

# In Your Face: Connecticut District Court Denies Motion To Dismiss in Coppertone “FACE” Sunscreen False Ad Case

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A few months ago when sun-seeking consumers were eagerly anticipating the start of summer, we [wrote](#) about a consumer false advertising case involving Beiersdorf’s Coppertone sunscreen brand. In that case, plaintiff Tonya Akes, a consumer, sued Beiersdorf, Inc., maker of Coppertone sunscreen, alleging that Beiersdorf engaged in deception because it sold the SPF 50 Coppertone Sport Mineral Face sunscreen, which she alleges she believed was “specifically designed” for use on the face based on the front-of-pack claims, at twice the price as the regular Coppertone Sport Mineral sunscreen, despite the formulas being identical.

Beiersdorf alleged that there was no deception because the claims on both packages are factually true and that Akes’s lawsuit is essentially an attempt to control product pricing disguised as a false advertising theory. Akes does not allege that she saw the regular Coppertone Sport Mineral sunscreen before deciding to purchase the “FACE” version.

Earlier this month, a Connecticut court rejected Beiersdorf’s motion to dismiss relying, in large part, on the prominence of “FACE” on the principle display panel. Distinguishing the Coppertone label from cases cited by the defendant, the Court stated: “...the word “FACE” is prominently displayed front and center and plaintiff’s claimed interpretation [that the product is specially formulated for facial use] is plausible based on particularized facts alleged, and is thus sufficient to survive a motion to dismiss.” Presumably, whether “won’t run into eyes” and “oil free” impact the interpretation of “FACE” is also a question of fact, although the court did not directly address this.

This case could signal the start of greater scrutiny on the frequency with which brands market products with identical formulas into different segments, and whether those products are sufficiently differentiated to justify varying price points. In addition to differences in packaging, branding, and merchandising, this early-stage decision signals the importance of prominence and placement of key words, in addition to potential inclusion of qualifying language or back panel copy to help mitigate risk.

