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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

The Clorox Company, Plaintiff, v. Reckitt Benckiser Group PLC and Reckitt Benckiser LLC, Defendants.	Case No. 4:19-cv-1452 **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff The Clorox Company ("Clorox"), for its complaint against defendants Reckitt Benckiser Group PLC and Reckitt Benckiser LLC (together "Reckitt"), alleges as follows:

NATURE OF ACTION

1. This is an action for false advertising and unfair business practices in violation of federal and California law.

2. Clorox is an Oakland, California-based company that produces and sells, among other things, household cleaning and disinfecting products under its world-famous Clorox® trademark. Reckitt is a British multinational consumer goods conglomerate that produces and sells Lysol® brand household cleaning, sanitizing, and disinfecting products in this District and throughout the United States. For decades, Clorox and Reckitt have competed in the U.S. market for household cleaning products.

3. Though both companies sell products that contain bleach, Clorox is the top seller of bleach-based products, and consumers closely associate the Clorox brand name with the unique cleaning and disinfecting powers of bleach. Clorox markets a variety of popular bleach-based products, including Clorox® Regular Liquid Bleach, Clorox® Clean-Up® Cleaner + Bleach, and Clorox® Toilet Bowl Cleaner with Bleach.

4. In addition to products that contain bleach, Clorox successfully markets a number of non-bleach-based household cleaning products, such as Clorox® Disinfecting Wipes.

5. Clorox Regular Liquid Bleach, Clorox Clean-Up Cleaner + Bleach and Clorox Disinfecting Wipes are the long-standing top sellers in their respective product categories.

6. In order to boost sales of Lysol products at the expense of these and other Clorox products, Reckitt has undertaken a wide-ranging, false and deceptive advertising campaign designed to erode consumer confidence and trust in the Clorox brand. For instance, several of Reckitt's ads disparage Clorox Disinfecting Wipes, comparing them unfavorably to Lysol products in terms of efficacy and durability. These comparisons are false. Clorox Disinfecting Wipes are just as durable as Lysol Disinfecting Wipes, and are approved by the U.S. Environmental Protection Agency ("EPA") to disinfect a broader range of germs than Lysol Disinfecting Wipes.

7. Another, more recent set of ads takes aim at Clorox Clean-Up Cleaner + Bleach, impugning its suitability for household use by claiming that it leaves behind a residue that Lysol products do not. These claims are also false. EPA has repeatedly deemed Clorox Clean-Up Cleaner + Bleach to be safe for its intended uses.

8. Reckitt's ads also target Clorox Toilet Bowl Cleaner with Bleach, disparaging that product and claiming that Reckitt's offering, Lysol Power Toilet Bowl Cleaner, provides superior cleaning efficacy. In fact, Clorox Toilet Bowl Cleaner with Bleach is more effective than the advertised Lysol product for removal of organic matter from toilets.

9. Reckitt's anti-Clorox advertising campaign falsely disparages multiple Clorox products and represents Lysol products as having performance advantages they do not have. Moreover, consumers rely on information in advertisements to make educated purchasing decisions. Reckitt's ads have the purpose and effect of deceiving consumers and inducing them to purchase Lysol products based on misinformation. These false advertisements also erode Clorox's hard-earned reputation among consumers as a manufacturer of effective, user-friendly products.

10. Both the individual ads that make up the Reckitt advertising campaign and the campaign as a whole have injured Clorox's standing with consumers and diverted sales and market share away from Clorox to Reckitt.

11. Reckitt's false claims are inflicting, and unless curtailed will continue to cause, harm to Clorox and its business that cannot be readily quantified or remedied through money damages alone.

12. Clorox brings this action to stop Reckitt from further misinforming the public about each party's products, to protect Clorox's goodwill, to recover damages for losses suffered as a result of Reckitt's false advertising to date, and to disgorge Reckitt's profits from the sale of the falsely advertised products.

PARTIES

13. Clorox is a Delaware corporation with its principal place of business in Oakland, California. For more than a century, Clorox has developed and sold products, including under its

Clorox trademark, that consumers use to clean and disinfect their homes. Clorox's products are available for sale throughout the District, the State of California, the United States, and the world.

14. Defendant Reckitt Benckiser Group PLC is a global consumer goods conglomerate based in Slough, England. Its principal U.S. subsidiary, defendant Reckitt Benckiser LLC, is a Delaware limited liability company with its principal place of business in Parsippany, New Jersey. Upon information and belief, Reckitt Benckiser Group PLC boasts annual global revenues in excess of $10 billion.

15. Reckitt develops and markets, in this District and throughout the United States, household cleaning products under the trademark Lysol. Clorox and Lysol are the top two brands, measured by sales revenue, in the U.S. market for household cleaning products. Clorox and Reckitt compete vigorously for sales and share of this expansive market.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the complaint involves a federal question under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties, and the amount in controversy exceeds $75,000. The Court has jurisdiction over the state-law claims pursuant to the doctrine of supplemental jurisdiction.

17. This Court has personal jurisdiction over Reckitt because it committed many of the acts that form the basis of Clorox's claims—including dissemination of the false advertisements—in California and in this District. Reckitt regularly and systematically transacts business in California, including through the sale and distribution of its Lysol-branded products. Moreover, Reckitt's ads explicitly target Clorox, which has its headquarters in this District and has suffered injury here as a result of Reckitt's unlawful acts.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

INTRADISTRICT ASSIGNMENT

19. For purposes of intradistrict assignment under Civil Local Rules 3-2(c) and 3-5(b), this Lanham Trademark Act action should be assigned on a district-wide basis.

FACTS

20. Reckitt's false advertisements follow a common theme. With few exceptions, the ads purport to reveal a supposed deficiency of a Clorox product, while claiming that a Lysol product does not suffer from the same deficit. But rather than choose products that are similarly positioned in the marketplace, the vast majority of Reckitt's ads compare products that are not comparable to one another. Through these "apples-to-oranges" comparisons, the ads create the impression that Lysol products, as a rule, are superior to their Clorox counterparts when, in fact, they are not.

21. For example, Reckitt has run numerous ads that disparage Clorox Disinfecting Wipes as unable to eliminate rhinovirus, a germ that causes the common cold. The "Lysol" product depicted in these ads as outperforming Clorox Disinfecting Wipes, however, is not Lysol Disinfecting Wipes—the Lysol product that competes head-to-head with Clorox's wipes. Rather, the ads compare Clorox Disinfecting Wipes to Lysol Disinfectant ***Spray***, which belongs to a different product category and has different usage instructions. In point of fact, neither Clorox Disinfecting Wipes nor Lysol Disinfecting Wipes are labeled or approved to disinfect against rhinovirus, though Clorox Disinfecting Wipes are EPA-approved to eliminate several illness-causing germs that Lysol Disinfecting Wipes are not.

22. A widely-circulated television commercial, launched in late January of this year, extends this tactic of comparing mismatched products to Clorox Clean-Up Cleaner + Bleach ("CCU"), a multi-purpose spray cleaner and disinfectant. This ad shows a side-by-side comparison between one kitchen surface treated with CCU and another sprayed with Lysol Daily Cleanser—a heavily diluted product that is intended, as its name suggests, for everyday use as opposed to intensive cleaning or disinfection. After the products are applied to the surface, a "bleach indicator test" purports to show that CCU leaves a residue whereas Lysol Daily Cleanser

supposedly does not. Several "real people, not actors" express displeasure at the Clorox test results and declare the "Lysol" product "better."

23. Like the wipes-focused ads, this commercial makes the false claim that the advertised Lysol product is superior to a comparable product offered by Clorox. But Lysol Daily Cleanser is not a substitute for CCU: it contains a much lower concentration of active ingredient, and is neither intended nor suitable for intensive cleaning or disinfection. Clorox markets other products, such as Clorox® Anywhere®, that are appropriate for everyday use and are formulated in a manner similar to Lysol Daily Cleanser. Yet Reckitt compares its everyday mild cleanser to a Clorox product with intensive cleaning and disinfection properties and bleach, then declares itself the winner of a meaningless "bleach indicator test."

24. In short, the vast majority of the ads in Reckitt's attack campaign feature "apples-to oranges" comparisons between products that, in reality, do not compete head-to-head and are not intended for the same uses. Through repeated use of this artifice to deem Clorox's products inferior, Reckitt has inflicted severe harm on Clorox's business and eroded Clorox's valuable brand equity. The specific false and misleading claims in each of the Reckitt ads challenged herein are described in detail below.

Reckitt's False and Misleading Advertising for Lysol Daily Cleanser

A. The Multi-Purpose Cleaner Market and CCU

25. Each year, American consumers spend more than $7 billion on products used to clean and disinfect their homes.

26. Clorox has long marketed a line of spray cleaning and disinfecting products, with different active ingredients at a range of concentrations, to meet varying consumer needs.

27. One such product, CCU, is a cleaning and disinfecting spray designed for deep-cleaning of hard nonporous home surfaces. Since its introduction more than 25 years ago, CCU's combination of bleach and detergent ingredients has made it an effective and trusted cleaner for heavily soiled or stained surfaces.

28. CCU is also an effective disinfectant suited for use on surfaces that tend to harbor germs, such as sinks and toilet rims. CCU has been shown to eliminate 55 different germs, many

of which are harmful to human health, within 30 seconds of contact. Its disinfecting ingredient is sodium hypochlorite (commonly known as bleach), which accounts for 1.84% of the product solution.

29. CCU can be used to clean and disinfect a wide variety of hard, nonporous surfaces throughout the home, including sinks, appliances, bathtubs and toilets.

30. CCU is currently the top-selling multi-purpose, trigger spray cleaner and disinfectant in the United States.

31. In addition to CCU, Clorox markets a range of other cleaning products such as Clorox Anywhere, a light-duty cleanser and sanitizer formulated with a much lower concentration of bleach than CCU (0.0095%, as opposed to 1.84%). Although Clorox Anywhere is an EPA-approved sanitizer, its less-concentrated formula does not eliminate germs as quickly or broadly as CCU. Products such as Clorox Anywhere are well-suited to everyday cleaning, while CCU can be used for periodic intensive cleaning and disinfecting.

32. Reckitt also markets a variety of spray cleaning and disinfecting products. For many years, Reckitt has produced and sold Lysol Multi-Purpose Cleaner with Bleach which, like Clorox Clean-Up Cleaner + Bleach, is an intensive spray cleaner/disinfectant for use on surfaces throughout the home. Lysol Multi-Purpose Cleaner with Bleach is formulated with an even higher concentration of bleach (2.0%) than CCU.

B. Lysol Daily Cleanser

33. In or around May 2018, Reckitt introduced Lysol Daily Cleanser, an everyday cleaning product comparable to Clorox Anywhere. Lysol Daily Cleanser is formulated with hypochlorous acid, a chlorine-based antimicrobial agent similar to sodium hypochlorite (bleach). However, hypochlorous acid accounts for just 0.017 % of the product solution, dramatically less than the active ingredient concentrations of either CCU or Reckitt's own Lysol Multi-Purpose Cleaner with Bleach.

34. As a general matter, the more diluted an antimicrobial solution, the less efficacious it is at eliminating microorganisms. To achieve disinfection of a surface—which EPA defines as total elimination of certain common microorganisms—Lysol Daily Cleanser

must be left on the surface for a full 10 minutes, as opposed to just 30 seconds for CCU. Even when left on a surface for this extended time, Lysol Daily Cleanser is EPA-approved as a disinfectant for just 16 microorganisms. CCU, by contrast, is EPA-approved as a disinfectant against 55 such organisms.

35. In addition, CCU is more effective than Lysol Daily Cleanser at removing common bathroom and kitchen stains, including mold and mildew stains.

C. Reckitt's False and Misleading "Bleach Indicator Test" Commercials

36. Despite these product differences, Reckitt has advertised Lysol Daily Cleanser as though it were a substitute for CCU.

37. One widely-disseminated television commercial, which was first broadcast on January 21, 2019 and has aired over 4,000 times since, opens with a voice-over that cautions consumers that, when "cleaning [their] counters," they could be leaving "residue behind."

38. The commercial next depicts a purported experimental setup consisting of two side-by-side cutting boards on a kitchen countertop. The announcer explains that "we used Clorox Clean-Up on one side and Lysol Daily Cleanser on the other," then "checked for hidden chemical residue with a bleach indicator test," in which items of food (apple slices) are shown being rubbed against the cutting board surfaces.

39. Following a hurried presentation, the camera lingers on the results of the "test." Despite the fact that both products contain cleaners that are widely considered to be forms of

bleach, only the apple slice rubbed on the CCU-treated surface activates the "bleach indicator test," causing the apple to turn a shade of brown. The color of the Lysol apple slice remains unchanged.

40. Next, four individuals identified by on-screen text as "REAL PEOPLE, NOT ACTORS" react to the results of the test. Each person reacts negatively to the apple that has been rubbed on the CCU cutting board.

41. The voice-over briefly returns with the message that "unlike Clorox Clean-Up, Lysol Daily Cleanser has only three simple ingredients and leaves surfaces free from harsh chemical residue." The commercial then cuts back to the "REAL PEOPLE," who have evidently been asked to choose between Clorox Clean-Up and Lysol Daily Cleanser based on the results of the "bleach indicator test." They enthusiastically select the latter, declaring it "clearly way better" and the one they "definitely" prefer.

42. The commercial concludes with the voice-over statement and on-screen text, "LYSOL, WHAT IT TAKES TO PROTECT."

A video copy of this commercial, which has appeared in both 15- and 30-second iterations, is included in Exhibit 1 (DVD), and a storyboard is attached as Exhibit 2. The video is also available at https://www.ispot.tv/ad/I6xG/lysol-daily-cleanser-bleach-indicator-test (last visited March 17, 2019).

43. Reckitt has also posted an alternative version of this commercial to its YouTube internet channel at https://www.youtube.com/lysol (last visited March 17, 2019). In that ad, "real people" apply a so-called "bleach indicator test" to food preparation surfaces that have just

been treated with CCU or Lysol Daily Cleanser. When the former product activates the test but the latter does not, the consumers indicate that they prefer Lysol Daily Cleanser. A video copy of this commercial is included in Exhibit 1 (DVD). The video is also available at https://www.youtube.com/watch?v=FhryYB-v0oc (last visited March 17, 2019).

44. Reckitt's bleach indicator test ads are false and misleading, in multiple respects. First, the ads make the false claim that Lysol Daily Cleanser and CCU are comparable products with similar efficacy and uses, and that the sole difference between them is that CCU (but not Lysol Daily Cleanser) leaves a "harsh chemical residue." This claim is false. As detailed above, Lysol Daily Cleanser and CCU are different products that are formulated to meet different consumer needs. Reckitt's attempt to position Lysol Daily Cleanser as a "simpler" or "less harsh" substitute for CCU misrepresents the facts and deceives consumers.

45. Second, these commercials represent that CCU Lysol Daily Cleanser leaves no chemical residue at all. But Lysol Daily Cleanser contains hypochlorous acid, a chlorine-based antimicrobial agent which is itself a form of bleach. A properly chosen and calibrated "bleach indicator test" would detect the residue left by Reckitt's product—especially since, according to the commercial, the test is administered within seconds of the product's use. Reckitt appears to have deliberately designed its test to not detect the concentration of hypochlorous acid in Lysol Daily Cleanser.

46. Third, Reckitt's bleach indicator test ads falsely communicate that CCU is unsuitable or unsafe for use in kitchens. EPA, which regulates all disinfecting products and approves them for identified uses, has repeatedly approved CCU for use throughout the home—including in the kitchen—in accordance with its label instructions. Indeed, CCU improves the safety of consumers' kitchens by eliminating harmful germs faster and more comprehensively than lower-concentration products such as Lysol Daily Cleanser.

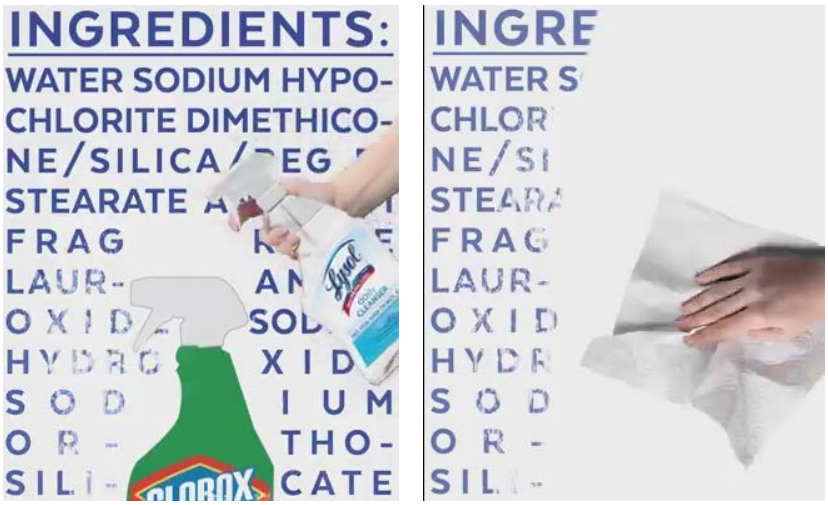
47. Moreover, EPA considers all approved antimicrobial agents to be safe for use when used as directed, *see* 7 U.S.C. § 136a (c)(5)(C), and EPA regulations prohibit comparative safety claims for one antimicrobial product versus another, *see* 40 C.F.R. § 156.10(a)(5).

Reckitt's representations that CCU is unsuitable for use in kitchens, and that Lysol Daily Cleanser is safer for that purpose, are false.

D. Reckitt's False and Misleading Social Media Advertising

48. In addition to its television and YouTube commercials, Reckitt has blanketed the internet with social media advertising that presents Lysol Daily Cleanser as a safer and less harsh substitute for CCU.

49. One ad shows an image of CCU and its list of ingredients being sprayed with, and wiped away by, Lysol Daily Cleanser.



50. The ad then flashes banners showing that Lysol Daily Cleanser contains "Only 3 ingredients," "Kills 99.9% of germs," and has "No harsh chemical residue."

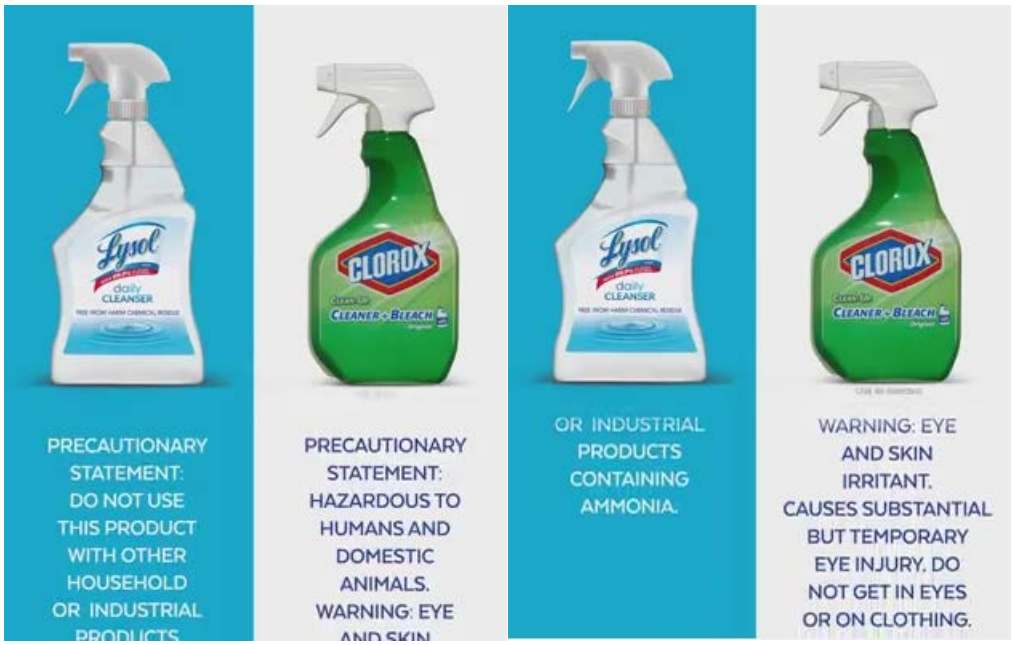
A video copy of this ad is included in Exhibit 1 (DVD). The video is also available at https://www.facebook.com/watch/?v=1916478605050159 (last visited March 17, 2019).

51. By depicting the two products in this fashion, Reckitt represents that Lysol Daily Cleanser is a replacement for, and performs the same functions as, CCU. Those representations are false. CCU is EPA-approved to disinfect against 55 germs within 30 seconds, while Lysol Daily Cleanser takes 20 times as long and has been approved by EPA to eliminate far fewer germs.

52. Moreover, in addition to having a greater antimicrobial effect than Lysol Daily Cleanser, CCU contains a detergent (also known as a "surfactant") that breaks down grease, dirt, and other household soils. Lysol Daily Cleanser has no detergent or surfactant.

53. The assertion that Lysol Daily Cleanser is less "harsh" than CCU is also false. As noted above, Lysol Daily Cleanser contains hypochlorous acid, a chlorine-based antimicrobial that is similar to sodium hypochlorite. Indeed, scientists consider hypochlorous acid to be a form of bleach. The active ingredient in Lysol Daily Cleanser is no gentler than the bleach in CCU. Lysol Daily Cleanser simply contains a lower concentration of active ingredient.

54. Reckitt has also disseminated on Facebook an ad for Lysol Daily Cleanser that juxtaposes the safety warnings for that product and CCU, and shows that CCU's are more elaborate. This advertisement also concludes with the statements "Only 3 ingredients," "Kills 99.9% of germs," and has "No harsh chemical residue."



A video copy of this advertisement is included in Exhibit 1 (DVD). The video is also available at https://www.facebook.com/Lysol/videos/1923353521029334/ (last visited March 17, 2019).

55. This ad represents to consumers that Lysol Daily Cleanser is an effective substitute for CCU, but with a simpler formula and fewer safety risks. It also impugns the safety of CCU by suggesting that consumers should shy away from products that require cautionary disclosures.

56. These messages are false. As noted above, Lysol Daily Cleanser is not a substitute for CCU, and its active ingredient (hypochlorous acid) is no gentler than the bleach in CCU. Like other bleach-based multi-purpose cleaners, including Reckitt's own Lysol Multi-Purpose Cleaner with Bleach, CCU is EPA-approved as safe for household use.

E. Reckitt's Non-Comparative Advertising

57. Reckitt has reinforced the false message that Lysol Daily Cleanser has the same efficacy and uses as intensive cleaners such as CCU through non-comparative advertising. In one commercial, Reckitt showed people spraying Lysol Daily Cleanser on a variety of household surfaces, including dining tables and high chairs, and then immediately wiping them clean. As the actors sprayed and wiped, an announcer stated that Lysol Daily Cleanser kills "99.9% of germs." A video copy of this commercial, which has been disseminated on the Lysol Daily

Cleanser internet homepage and on YouTube, is included in Exhibit 1 (DVD). The video is also available at https://www.youtube.com/watch?v=ipCW-D-g_vs (last visited March 17, 2019).

58. In point of fact, spraying Lysol Daily Cleanser on a surface and immediately wiping it away does not comport with the product's EPA-approved instructions for use as a disinfectant. According to its label, Lysol Daily Cleanser requires 10 minutes of contact with a treated surface to achieve its disinfectant effect.

59. This ad's erroneous portrayal of Lysol Daily Cleanser's approved use instructions and disinfecting efficacy reinforces the false message of Reckitt's comparative advertising: that Lysol Daily Cleanser is comparable to CCU but has "safer" and "simpler" ingredients.

Reckitt's False and Misleading Attacks on Clorox Disinfecting Wipes

60. Another component of Reckitt's anti-Clorox ad campaign takes aim at Clorox Disinfecting Wipes, which are pre-moistened, anti-microbial wipes that consumers use to clean and disinfect surfaces throughout the home. Clorox Disinfecting Wipes are the leading product in this category, outselling competing products including Lysol Disinfecting Wipes.

61. Over the past year, Reckitt has run a series of commercials and online videos that disparage the disinfecting efficacy of Clorox Disinfecting ***Wipes*** by comparing them unfavorably to Lysol Disinfectant ***Spray***. Like CCU and Lysol Daily Cleanser, Clorox Disinfecting Wipes and Lysol Disinfecting Spray are distinct products that are not positioned for the same usage occasions. Reckitt's ads purposely elide this mismatch, and present the comparison as proof of the relative disinfecting efficacy of "Clorox" on the one hand and "Lysol" on the other. The purpose and effect of this sleight of hand is to convey the false and disparaging message that Clorox products, including Clorox Disinfecting Wipes, are inferior in quality to their Lysol counterparts.

A. Reckitt's "Fake It" Commercial

62. One such ad, a television commercial (aptly) titled "Fake It," began airing in November 2018 and has been broadcast more than 12,000 times since.

63. The Fake It commercial opens with images of young children feigning various cold symptoms—such as coughs, sneezes and fevers—presumably to avoid having to go to school. Their parents, however, are not buying the act.

64. The scene eventually shifts to a sun-soaked kitchen, where a mother watches her son grab his lunch box, then sprays the counter with Lysol Disinfectant Spray. Meanwhile, an announcer states "You can't protect them from an imaginary cold. But with Lysol you can help protect them from a real one."

65. The commercial next shows a split screen with blue and green "germs" littered across a white background. Near the bottom of the screen on the left side is the famous Clorox symbol or chevron, and on the right side is the Lysol logo.

66. As the ad continues, the germs on the Lysol side of the screen disappear, while many of those on the Clorox side remain. In place of the germs, the Lysol screen displays the statement, "KILLS THE #1 CAUSE OF THE COLD."

67. As these images appear, an announcer proclaims that "Lysol Disinfectant Spray kills the number one cause of the cold and Clorox Wipes don't."

68. The commercial closes with the assertion that Lysol is "What It Takes To Protect." A video copy of this commercial is included in Exhibit 1 (DVD), and a storyboard is attached as Exhibit 3. The video is also available at https://www.youtube.com/watch?v=hzMRK6UiLfs (last visited March 17, 2019).

69. After the commercial had been running for months and seen by millions of consumers, in response to a protest by Clorox, Reckitt revised the side-by-side images to include—in minuscule type—"Disinfecting Wipes" under Clorox and "Disinfecting Spray" under Lysol.

70. The Fake It commercial—in both its original and revised forms—leaves consumers with two unmistakable impressions, both of which are false. First, through its use of a mismatched, "apples-to-oranges" product comparison and non-specific references to "Lysol" and "Clorox," the ad conveys the message that Lysol products in general are more effective at eliminating germs—including the virus that causes the common cold—than Clorox products. There is no support for such an assertion: Clorox products are at least as effective as antimicrobials as their Lysol counterparts (and often more so). In fact, neither Lysol Disinfecting Wipes nor Clorox Disinfecting Wipes are labeled or approved by EPA to eradicate rhinovirus—a fact the commercial deceptively omits. Meanwhile, other Clorox products, including Clorox® 4-in-One® Disinfecting Spray, the product most comparable to the Lysol Disinfecting Spray product referenced in the Fake It commercial, are EPA-approved to disinfect against rhinovirus.

71. Second, the commercial conveys the false message that Clorox Disinfecting Wipes are less efficacious than Lysol Disinfecting ***Wipes***, the product with which they directly compete. In fact, as noted above, neither product is approved for use against rhinovirus, so Lysol Disinfecting Wipes have no advantage in that regard. At the same time, Clorox Disinfecting Wipes are EPA-approved to eradicate more illness-causing germs than Lysol wipes.

B. Reckitt's "Game Over" Commercial

72. In addition to the Fake It television commercial, Reckitt has disseminated online advertisements that similarly use a split screen to pit Lysol Disinfectant ***Spray*** against Clorox Disinfecting ***Wipes***. One such ad, called "Game Over," portrays a videogame-like scene in which Reckitt's spray product eliminates rhinovirus while Clorox Disinfecting Wipes fail to do so. The commercial closes with the pronouncement that "LYSOL WINS" because it "KILLS THE #1 CAUSE OF THE COLD," while "Clorox Wipes don't."

A video copy of this commercial is included in Exhibit 1 (DVD). The video is also available at https://www.facebook.com/watch/?v=528761170868483 (last visited March 17, 2019).

73. A consumer watching this ad would not know that, in fact, Lysol Disinfecting Wipes perform no better on rhinovirus than Clorox Disinfecting Wipes, while each company's disinfecting spray is an EPA-approved disinfectant against that particular germ. In other words, Reckitt has turned the reality that the products are at parity into a fiction that Lysol is superior.

C. Reckitt's "Spray Away" Ad

74. Yet another Reckitt online advertisement, called "Spray Away," opens with an image of Lysol Disinfecting Spray and the statement "LYSOL KILLS THE #1 CAUSE OF COLDS." The next screen shows the Lysol product being sprayed at a container of Clorox Disinfecting Wipes, forcing the Clorox product off the screen:

75. The ad concludes with the assertion that, unlike "Lysol," "CLOROX WIPES DON'T" kill the cold virus:

A video copy of this commercial is included in Exhibit 1 (DVD). The video is also available at https://www.facebook.com/watch/?v=295003127802930 (last visited March 17, 2019).

76. The "Spray Away" ad is false and misleading for the same reasons as the Fake It and Game Over commercials: it represents to consumers that Clorox products are inferior to their Lysol counterparts when, in fact, the Clorox products are equal or superior.

Reckitt's False and Misleading, Non-Comparative Ads for Lysol Disinfecting Spray and Lysol Disinfecting Wipes

77. In addition to falsely denigrating Clorox's product offerings, Reckitt has represented its own disinfecting spray and disinfecting wipes products as having equivalent efficacy and approved uses when, in fact, they do not.

78. For example, one online ad that has been viewed nearly two million times begins with a sneezing boy. In the top-right corner of the screen, the words "Cough Season Protection" appear.

79. The next screen shows Lysol Disinfecting Spray, along with the claim that it "kills over 100 illness causing germs." In minuscule font at the bottom the screen, a disclaimer notes that "Lysol Disinfecting Spray kills germs on hard surfaces when used as directed."

80. Reckitt could have stopped there, but instead the final scene of the commercial depicts Lysol Disinfecting ***Wipes*** alongside Lysol Disinfecting Spray, along with the tag line "WHAT IT TAKES TO PROTECT."

A video copy of this commercial is included in Exhibit 1 (DVD). The video is also available at https://twitter.com/Lysol/status/937809337984090113 (last visited March 17, 2019).

81. Another Reckitt ad, available online and seen by millions of consumers, follows the same pattern:

A video copy of this commercial is included in Exhibit 1 (DVD). The video is also available at https://twitter.com/Lysol/status/937808456568004608 (last visited March 17, 2019).

82. By showing both Lysol products in this fashion, these ads send the clear message that both products "kill over 100 illness causing germs"—a claim that is flatly false as to Lysol Disinfecting Wipes. Even a consumer who managed to read the nearly invisible disclaimer

would likely not realize that the "kills over 100 illness causing germs" claim is true only to Lysol Disinfecting Spray, but false as to Lysol Disinfecting Wipes.

Reckitt's False Comparative Advertisements Regarding Wipe Strength

83. In yet another deceptive aspect of its anti-Clorox ad campaign, Reckitt impugns the "strength" of Clorox Disinfecting Wipes, falsely representing that they are prone to tearing during use.

84. The central ad of the campaign, titled "Now Stronger Than Clorox," has run more than 3,000 times since January 2019.

85. The commercial depicts four people in a gym putting disinfecting wipes to a "strength test" by using them to pick up 30-pound kettlebell weights.

86. The Clorox wipe immediately rips, causing the weight to drop to the ground and the contestant holding it to express disappointment. The Lysol wipe, by contrast, holds the weight for several seconds, to the approval of the contestant. A minuscule disclaimer notes: "Dramatization. Based on lab results. Supervised demonstration. Do not attempt." A video copy of this commercial is included in Exhibit 1 (DVD), and a storyboard is attached as Exhibit 4. The video is also available at https://www.youtube.com/watch?v=vd7ZUkXhDEk (last visited March 17, 2019).

87. A second variation on this ad likewise depicts gym-goers "testing" the comparative strength of Clorox Disinfecting Wipes and Lysol Disinfecting Wipes by using each product to pick up a 30-pound weight.

88. The Clorox wipes are depicted as immediately breaking apart, while Lysol Wipes purportedly withstand the 30-pound weight. The same minuscule disclaimer, which states that the scene depicts a "dramatization" of lab results, appears at the bottom of the screen. A voice-over then declares "Lysol for the win" while a large "WINNER" banner appears above the Lysol logo.

A video copy of this commercial is included in Exhibit 1 (DVD). The video is also available at https://www.youtube.com/watch?v=-4ttmPKRtz0 (last visited March 17, 2019).

89. Reckitt has also disseminated via Facebook an ad that claims that "LYSOL WIPES ARE STRONGER THAN COMPETITION." This ad shows a Lysol wipe intact, adjacent to a torn "competitive" wipe that appears below a version of the famous Clorox chevron, in which the Clorox brand name has been replaced with the words "VS LEADING COMPETITOR." A copy of this ad is attached as Exhibit 5.

90. The unmistakable message of these advertisements is that Lysol Disinfecting Wipes are of higher quality, are more durable, and are more resistant to tearing during use than Clorox Disinfecting Wipes. That message is false.

91. Clorox has rigorously tested the durability of Clorox Disinfecting Wipes, and has substantiated that they are able to withstand consumer use of sufficient duration to exhaust the antibacterial solution on the products. A Clorox Disinfecting Wipe is highly unlikely to rip before a consumer finishes using it to clean and/or disinfect a surface. Accordingly, even if Reckitt has some testing to support the "dramatization" depicted in the commercial, the message that Clorox Disinfecting Wipes are more prone to tearing than Lysol wipes under actual use conditions is false.

92. Moreover, even laying aside the products' durability under typical use conditions, the commercials' representation that Lysol Disinfecting Wipes perform better on extreme "stress

tests" than Clorox Disinfecting Wipes is false. The "strength test" depicted in these commercials is not capable of replication, because neither product is actually long enough to serve as a "handle" when holding a kettlebell weight. Upon information and belief, the depicted "dramatization" does not accurately reflect the results of any rigorous or sound comparative strength testing between the two products.

False Comparative Ads for Lysol Power Toilet Bowl Cleaner

93. Reckitt also has run a series of ads that falsely claim that its product, Lysol Power Toilet Bowl Cleaner, is generally "10 times more effective" than Clorox's bleach-based Clorox Toilet Bowl Cleaner. These ads further represent that Lysol's product, unlike Clorox's, renders toilets immaculate in mere seconds without any scrubbing.

94. In fact, Clorox's product is much more efficacious than Lysol Power Toilet Bowl Cleaner at removing organic matter deposits from toilet surfaces. And because Lysol Power Toilet Bowl Cleaner is less effective at removing deposits of this nature from toilet surfaces, it cannot render toilets immaculate in seconds, as depicted in Reckitt's advertising.

95. One such ad is a television commercial entitled "No Scrubbing" (also known as "Surprisingly Not Terrible"), which has run nearly 8,000 times since August 2018.

96. The ad depicts a woman squirting Lysol Toilet Bowl Cleaner into a filthy toilet and watching as it instantly becomes immaculate, without the use of a brush. She remarks, "That was surprisingly not terrible," flushes, and walks away.

97. The ad then purports to depict the results of a side-by-side efficacy test comparing Lysol Power Toilet Bowl Cleaner and Clorox ***Regular Liquid Bleach*** (rather than a Clorox toilet cleaning product). The "results" show the Lysol surface immaculate, while the Clorox surface remains stained and soiled. A large banner reads: "10X MORE CLEANING POWER THAN CLOROX."

98. In nearly illegible fine print, a disclaimer reveals that the test evaluated the two products' efficacy (1) on "limescale and rust stains" only, as opposed to the full range of deposits that can soil toilet bowls; and (2) "after contact with the product for 10 minutes, followed by rinsing." The disclaimer thus contradicts the ad's express representations that the Lysol product rids the toilet of all stains within a few seconds, at "10X" the efficacy of Clorox's bleach-based product. A video copy of this commercial is included in Exhibit 1 (DVD), and a storyboard is attached as Exhibit 6. The video is also available at https://www.ispot.tv/ad/dB46/lysol-power-toilet-bowl-cleaner-surprisingly-not-terrible (last visited March 17, 2019).

99. A similar ad presents the same misleading comparative test results, and claim of "10X More Cleaning Power," against a Clorox toilet cleaning product that Reckitt does not properly identify. In that commercial, the voice-over initially proclaims that "Clorox Toilet Bowl Cleaner with Bleach is no match against limescale," over side-by-side images of "Clorox" failing to clear limescale buildup while "Lysol" wipes it out completely. A large, red "10X" banner flashes across the screen.

100. Meanwhile, a minuscule on-screen disclaimer reveals that the depicted test results involve Lysol Power Toilet Bowl Cleaner and Clorox Toilet Bowl Cleaner Clinging Bleach Gel®—a distinct product from the Clorox Toilet Bowl Cleaner with Bleach referenced in the voice-over. A video copy of this commercial is included in Exhibit 1 (DVD), and a storyboard is attached as Exhibit 7. The video is also available at https://www.youtube.com/watch?v=IYTlMyokfbo (last visited March 17, 2019).

101. The "10X More Cleaning Power" claim also appears on various in-store displays and on product packaging, examples of which are attached as Exhibits 8.

102. Reckitt's claim that Lysol Power Toilet Bowl Cleaner has "10X more cleaning power than Clorox" is false. As the disclaimer in the "No Scrubbing" ad reflects, the Lysol product's purported advantage relates only to rust and limescale, and not to organic matter. Yet Reckitt makes the "10X More Cleaning Power" claim without limitation, other than in a nearly illegible disclaimer. Once again, Reckitt selectively chooses non-comparable products and makes misleading efficacy claims to reinforce an overall message that Lysol-branded products are superior to, and more efficacious than, Clorox's product offerings.

103. Indeed, even as to rust and limescale, Reckitt's claim of a performance advantage is premised on a misleading comparison between distinct products. Acid-based cleaners are more effective against mineral-based deposits, including rust and limescale, whereas bleach-based cleaners are more effective at removing organic stains. Accordingly, both companies offer products in both categories. In addition to the products depicted in Reckitt's commercials, Clorox markets Clorox Toilet Bowl Cleaner — Tough Stain Remover®, whose active ingredient is glycolic acid, for mineral deposits including rust and limescale stains; and Reckitt offers Lysol Bleach Toilet Bowl Cleaner, with sodium hypochlorite, for organic stains.

104. In the "No Scrubbing" ad, Reckitt depicts a "laboratory test" for removal of mineral deposits—the task for which acid-based cleaners are uniquely suited—between its own acid-based cleaner and Clorox Regular Liquid Bleach. It then uses the results of this rigged experiment to convey the messages that (1) Lysol Power Toilet Bowl Cleaner is a more effective

toilet cleaner overall than Clorox Toilet Bowl Cleaner with Bleach; and (2) Lysol toilet cleaning products are, in general, more effective than Clorox toilet cleaning products.

105. Those messages are false. Lysol Power Toilet Bowl Cleaner could claim greater effectiveness only as to the subset of deposits that call for an acid-based cleaner. Reckitt's bleach-based toilet cleaners would fare no better on those deposits than Clorox's Toilet Bowl Cleaner with Bleach. Indeed, the product packaging of Lysol Power Toilet Bowl Cleaner also contains the "10X Cleaning Power" claim—except there, minuscule type on the back label explains that this comparison is "***vs. Lysol Clean & Fresh Toilet Bowl Cleaner*** [a chlorine-based product] against limescale." Thus, Reckitt acknowledges that its chlorine-based toilet cleaner does not eliminate limescale any better than the Clorox product it disparages in the "No Scrubbing" ad.

106. Reckitt's use of the "10X Cleaning Power" claim on its product label and in retail displays also reinforces the false message of its television advertising, since the millions of consumers who have seen the ads are likely to read the label claim and in-store displays as a comparative one against Clorox's entire line of toilet bowl cleaners.

107. Finally, separate and apart from its misleading comparative claims, the "No Scrubbing" ad egregiously misrepresents the efficacy of Lysol Power Toilet Bowl Cleaner. Through its depiction of a woman using a single squirt of the product to render her toilet immaculate, the ad conveys that the Lysol product works instantly to remove ***all*** deposits from toilets. In fact, rather than cleaning toilets completely and instantaneously, the Lysol product requires at least ***10 minutes*** to remove ***some*** of the stains from consumers' toilets.

108. As with the other advertisements discussed herein, Reckitt's false and misleading ads for its toilet cleaning products are designed to shake consumer confidence in Clorox products, to erode and devalue Clorox's brand equity, and to enable Reckitt to compete unfairly in the marketplace against Clorox.

Injury to Clorox and the Public

109. Clorox has been injured by Reckitt's false advertising, which impugns the performance and safety of its best-selling products. Clorox is likely to continue to suffer irreparable injury until Reckitt's false advertising is stopped.

110. Reckitt's false advertising is damaging Clorox's goodwill and business in ways that cannot readily be quantified or recaptured. Among other things, the challenged advertising sows doubts in consumers' minds about the efficacy and safety of Clorox products as a household cleaning and disinfecting agents.

111. In addition to harming Clorox's reputation and standing with the consuming public, Reckitt's false advertising has diverted to Reckitt sales that Clorox otherwise would have made, and has prevented Clorox from earning profits on those sales that Clorox otherwise would have earned.

112. If Reckitt is permitted to continue its false and misleading ad campaign, Clorox is likely to (1) lose the loyalty of consumers who have purchased its products in the past; and (2) fail to attract consumers whom its products would otherwise have attracted in the absence of Reckitt's false advertising. This damage, once done, will be difficult to quantify or remediate.

113. In addition to causing irreparable injury to Clorox, Reckitt's deceptive advertising campaign harms the public interest. Consumers rely on information in advertisements to make educated purchasing decisions. Reckitt's ads have the purpose and effect of deceiving consumers and inducing them to purchase Lysol products based on misinformation. Accordingly, the relief requested herein furthers the public interest in truthful advertising.

114. Clorox has a strong commercial interest in preventing the further dissemination of Reckitt's false advertising.

115. Clorox has no adequate remedy at law.

COUNT I

False Advertising in Violation of the Lanham Act

116. Clorox realleges and incorporates by reference paragraphs 1 through 115 above.

117. Reckitt has engaged in unfair and fraudulent business acts and practices, including the dissemination of unfair, deceptive, untrue and misleading advertising about its own products and concerning the safety, efficacy, and suitability of Clorox products.

118. Clorox has been and is likely to continue to be injured as a result of Reckitt's false advertising.

119. By reason of the foregoing, Reckitt has violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT II

Violation of California's Unfair Competition Law

120. Clorox realleges and incorporates by reference paragraphs 1 through 119 above.

121. Reckitt, to induce the public to purchase its products, has disseminated untrue and misleading statements about its own products and concerning the safety, efficacy, and suitability of Clorox products.

122. Reckitt knew or should have known by the exercise of reasonable care that its advertising and promotions were untrue and misleading.

123. Clorox has been and is likely to continue to be injured as a result of Reckitt's false advertising.

124. By reason of the foregoing, Reckitt has engaged in unfair competition, including unlawful, unfair, deceptive and fraudulent business acts or practices, in violation of California Business & Professions Code § 17200, *et seq*.

COUNT III

Violation of California's False Advertising Law

125. Clorox realleges and incorporates by reference paragraphs 1 through 124 above.

126. Reckitt, to induce the public to purchase its products, has disseminated untrue and misleading statements about its own products and concerning the safety, efficacy, and suitability of Clorox products.

127. Reckitt knew or should have known by the exercise of reasonable care that its advertising and promotions were untrue and misleading.

128. Clorox has been and is likely to continue to be injured as a result of Reckitt's false advertising.

129. By reason of the foregoing, Reckitt has engaged in false advertising in violation of California Business and Professional Codes §§ 17500, *et seq*.

PRAYER FOR RELIEF

WHEREFORE, Clorox demands judgment against Reckitt as follows:

1. An injunction that permanently bars Reckitt from

(a) Disseminating the advertisements referenced herein, including but not limited to those attached as Exhibits 1 through 8 hereto, and any other substantially identical advertisements;

(b) Disseminating any advertisement or promotional communication that includes any false or misleading comparison between a Lysol product and a Clorox product, including without limitation any comparison that represents or implies that the products depicted in the advertisement have similar efficacy or uses when in fact they do not;

(c) Claiming, whether directly or by implication, in any advertisement or promotional communication, that

i. Lysol products are generally superior to Clorox products;

ii. Clorox products are generally inferior to Lysol products;

iii. Lysol products are generally more effective than Clorox products at killing or disinfecting against germs, including the rhinovirus;

iv. Clorox Clean-Up Cleaner + Bleach and Lysol Daily Cleanser are comparable products with similar uses and efficacy;

v. The sole or primary difference between Clorox Clean-Up Cleaner + Bleach and Lysol Daily Cleanser is that Clorox Clean-Up Cleaner + Bleach leaves a "harsh chemical residue" whereas Lysol Daily Cleanser does not;

vi. Lysol Daily Cleanser is a "simpler" or "less harsh" substitute for Clorox Clean-Up Cleaner + Bleach;

vii. Clorox Clean-Up Cleaner + Bleach leaves a "harsh chemical residue" whereas Lysol Daily Cleanser leaves no residue;

viii. Clorox Clean-Up Cleaner + Bleach is unsuitable or unsafe for use in kitchens;

ix. Lysol Disinfecting Wipes are more effective than Clorox Disinfecting Wipes at killing or disinfecting against rhinovirus;

x. Lysol Disinfecting Spray kills or disinfects against rhinovirus while Clorox's spray disinfectant, Clorox 4-in-One Disinfecting Spray, does not;

xi. Lysol Disinfecting Wipes kill over 100 illness causing germs, including the rhinovirus;

xii. Lysol Disinfecting Wipes are of higher quality, are more durable, or are more resistant to disintegration during use than Clorox Disinfecting Wipes;

xiii. Clorox Disinfecting Wipes fall apart or disintegrate under conditions of ordinary use;

xiv. Lysol Toilet Bowl Cleaner is more effective, "10x stronger," or has "10x more cleaning power" than Clorox's bleach-based toilet cleaning products on all types of stains or deposits, including organic matter;

xv. Lysol Toilet Bowl Cleaner is more effective, "10x stronger," or has "10x more cleaning power" than all Clorox products intended for use on toilets;

xvi. Lysol Toilet cleaning products are generally more effective, or have more cleaning power, than Clorox toilet cleaning products; and

xvii. Lysol Toilet Bowl Cleaner works instantly to remove all stains and deposits from toilets;

2. An Order directing Reckitt to disseminate, in a form to be approved by the Court, advertising designed to correct the erroneous impressions created by the false and misleading claims made by Reckitt in its advertising;

3. An Order pursuant to 15 U.S.C. § 1116(a) directing Reckitt to file with the Court and serve upon Clorox, within 30 days after entry of judgment, a report, in writing and under oath, setting forth in detail the manner and form in which Reckitt has complied with the judgment;

4. An award of Clorox's damages attributable to Reckitt's false advertising, in an amount to be determined at trial;

5. Disgorgement of Reckitt's profits from the sale of the falsely advertised products, pursuant to 15 U.S.C. § 1117;

6. A declaration that this is an "exceptional case" due to the willful nature of Reckitt's false advertising, and awarding treble damages, attorneys' fees and costs to Clorox pursuant to 15 U.S.C. § 1117;

7. A declaration that this action resulted in the enforcement of an important right affecting the public interest, and awarding attorneys' fees and cost to Clorox pursuant to Cal. Civ. P. Code § 1021.5; and

8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Clorox hereby demands a trial by jury on all issues triable before a jury in this action.

Dated: March 20, 2019

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