products sold at the veterinarian’s office at a

substantial savings” remarked Julie Krauss, corporate vice president of marketing for Hartz.

Utilizing the most advanced insect killing and preventing technology and hormone-based Insect Growth Regulators (IGRs), Hartz Advanced Care Flea and Tick Drops incorporates both an exclusive, patented adulticide (d-Phenothrin) to kill adult fleas, many types of ticks and mosquitoes as well as an ovacide (S-Methoprene) to prevent flea eggs from hatching, effectively breaking the flea life cycle. Both active ingredients are significantly lower in toxicity yet equally effective as other flea and tick insecticides available at a veterinarian. Like other veterinarian brands, the new Hartz Advanced Care Brand of Flea and Tick Drops is available to use on both dogs and cats – another first in the OTC marketplace [emphasis supplied].

22. Hartz has promoted Drops in promotional materials as:

- providing “gentle yet effective protection”
- “gentle enough to be used on both cats and litters”
- a “gentle formula”

23. The active ingredient in Drops is d-Phenothrin (“d-P”). d-P is one of a class of pesticides called pyrethrin. d-P is not, however, a natural insecticide. Rather, it is a synthetic pyrethrin often referred to as a synthetic “pyrethroid” which is a contact poison.

24. According to the World Health Organization Fact Sheet on d-P (WHO/FAO Data Sheet on Pesticides No. 85), “d-P is a synthetic pyrethroid which may elicit an effect on nerve function when administered at high doses to animals.”

25. d-P is known as a Type I pyrethroid and its toxic effects are named “Type I “T” Syndrome.” The toxic effects of Phenothrin are generally restlessness, incoordination, prostration, hyperexcitement, aggressive, body tremors and paralysis in both insects and mammals, including cats. See Klaassen, C.D., et al. Casarett and Doull’s Toxicology, “The

Science of Poisons”, McGraw Hill, New York 1996. Such effects are the result of the central and peripheral nervous system toxicity of the Drops in mammals, including cats.

26. Because synthetic pyrethroids such as d-P undergo photochemical degradation very quickly, chemical additives called “synergists” are added to increase potency and mode of action. The addition of synergists causes the formulations to be more toxic to insects and potentially to mammals. See Berger-Press, E. et al., The behavior of Pyrethroids Indoors: A Model Study. *Indoor Air*, 7:248-261, 1997.

27. In order to prolong the effectiveness of Drops, synergists have been added to Drops. As a consequence, d-P is rated EPA toxicity class III (on a most toxic-least toxic scale of I-IV) as opposed to d-P’s chemical “brother” Sumithrin, which is EPA rated toxic class IV. Under EPA regulations, even an EPA rated Class IV toxic must use the word “CAUTION” on its label.

28. While synthetic pyrethroids such as d-P are regulated by the EPA, that agency is not scheduled to evaluate the pyrethroid until the summer of 2002. d-P has not yet been classified by the EPA with regard to carcinogenicity. However, a study conducted in 1999 suggests that one formulation of d-P, Sumithrin, may increase the risk of breast cancer.

B. Plaintiff’s Claims

29. On or about June 16, 2001, plaintiff purchased Hartz Advanced Care Brand Flea & Tick Drops for Cats Weighing Over 10 Lbs. (the “Product”). The Product is one of the Products in the Drops product line. Plaintiff paid \$9.99 for the Product.

30. Plaintiff applied the Product, as directed, and for the purpose for which the Product was intended, on each of her three cats.

31. Almost immediately, and as a result of the Drops, each of plaintiff's three cats suffered pronounced, protracted, adverse side effects including hyperactivity, hyperaggression, hyperventilation and anxiety. At various times, each of the three cats were gripped by seizures and screamed and shook and were afflicted with tremors.

32. Plaintiff took her cats to her family veterinarian. She was told by the office of the veterinarian that the office was not equipped to handle the three cats' conditions. Plaintiff was told that her cats' problems were common problems suffered by cats from use of the Product.

33. Plaintiff took her three cats to an emergency veterinary clinic which instructed her to keep her cats there for intravenous feeding, medications, sedation and observation. All three cats remained there for thirty-eight hours where they continued to receive treatment.

COUNT I

New Jersey Consumer Fraud Act

34. Plaintiff realleges and incorporates by reference the allegations set forth above.

35. Defendant, in its capacity as the manufacturer, distributor, marketer and seller of Drops is a "person" for the purposes of the Consumer Fraud Act, as codified in N.J.S.A. 56:8-1, *et seq.*

36. Plaintiff and the other members of the Class purchased and used Drops for personal use and suffered ascertainable loss as a result of Defendant's actions in violation of the Consumer Fraud Act.

37. Pet products are "merchandise" as defined in N.J.S.A. 56:8-1(c).

38. Defendants violated the Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*, as follows:

Defendants engaged in unconscionable commercial practices, including, but not limited to, the following:

- (1) Defendant promoted Drops as “effective” and “gentle” despite Defendant’s knowledge of the risks of serious injury to pets and humans. Furthermore, Defendants have purposefully downplayed and/or understated the serious nature of the risks associated with use of the Drops;
- (2) Defendants knew or should have known, and would have known, had appropriate testing been done, that the use of Drops caused serious side effects on cats and was therefore unreasonably dangerous for its intended use;
- (3) Defendants failed to conduct adequate testing of Drops including;
 - (a) Defendants failed to properly monitor and evaluate Drops’ effect on cats;
 - (b) Defendants concealed the clinical experience of Drops from the public;
 - (c) Defendants failed to report all adverse results of use of Drops to the EPA tests, as required by law;
 - (d) Defendants failed to properly market, advertise or distribute Drops, an inherently dangerous product, when they knew or should have known, that there existed danger to users of Drops arising from the foreseeable and recommended use of the product.

39. Such unconscionable commercial practices make defendants liable to Plaintiff and the Class under N.J.S.A. 56:8-2, which provides that “[a]ny person violating the provisions of the

act shall be liable for a refund of all moneys acquired by means of any practice declared to be unlawful."

40. As a proximate result of these violations of the Consumer Fraud Act, Plaintiff and the Class suffered ascertainable economic loss, including the purchase price of the drugs, out-pocket costs of medical tests and treatment, future medical care and/or services, and other costs.

41. As a direct and proximate result of using Drops, Plaintiff and the other members of the Class suffered economic loss in an amount to be established at trial.

42. Defendants are further liable to Plaintiff and the Class for treble damages under N.J.S.A. 56:8-13, 19.

43. Plaintiff and the Class are also entitled to recover attorney's fees and costs, as well as treble damages, from defendants jointly and severally under N.J.S.A. 56:8-19.

WHEREFORE, Plaintiff and the Class respectfully request that they be granted relief against Defendants jointly and severally, as contained in the Prayer For Relief.

COUNT II

Breach of Warranty

44. Plaintiff repeats and realleges each allegation above.

45. Through their public statements about Drops, their descriptions of Drops and their promises relating to Drops, defendants expressly and impliedly warranted that Drops was both efficacious and safe for its intended use.

46. These warranties came in the form of (i) publicly made written and verbal assurances of safety; (ii) press releases and dissemination via the media of uniform promotional information that was intended to create demand for Drops, but which contained material

misrepresentations and utterly failed to warn of the risks of Drops; (iii) verbal assurances made by defendants' consumer relations personnel to the public about the safety of Drops and the downplaying of the risks associated with Drops; (iv) false and misleading written information supplied by Defendant.

47. Plaintiff further alleges that all of the aforementioned written materials are known to Defendants and in their possession, and it is Plaintiff's reasonable belief that these materials shall be produced by Defendants and be made of record once Plaintiff has afforded the opportunity to conduct discovery.

48. When Defendants made these express and implied warranties, Defendants knew the purpose for which Drops was to be used and warranted it to be in all respects safe and proper for such purpose.

49. Defendant drafted the documents and/or made the statements upon which these warranty claims are based, and in so doing, defined the terms of those warranties.

50. Drops does not conform to Defendants' representations in that Drops is not safe and produces serious side effects.

51. As such, Drops did not conform to Defendant's promises, descriptions or affirmations of fact and was not adequately packaged, labeled, promoted or fit for the ordinary purposes for which such drugs are used.

52. Defendant therefore breached its warranties to Plaintiff in violation of N.J.S.A. 12A:2-313, codifying the Uniform Commercial Code by manufacturing, marketing and selling Drops to Plaintiff and the Class and causing damages as well be established at trial.

WHEREFORE, Plaintiff and the Class respectfully request that they be granted relief against Defendants jointly and severally, as contained in the Prayer For Relief.

COUNT III

New Jersey Products Liability Act

53. Plaintiff repeats and realleges each allegation above.

54. Defendants are manufacturers and/or sellers of Drops within the meaning of N.J.S.A. 2A:58C-8.

55. Defendants failed to perform adequate testing in that adequate testing would have shown that d-Phenothrin possessed serious potential side effects which rendered the product unfit for its intended use and unreasonably dangerous.

56. The Drops manufactured, supplied and/or sold by defendants were defective in design or formulation in that when it left the hands of the manufacturer and/or sellers, the foreseeable risks exceeded the benefits associated with the design or formulation.

57. Alternatively, the Drops manufactured, supplied and/or sold by defendants were defective in design or formulation in that when it left the hands of the manufacturer and/or supplier/seller, it was unreasonably dangerous, and was more dangerous than an ordinary consumer would expect and more dangerous than other alternative products.

58. The Drops manufactured, supplied and/or sold by Defendant was defective in design due to inadequate testing.

59. As a result of the defective condition of the Drops as manufactured and/or supplied by Defendant, Plaintiff suffered compensable damages

60. Because Defendant knowingly engaged in the conduct described herein, punitive damages against Defendant is warranted.

WHEREFORE, Plaintiff and the Class respectfully request that they be granted relief against Defendant, jointly and severally, as contained in the Prayer For Relief.

PRAYER FOR RELIEF

1. That this action be certified as a Class action on behalf of the proposed class of consumers who have purchased Drops, that the named plaintiff be designated as representative of the Class, and that named counsel be designated as Class counsel;

2. That Plaintiff and the Class have and recover compensatory damages under the New Jersey Consumer Fraud Act of Defendants and that these damages be trebled, and that Plaintiff and the Class have and recover a reasonable attorney's fee and costs pursuant to the New Jersey Consumer Fraud Act under Count I of this Complaint;

4. That Plaintiff and the Class have and recover compensatory damages resulting from Defendants' breach of warranty under Count II of this Complaint;

5. That Plaintiff and the Class have and recover compensatory damages resulting from Defendant's violation of the PLA under Count III of this Complaint;

6. That the Court permanently enjoin Defendant from the sale, manufacture and/or distribution of drops;

5. For a jury trial on all issues so triable;

6. That the costs of this action be taxed to defendants;

7. For such other and further relief as to this Court deems just, fair and reasonable.

Dated: November 15, 2001

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Attorney for Plaintiff and the
Proposed Class

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies the following:

That, to the best of my knowledge and belief, this matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is there any such proceeding contemplated at this time by the Plaintiff. That, to the best of my knowledge and belief, there are no other parties who must be joined in this action.

Dated: November 15, 2001

SQUITIERI & FEARON, LLP

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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that the Plaintiff demands trial by jury as to all issues in the
above matter.

Dated: November 15, 2001

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