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CLIFFORD'S NOTES

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Chicago couple recently moved to Boca Raton, Fla., with their 2-year-old son. Taking advantage of the sunshine, they took him out one Sunday afternoon and lathered him in sunscreen. Agi Kiraga said she used Banana Boat Kids' tear-free sting-free spray for the first time on her son, Jaden. They were at the pool only about an hour later in the day.

That evening, Jaden had a circular spot on his shoulder where his mom had sprayed the sunscreen. She took her son to a dermatologist who told her he had seen similar negative reactions to sunscreen because of chemicals activated by the sun. The 2-year-old now has a permanent scar on that shoulder.

Because there were no warnings, Kiraga hired an attorney who, after consulting with toxicologists, filed a lawsuit against Banana Boat's parent company, Edgewell Personal Care. Allegations included personal injury, false labeling and failure to warn.

A proposed nationwide class-action lawsuit also has been filed in the Eastern District of New York against the popular children's sunscreen lotion makers of Banana Boat Kids SPF50 and other Banana Boat sunscreen products alleging that the product does not provide the promised level of sun protection on its label.

An SPF rating, or sun protection factor, of 50 means users are able to stay in the sun 50 times longer without getting a sunburn compared to untreated skin because it protects the skin from harmful ultraviolet rays. SPF 15 blocks 93% of UVB rays, while SPF 50 blocks 98% of UVB rays. It has long been recognized that protection from harmful UV and UVB rays is necessary to prevent a sunburn and even possible skin cancer. Wearing sunscreen is one way to prevent sunburn, which is when UV rays react with a chemical found in the skin, melanin.

The lawsuit alleges that the sunscreen manufacturer is defrauding unsuspecting customers and forcing consumers to "overpay for the sunscreen based upon false, inflated SPF." *In re Edgewell Personal Care Co. Litigation*, No. 16-cv-3371 (E.D.N.Y. 2018). Plaintiffs alleged that their own testing of the products at independent laboratories found the SPF 50 product actually tested to be SPF 12.69, and that the Food and Drug Administration found the sunscreen lotion "had an actual SPF substantially lower than the claimed SPF 50."

Initially, seven class-action lawsuits were filed in federal courts in six states, including Illinois under



SUNTAN MOTION

Toddler's use of sunscreen spurs suit

By BOB CLIFFORD

the state's Consumer Fraud and Deceptive Business Practices Act (815 ILCS sections 505.1, et seq.), alleging that the defendants inaccurately labeled the products as having SPF 50 when it was actually much lower. These cases have been consolidated before the federal judge in New York.

Many cosmetic products are not FDA-regulated. However, the 2014 Sunscreen Innovation Act requires the agency to review sunscreen ingredients to ensure efficacy and consumer safety. The FDA's proposed new sunscreen regulations state that sunscreens containing zinc oxide and titanium oxide would be "generally recognized as safe and effective," while PABA and trolamine salicylate would not. The agency is awaiting additional data on 12 other ingredients used in sunscreen products. The proposal also includes raising the maximum SPF on labels from 50+ to 60+. (See the Federal Register, Proposed Rule, "Sunscreen Products for Over-the-Counter Human Use," Feb. 26, 2019.)

According to the FDA, the proposed changes are "aimed at bringing nonprescription, over-the-counter (OTC) sunscreens that are marketed without FDA-approved applications up to date with the latest science to better ensure consumers have access to safe and effective preventative sun care options."

A similar lawsuit was filed against the makers of Coppertone's Ultra Guard Broad Spectrum SPF

50 sunscreen after a California user developed serious chemical burns and permanent scars after use of its product. The Honest Co., a line of natural products launched by popular Hollywood star Jessica Alba that landed her on the cover of *Forbes* as one of "America's Richest Self-Made Women," also was sued for dishonestly advertising that its products were safe, natural, and free of toxins and chemicals. The Organic Consumers Association, which represents about 850,000 members, sued after finding out that many, including children, became sunburned after using the product.

Skin cancer remains the most commonly diagnosed cancer in the United States. The FDA relies on manufacturers to provide data on sunscreen active ingredients necessary to establish safety and effectiveness for use in sunscreens. Perhaps its time for the FDA to do more of the work and rely less on the industry to self-regulate. [CL](#)

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