

# Two-Faced? Coppertone Case Tests Whether Factually True Claims Are Deceptive

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Can claims that are factually true still be deceptive? This is the question before a Connecticut federal court. Last summer, 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.



In January 2023, Beiersdorf moved to dismiss the amended complaint. The company concedes that the formulas are the same. However, the company asserts, among other things, that the product claims are true and therefore the complaint fails because there is no deception. That is, Ms. Akes cannot succeed on her claims because the claims that she points to as the basis for her understanding that the product was specifically designed for facial use, i.e., the use of “FACE”, “oil

free” and “won’t run into eyes” are, in fact, true. Beiersdorf points out that Akes does not allege that she looked at the regular version of Coppertone Sport Mineral prior to purchasing the “FACE” version and, therefore, her argument amounts to little more than regret over paying more than she would have liked. The court’s ruling is pending.

Courts have been skeptical of arguments that brands necessarily deceive consumers by packaging the same product at varying price points, e.g., rejecting arguments that infant acetaminophen is deceptively marketed when sold at a higher price as compared to children’s acetaminophen because there was nothing about the packaging that suggested that the products had different formulations. Here, had Akes looked at the 5 oz version, she presumably would have seen that the active ingredient in both was zinc oxide and would have also seen that the ingredient listings and Drug Facts were identical. But, courts are also skeptical of requiring consumers to actually read ingredient lists.

***So, what’s a marketer to do?*** Beiersdorf rightly points out that “[t]here is nothing deceptive about emphasizing different but equally true aspects of a product to different market segments or pricing products differently when sold to different market segments or in different retail channels. This happens every day.” When confronting this issue, companies should keep in mind that differences in branding, packaging, merchandising (store and shelf placement) and other factors can help establish a valid legal basis to support an argument that, even if two products have the same formula, one rightly commands a higher price point.