

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E.D.N.Y.
★ MAY 05 2011 ★

MICHAEL FEUER, on behalf of himself
and all others similarly situated,

BROOKLYN OFFICE

Plaintiff,

CASE NO.:

v.

CLASS ACTION COMPLAINT

THE DIAL CORPORATION, an Arizona
Corporation,

JURY TRIAL DEMANDED

Defendant.

11 2205

WEXLER, J

LINDSAY, M.J.

CLASS ACTION COMPLAINT

Plaintiff, MICHAEL FEUER, by and through undersigned counsel, brings this action on his own behalf and on behalf of a Class of persons defined below against Defendant, THE DIAL CORPORATION, and for his Complaint alleges, upon information and belief and based on the investigation to date of his counsel, as follows:

NATURE OF CASE

1. This is a class action arising from the unfair, deceptive, and fraudulent practices by Defendant THE DIAL CORPORATION with respect to the marketing, advertising and sale of Dial Complete Antibacterial Hand Wash ("Dial Complete" or the "Product"), brought by Plaintiff on his own behalf, and on behalf of a class of others similarly situated, those persons being all residents of the State of New York, during the Class Period defined below.

THE PARTIES

2. At times material, Plaintiff was and is an individual residing in Oceanside, Nassau County, New York and a citizen of the State of New York. Plaintiff purchased Dial Complete from retail stores located in Nassau County, New York on numerous occasions throughout the class

period. Plaintiff purchased and used Dial Complete because he saw and relied on the purported health benefits described by Defendant's website, advertising, and in-store media where he purchased Dial Complete, including product labeling.

3. Plaintiff, on behalf of himself and all New York residents who purchased Dial Complete (the "Class") during the Class Period, as further defined below, brings this class action against Defendant, THE DIAL CORPORATION.

4. Defendant, THE DIAL CORPORATION, is a foreign corporation incorporated in the State of Delaware and maintains its principal place of business at 19001 N. Scottsdale Road, Scottsdale, AZ 85255.

5. Defendant, THE DIAL CORPORATION, is a subsidiary of Henkel AG & Co., a Dusseldorf Germany-based, Fortune Global 500 Company.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2) (diversity jurisdiction), in that (i) there is complete diversity (Plaintiff is a citizen of New York and Defendant is incorporated in Delaware, and, to the extent pertinent, maintain its principal place of business in Arizona), ii) the amount in controversy exceeds \$5,000,000.00 (Five-Million Dollars) exclusive of interests and costs, and (iii) there are 100 or more members of the proposed Plaintiff class.

7. Venue lies in this District, pursuant to 28 U.S.C. §1391, because Plaintiff resides in this Judicial District, purchased the Product in this Judicial District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this Judicial District. In addition, Defendants do business and/or transact business in this Judicial District, and therefore, are subject to personal jurisdiction in this Judicial District and reside here for venue purposes.

COMMON FACTUAL ALLEGATIONS

8. Plaintiff's allegations are based in part on the investigation of counsel, including but not limited to reviews of advertising and marketing material, public filings, articles, journal actions, and other publicly available information, and thus on information and belief, except as to the individual actions of Plaintiff, as to which Plaintiff has personal knowledge.

Defendant's Deceptive Message

9. Defendant advertises, promotes and sells a broad range of branded products throughout New York and the United States, including body washes, bar soap, liquid hand soap and hand sanitizers, including its Dial Complete line of products, that are the subject of this lawsuit.

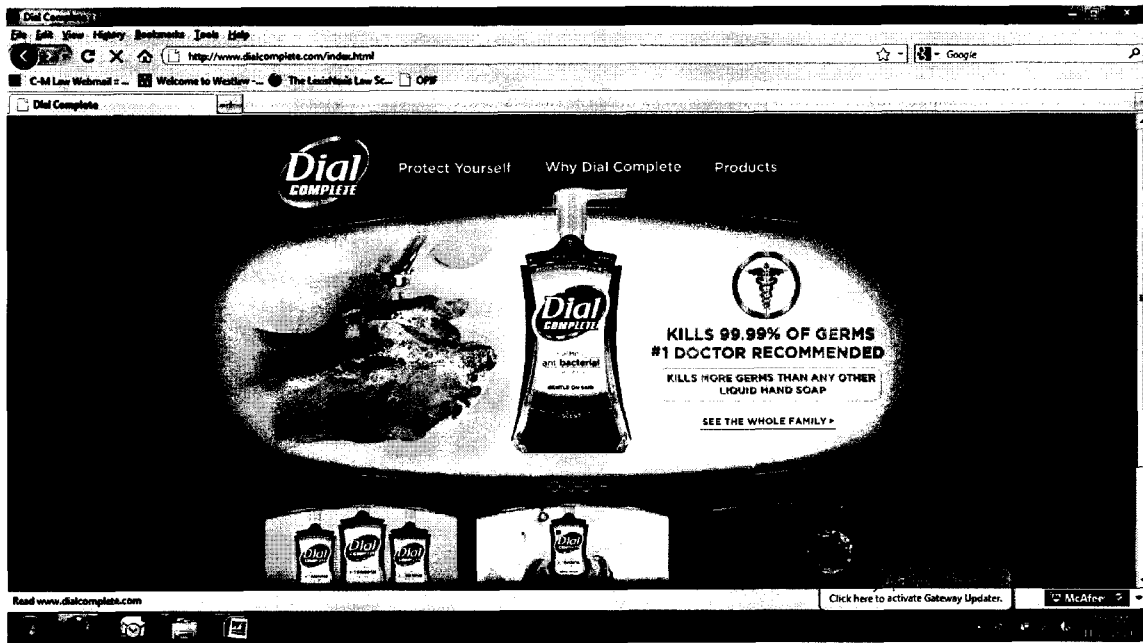
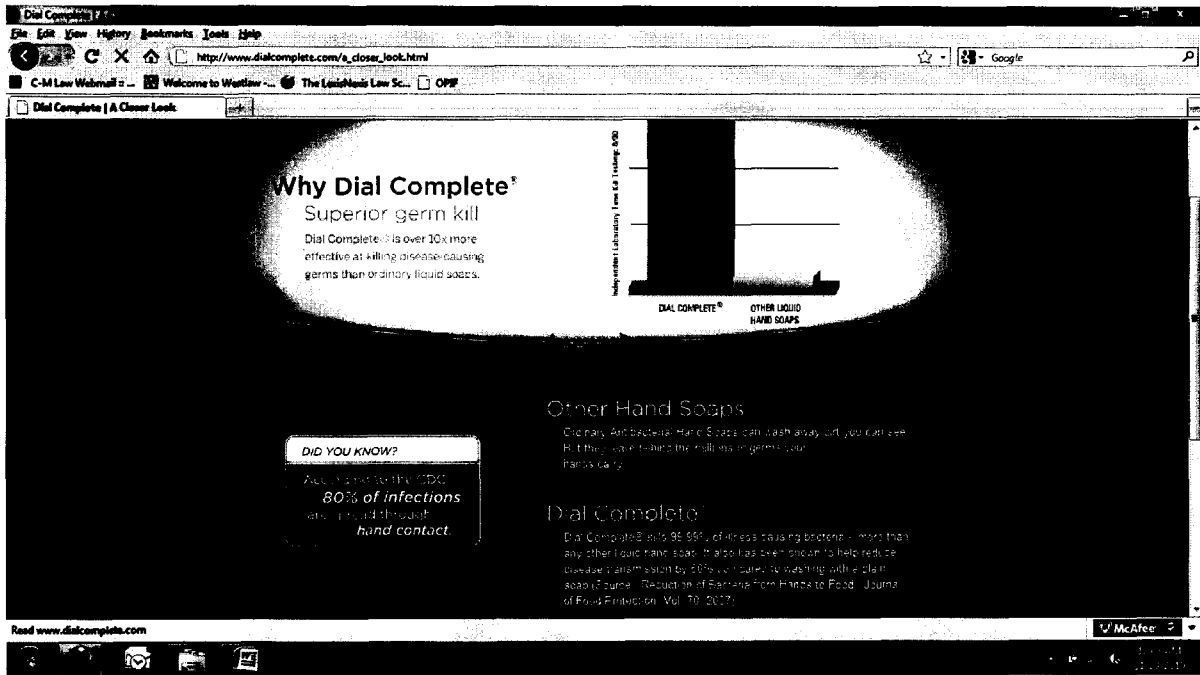
10. The Product contains Triclosan as its active ingredient, which was originally developed as a surgical scrub for medical professionals. In recent years, it has been added to many consumer products such as soap and body washes, toothpaste, clothing, kitchenware, furniture and toys.

11. Triclosan is a chlorophenol, a class of chemicals that is suspected of causing cancer in humans. While the companies that manufacture products containing Triclosan claim that it is safe, the Environmental Protection Agency ("EPA") has registered it as a pesticide and has rated it high for human health risk and environmental risk.

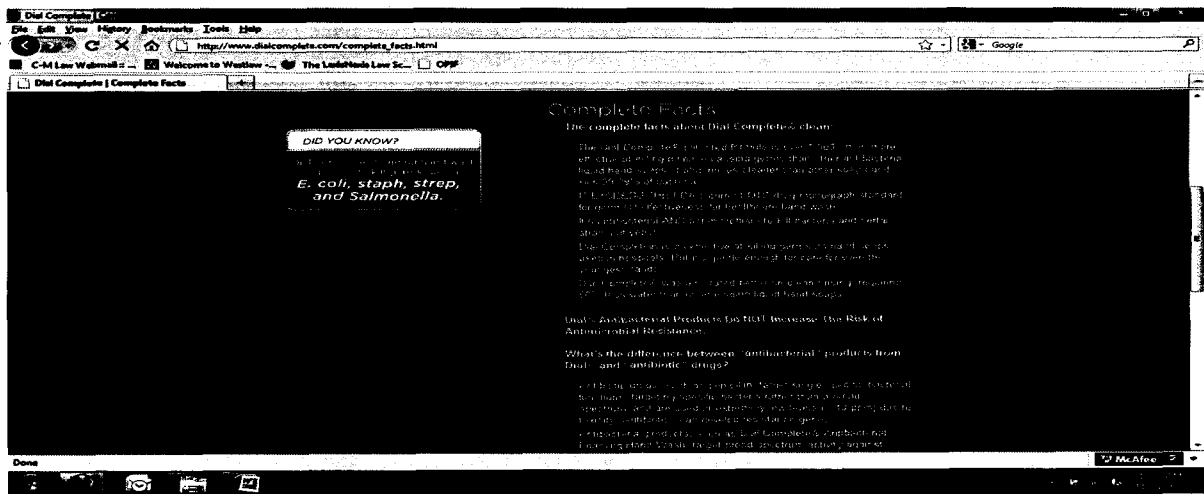
12. Defendant's misleading marketing campaign begins with a deceptive name – Dial Complete—as it implies that it will completely protect you from germs. Defendant's exhaustive advertising campaign builds on this deception. In truth, Defendant has no independent, competent and reliable support for these claims.

13. Since 2001, Dial has deceptively and unfairly promoted the usage of Dial Complete to consumers as having special health benefits, including, but not limited to, being over

1,000 times more effective at killing disease-causing germs than other antibacterial liquid hand soaps, killing 99.99% of bacteria, kill 99.9% of illness-causing bacteria, reducing disease transmission by 50% compared to washing with a plain soap, and killing more germs than any other liquid hand soap.



14. Dial deceptively and unfairly claims and implies that Dial Complete's active ingredient, Triclosan, enables Dial Complete to outperform other soap products, thus allowing Dial Complete to perform at the levels indicated by Dial, to wit: killing 99.99% of bacteria, kill 99.9% of illness-causing bacteria, being over 1,000 times more effective at killing disease-causing germs than other antibacterial liquid hand soaps, and reducing transmission of diseases by 50% compared to washing with a plain soap.



15. Dial deceptively and unfairly claims and implies that Dial Complete prevents and protects consumers from diseases and illnesses, including but not limited to infectious disease, diarrhea and nausea.

¹ http://www.dialcomplete.com/complete_facts.html



[Protect Yourself](#)

[Why Dial Complete](#)

[Products](#)



Protect yourself against germs that cause *illness*.

Microbes are everywhere, and Dial Complete is the best way to protect yourself and your family from the "invisible germ" and disease. And, it's convenient. Dial Complete also comes in a new, most-travel-friendly format.

[LEARN MORE >](#)



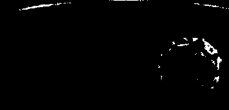
Dial Complete Family

Get to know the entire Dial Complete family.



Get the Facts

Dial Complete is the #1 leading brand of hand liquid soap.



Protect Yourself

Learn how Dial Complete is your best protection from illness.



Protect Yourself Why Dial Complete Products

Protect Yourself

Germs are everywhere



DID YOU KNOW?

Of the 76 million annual reported cases of food poisoning, 25% can be attributed to poor hygiene. Besides symptoms such as nausea and diarrhea, these germs are responsible for 9,000 deaths per year.*

1 in 3 is caused by poor hand washing.

Germs: The Ugly Truth

Think you don't have a hand in the spread of germs? Think again!

- Of the 76 million annual reported cases of food poisoning, 25% can be attributed to poor hygiene. Besides symptoms such as nausea and diarrhea, these germs are responsible for 9,000 deaths per year.*
- The young, elderly and people with impaired immunity are most susceptible to germs.
- Hand washing is recommended as a key method to stay healthy by the Centers for Disease Control, the Association of Practitioners in Infection Control, the Association of Operating Room Nurses, and the US Department of Health and Human Services.
- More women than men wash their hands after using the restroom.
- After changing diapers, 1 in 4 Americans don't wash their hands.
- Less than half wash their hands after cleaning up after pets.
- Only 1 in 3 wash their hands after sneezing/coughing.
- Less than 1 in 5 wash their hands after touching money.

* STATISTICS FROM :

germs in focus
Take a closer look at the germs that are all around us.

a closer look
See why Dial Complete® is the hands-down favorite of doctors.

our products
Meet the products that make up the Dial Complete® family of clean.

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Protect Yourself
the ugly truth
illness & infection
germs in focus
when & how to
wash
helpful links

Why Dial Complete
a closer look
facts
testimonials
media &
press releases

Products
our products
complete facts
commercial use

Other Links
dial home
contact us
terms of use
henkel
privacy statement



Protect Yourself

Why Dial Complete

Products

Protect Yourself
Put germs in focus



Streptococcus

Streptococcus

People with streptococcal infections usually transmit the illness through skin contact. Mucus on the skin carries the bacteria, which can cause fever, throat or skin infections, among other symptoms. The spread of streptococcal infections can be reduced by thorough hand washing.



Salmonella

Salmonella

Salmonella is a type of bacteria that is found in the feces of people or animals, which can then infect other people or animals. These organisms can cause fever, diarrhea and abdominal cramps. Washing hands after using the restroom is a critical way to keep Salmonella from spreading.



E. coli

E. coli

E. coli can be transmitted through hand contact, especially during food preparation. The resulting infection often causes severe bloody diarrhea and abdominal cramps. Hand washing, especially after handling raw meats, is one of the best ways to stop the spread of E. coli.



Staphylococcus aureus

Staphylococcus aureus

Staphylococcus aureus is a common bacteria frequently responsible for food poisoning. It can sometimes cause nausea, vomiting, stomach cramps and diarrhea in as little as 30 minutes. To prevent from spreading through food, be sure to wash hands carefully before preparation.



Protect Yourself

Why Dial Complete

Products

Protect Yourself

Clean hands fight illness



DID YOU KNOW?

According to the CDC
80% of infections
are spread through
hand contact.

Illness & Infection

Proper hand washing, especially with Dial Complete®, can help protect you against germs that cause illness. According to the Centers for Disease Control, 80% of infectious diseases are spread through hand contact. Keeping hands clean is one of the most important steps we can take to avoid getting sick and spreading germs to others.

Dial Complete® Foaming Hand Wash kills more germs than any other liquid hand wash. It is also the #1 Doctor Recommended antibacterial hand soap.

Germs can live from 20 minutes up to 2 hours or more on surfaces like cafeteria tables, doorknobs, and desks

At home, handwashing can prevent infection and illness from spreading from family member to family member and, sometimes through a community.

when & how to wash
Find out how to keep
your hands clean and healthy.

helpful links
Get connected to more
information to help you live clean.

our products
Meet the products that make up
the Dial Complete® family of clean.

Can bacteria become resistant? Are people more susceptible to sickness? The answer: NO

The FDA and European Union, after extensive studies over 10 years, have concluded that there is no convincing evidence that the antibacterial ingredient used in Dial® liquid soaps poses a risk to humans or to the environment by inducing or transmitting antibacterial resistance under current conditions of use. (EU-SCGP, 2002, 2006)

A large study done by the University of Iowa from 1990 to 2000, which compared the resistance of bacteria against the antibacterial ingredient used in Dial® liquid soaps, found no difference in resistance patterns.

Peer reviewed scientific research has consistently shown that the susceptibility of bacteria to antibacterial ingredients has not changed over at least the last 10 years.

The susceptibility of bacteria from people who use antibacterial products is no different than from those people who do not.

The screenshot shows the Dial Complete website. At the top, there is a navigation bar with "Explore Our Products", the Dial logo, "Dial® Your Perfect Product", and "Dial® About". Below the navigation bar, three bottles of Dial Complete antibacterial hand soap are displayed. The bottles are labeled "Dial COMPLETE antibacterial" and "GENTLE ON SKIN". Below the bottles, there is a link that says "Click on a product above to learn more". Below that, the text reads "For A Clean That's Complete. Dial Complete is tough enough for the worst germs, but gentle enough for the smallest hands." To the left of this text is a medical symbol (Rod of Asclepius). To the right, it says "Kills more germs than any other liquid hand soap", "Kills 99.99% of germs", and "#1 Doctor Recommended". At the bottom, there is a button that says "CLICK HERE TO LEARN MORE AT DIALCOMPLETE.COM".

16. In addition, as shown above, Defendant Dial deceptively and unfairly claims and implies that Dial Complete prevents and/or protects consumers from contracting: streptococcal infections that can lead to illness through skin contact and cause fever, throat or skin infections; among other symptoms; Salmonella, which can infect people and cause fever, diarrhea and

abdominal cramps; E. coli leading to infection causing severe bloody diarrhea and abdominal cramps; Staphylococcus aureus leading to food poisoning and can cause nausea, vomiting, stomach cramps and diarrhea in as little as 30 minutes.

17. Defendant Dial deceptively and unfairly claims and implies that the statements about Dial Complete's health benefits and the superiority in quality of Dial Complete are backed by a competent, credible, and reliable study. The advertisements for Dial Complete fail to disclose the specific limitations of the Dial study including: (a) that only 2 strains of bacteria were tested and (b) there was no determination as to the development of immunity by the bacteria after repeated use. Moreover, Defendant Dial's study was performed by Dial itself or a related entity, is not objective.

18. In a promotional video targeting janitorial product suppliers, Defendant contends that Dial Complete has the "highest level of germ killing action", is the "#1 antibacterial foaming hand soap", and its "patented activated Triclosan formula" allows it to be "25x more effective than other antibacterial soaps."²

19. Dial's marketing and advertising campaign sends an unmistakably clear, but an unconscionably deceptive and unfair message: Dial Complete is more effective at killing germs, protecting the consumer from germs, and thus preventing illness and promoting good health, than washing with less expensive plain soap and water.

Defendant's Message is False, Misleading, Deceptive, Unfair and Unconscionable

20. Defendant's advertising message ignores the well-supported fact that washing with soap and water is just as effective as washing with Dial Complete, which contains Triclosan and is more expensive than plain soap.

21. Defendant Dial's claims about Dial Complete's effectiveness and superiority are

² Dial Complete Foam promotional video, available at <http://www.youtube.com/watch?v=TjmKuREfGmQ>

false, deceptive, unfair and unconscionable because there is not sufficient, competent and/or reliable scientific evidence and/or substantiation for Dial Complete's effectiveness and superiority claims.

22. Specifically, Defendant has no competent, credible and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence to substantiate the claims that Dial Complete is over 1,000 times more effective at killing disease-causing germs than other antibacterial liquid hand soaps, killing 99.99% of bacteria, kill 99.9% of illness-causing bacteria, reducing disease transmission by 50% compared to washing with a plain soap, and killing more germs than any other liquid hand soap.

23. Defendant's purported scientific evidence is neither competent nor reliable scientific evidence. Defendant does not possess any tests, analyses, research, or studies that have been conducted and evaluated in an objective manner.

24. In fact the competent and reliable scientific evidence indicates that Defendant's claims are false, deceptive, unfair and unconscionable.

25. A study published on July 13, 2000 reported that Triclosan acts by inhibiting one of the highly conserved enzymes (enoyl-ACP reductase, or FabI) of bacterial fatty-acid biosynthesis. Several key pathogenic bacteria do not have FabI. This study described a Triclosan resistance flavoprotein, FabK such as *Streptococcus pneumonia*, which can cause pneumonia or the infection that causes meningitis. Richard J. Heath & Charles O. Rock, *Nature Journal*, No. 406, pp. 145-146, 7/13/00.

26. Defendant Dial's advertising and messaging fails to mention and/or warn Plaintiff that repeated use of Dial Complete may cause her to develop bacteria immune to Triclosan.

27. The Journal of the Annual Meeting of the American Medical Association in 2000

included the following:

Conclusions. The use of common antimicrobials [i.e. Triclosan] for which acquired resistance has been demonstrated in bacteria as ingredients in consumer products should be discontinued, unless data emerge to conclusively show that such resistance has no impact on public health and that such products are effective at preventing infection. Scientific research on the issue of antimicrobial resistance must continue to elucidate gaps in knowledge, particularly with respect to the use of common antimicrobials as ingredients in consumer products and its impact on the major public health problem of antibiotic resistance.

28. In 2010 the AMA voted to retain this recommendation as still relevant.

29. On March 20, 2001 Defendant received Patent No. US 6,204,230: *An antibacterial composition that has a 99% reduction in Gram positive and Gram negative bacteria.* According to the patent application the composition including Triclosan was tested against only four bacteria, nowhere near 99% of the bacteria that is known to exist.

30. In March 2004, a study published in the *American Journal of Infection Control* concluded that, after testing the efficacy of 14 different hand hygiene agents including a hand wash with 1% Triclosan, washing with plain soap and water was **more effective** than Triclosan after one wash. Sickert-Bennett, Weber, Gergen-Teague, Sobsey, Samsa, Rutala. *American Journal of Infection Control*; pp. 67-77.

31. An August 2004 study published in *Antimicrobial Agents and Chemotherapy* collected hand cultures in houses using liquid hand soap containing 0.2% Triclosan (Dial Complete contains 0.2% Triclosan) to observe the presence of bacteria. The study found that little evidence supported the notion that 0.2% Triclosan soap affords any benefit in the reduction of infectious symptoms, bacterial counts, or types of bacteria on the hands of individuals within the household setting in the developed world.

32. In reviewing 27 studies conducted over the past 30 years, scientists from the University of Michigan, Columbia University, and Tufts University determined that soaps

containing added ingredients such as Triclosan in liquid soap and Triclocarban in bar soap do not show a benefit above and beyond plain soap in the consumer environment. The scientists concluded that “[t]he lack of an additional health benefit associated with the use of Triclosan-containing consumer soaps over regular soap, coupled with laboratory data demonstrating potential risk of selecting for drug resistance, warrants further evaluation by the government.” (Allison Aiello, *Consumer Antibacterial Soaps: Effective or Just Risky?* Clinical Infectious Diseases 2007; 45; S137-47).

33. In 2005, the FDA concluded that antimicrobial soaps and sanitizers do not reduce the risk of illness and infection in the home. The Canadian Pediatric Society and the American Medical Association have concluded similarly.

34. In an April 8, 2010 “Consumer Update”, the FDA stated that it does not have evidence that Triclosan-containing antibacterial soaps and body washes provide any extra health benefit over soap and water alone.

35. Despite all evidence to the contrary, Dial continues to aggressively advertise Dial Complete as having substantial health benefits and being more effective in its use than ordinary soap and water. This aggressive advertisement containing these deceptive, unfair, misleading, and unconscionable statements effectively induced millions of consumers in the U.S. to purchase Dial Complete in hopes of realizing these false gains. These consumers exchange their money for a product that they were misled by Dial into purchasing for more money than plain soap. This was Dial’s intention, and the deceptive, misleading, unfair, and unconscionable advertisements and messages were the means by which Dial sought to achieve its end: persuading consumers to purchase Dial Complete at a price premium compared to ordinary soap.

Plaintiff’s Reliance

36. At all times relevant, Plaintiff heard, saw and relied upon various Dial on

product claims, promotions, commercials and advertisements for Dial Complete in making the decision to purchase said products.

37. In reliance on the false, unfair, deceptive and/or unconscionable and unfair promotional, label and advertising claims Plaintiff purchased Dial Complete. However, unbeknownst to Plaintiff at the time of purchase, there was and still is no reasonable basis in fact or substantiation for Dial's claims that Dial Complete "kills 99.99% of germs, is the "#1 Doctor Recommended" liquid hand wash, "kills more germs than any other liquid hand soap, is "over 1,000 times more effective at killing disease-causing germs than other antibacterial liquid hand soaps", and is "over 10x more effective at killing disease-causing germs than ordinary liquid soaps."

38. Defendant's false statements of product quality and effectiveness would cause a reasonable person to believe such statements, and did, in fact, cause the Plaintiff to believe and rely upon such statements in making the decision to purchase Dial Complete.

39. Plaintiff specifically relied on Defendant Dial's false, unfair, deceptive, and/or unconscionable claim that Dial Complete "kills 99.99% of germs, is the "#1 Doctor Recommended" liquid hand wash, "kills more germs than any other liquid hand soap, is "over 1,000 times more effective at killing disease-causing germs than other antibacterial liquid hand soaps", and is "over 10x more effective at killing disease-causing germs than ordinary liquid soaps." But for the false, misleading, deceptive, unfair and unconscionable statement, Plaintiff would not have purchased Dial Complete at a price premium, but instead, purchased the less expensive ordinary soap.

40. Because Plaintiff relied upon the false, misleading, deceptive, unfair and unconscionable claims made by the Defendant, Plaintiff has been damaged in that she purchased Dial Complete and has lost the money she spent purchasing such products, including paying a price premium, while being misled about the Product benefits and

she either would not have purchased such products or would not have purchased them for the price that she paid but for her belief in their health benefits as advertised and claimed by Dial.

CLASS ACTION ALLEGATIONS

41. Plaintiff seeks to represent the Class defined below or class or classes further refined by the Court.

42. Plaintiff brings the claims asserted herein on behalf of a Class defined as:

All New York residents who purchased Dial Complete products primarily for personal, family, or household use, within the statutory limitations periods applicable to the herein- alleged causes of action (including, without limitation, the period following the filing of this action). Excluded from the Class are any judicial officers presiding over this action, and Defendants, including their officers, directors and employees. ("Class").

43. Defendant's representations and omissions were material, were relied upon by Plaintiff and intended to be relied upon by the putative class, and resulted in damage to each and every member of the Class as alleged.

44. The exact number of Members in the Class identified above is not known, but it is reasonable to presume that the class is so numerous that joinder of individual Members is impracticable. Dial has sold millions of soap products, including Dial Complete soaps, using the misrepresentations complained of herein and all of these consumers are presumed to have relied upon Dial's uniform written misrepresentations concerning the efficacy of Triclosan containing antibacterial soaps and body washes.

45. There are questions of law and fact that are common to the proposed Class, including, but not limited to, the following:

- a. are the claims that Dial made and is making regarding Dial Complete false, unfair, deceptive and/or unconscionable;

- b. is Dial making claims that Dial Complete have certain performance characteristics, uses or benefits that they do not have;
- c. is Dial making claims that Dial Complete are of a particular standard, quality and/or grade, when they are not;
- d. is Dial supplying Dial Complete not in accordance with its representations;
- e. has Dial engaged in false, unfair, deceptive and/or unconscionable acts or practices in connection with a consumer transaction;
- f. did Dial know at the time the consumer transaction took place that the consumer would not receive the benefit from the consumer product that Dial was claiming the consumer would receive;
- g. did Dial know or should it have known that the representations and advertisements regarding Dial Complete were unsubstantiated, false and misleading;
- h. did Dial engage in false, unfair, deceptive and/or unconscionable advertising;
- i. did Dial use false, unfair deceptive and/or unconscionable representations in connection with the sale of goods;
- j. did Dial's representations concerning the purported supporting study cause a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods;
- k. did Dial represent that goods have a certain sponsorship, approval, characteristic, ingredient, use or benefit that they do not have;
- l. did Dial represent that goods are of a particular standard, quality or grade when they are of another;

- m. did Dial represent that the goods were available to the consumer for a reason that did not exist;
- n. did Dial advertise goods with the intent not to sell them as advertised;
- o. did Dial disparage the goods of another by false representations of fact;
- p. did the Plaintiff and the Class Members that purchased Dial Complete suffer monetary damages and, if so, what is the measure of said damages;
- q. are the Plaintiff and Class Members entitled to an award of punitive damages; and
- r. are the Plaintiff and Class Members entitled to declaratory and injunctive relief?

46. Plaintiff's claims are typical of the claims of the proposed Class. Indeed, Plaintiff's claims are identical or nearly identical to Class Member's claims.

47. Plaintiff will fairly and adequately represent and protect the interest of the proposed Class because, *inter alia*, Plaintiff's interests are not antagonistic to those of the Class, and Plaintiff has retained counsel competent and experienced in the prosecution of this type of litigation.

48. The questions of law and fact common to the Class Members, some of which are set forth above, predominate over any questions affecting only individual Class Members. Clearly, the predominate issues are whether Dial has sufficient substantiation for its claims concerning the efficacy of Dial Complete to remove 99.99% of germs through washing and whether Dial's marketing materials misrepresented the efficacy of Dial Complete at removing germs during washing. Those issues are focused on the Defendants and predominate over any questions that may arise concerning individual Class Members.

49. Adjudicating this matter as a class action is superior to other available methods for

adjudication because, *inter alia*, the expense and burden of requiring consumers to individually litigate these claims would make it impracticable or impossible for them to bring their claims.

50. This matter is manageable as a class action. At most, the effective management of this case as a class action may require one or more simple sub-classes. However, the use of sub-classes to manage class action litigation is a common practice, and this Court is very adept at the use of sub-classes to manage class action litigation.

51. Unless a class is certified, Defendant will retain monies received as a result of its conduct that were taken from Plaintiff and proposed Class Members. Unless a classwide injunction is ordered, Defendant will continue to commit the violations alleged, and the Members of the Class and the general public will continue to be misled.

52. Defendant Dial's unlawful conduct, including the unlawful acts described herein, and its continuing unlawful acts, are generally applicable to the Class as a whole making final injunctive relief appropriate.

COUNT I
VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW §§ 349 et seq.

53. Plaintiff, MICHAEL FEUER, individually and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 52 as though fully set forth herein.

54. Plaintiff and all class members are "consumers" and the transactions at issue in this Complaint constitute "trade or commerce" as defined by New York Statutes §349 respectively.

55. New York General Business Law §349, et seq. was enacted to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive or unfair acts or practices in the conduct of any trade or commerce. Defendant's actions and/or omissions as described herein violate this statute in that Defendant

misrepresented and omitted material information regarding the Product. Defendant also engaged in false advertising as set forth herein with respect to the Product in violation of this statute.

56. As a result of the wrongful conduct described herein, Plaintiff and members of the class suffered damages.

57. Plaintiff and members of the class are entitled to compensatory damages, equitable and declaratory relief, costs, and reasonable attorneys' fees.

COUNT II
VIOLATION OF NEW YORK GENERAL BUSINESS LAW §350

58. Plaintiff, MICHAEL FEUER, individually and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 52 as though fully set forth herein.

59. New York General Business Law §350-a declares it "unlawful for any person to disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement."

60. New York General Business Law §350-a defines a "misleading advertisement" as including "representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual".

61. Defendants disseminated misleading advertisements to the general public of the State of New York regarding the health benefits and effectiveness of Dial Complete in violation of Section 350-a with the intent and purpose of inducing members of the public to purchase products provided by Defendant. Indeed, at the time Defendant disseminated such misleading

advertisements, Defendant knew such advertisements to be false and intended for members of the general public, including Plaintiff and class members, to rely on such misleading advertisements.

62. Plaintiff and class members relied upon the misleading advertisements disseminated by Defendant when purchasing Dial Complete.

63. As a proximate result of Defendants' dissemination of misleading advertisements in violation of Section 350-a, Plaintiff and class members sustained injury and damage.

64. Plaintiff and class members are entitled to attorneys' fees under New York General Business Law §350-a.

65. Plaintiff and members of the class are entitled to compensatory damages, equitable and declaratory relief, costs, and reasonable attorneys' fees.

COUNT III
BREACH OF CONTRACT

66. Plaintiff, MICHAEL FEUER, individually and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 52 as though fully set forth herein.

67. Plaintiff and each member of the Class formed a contract with Defendant. The terms of that contract include the promises and affirmations of fact made by Defendant in its marketing and sales materials as described above, that became part of the basis of the bargain, and are part of a standardized contract between Plaintiff and members of the Class on the one hand, and Defendant on the other.

68. Defendant breached the terms of its sales contract with Plaintiff and members of the Class by promising to provide a Dial Complete product that conformed to the promises and affirmations of fact replete throughout Defendant's aggressive sales and marketing materials, but then failed to provide a product measuring up to these promises and affirmations of fact.

69. As a result of Defendant's breach of their contract, Plaintiff and the other members of the Class have been damaged.

COUNT IV
BREACH OF EXPRESS WARRANTY

70. Plaintiff, MICHAEL FEUER, individually and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 52 as though fully set forth herein.

71. Defendant asserts promises and affirmations of fact throughout its advertisement of Dial Complete. The Statements described in detail in the previous paragraphs were each designed to induce in Plaintiff a belief that the Dial Complete was superior in both quality and effectiveness. The specific statements and facts prevalent throughout Defendant's advertisements were more than just mere puffery; they were orchestrated to produce a reliance in Plaintiffs on these misrepresentations when deciding to purchase the Dial Complete. Moreover, these promises and affirmations of fact were not merely Defendant's opinion on its own product; rather, these promises and affirmations allegedly are the product of a scientific study and conclusive evidence. These promises and affirmations are precisely the sort that create an express warranty.

72. Plaintiff's reliance on and belief of these promises and affirmations of fact, considering the circumstances surrounding the sale, the reasonableness of the Plaintiff in believing the Defendant, and the reliance placed on Defendant's statement to Plaintiff, these promises and affirmations were intended to form part of the basis of the bargain, and thus are express warranties. Furthermore, Defendant asserts these promises and affirmations as facts, not just sales talk.

73. Dial breached the expressed warranty by failing to provide a product that conformed to its promises and affirmations; specifically, a product that kills 99.99% of bacteria, kill 99.9% of illness-causing bacteria, is over 1,000 times more effective at killing disease-causing germs

than other antibacterial liquid hand soaps, reduces transmission of diseases by 50% compared to washing with a plain soap, and otherwise prevents and protects consumers from contracting illnesses and diseases.

74. As a result of Defendant's breach of the express warranties with Plaintiff and Class members, Plaintiff and the Class members suffered damages to be determined according to proof at the time of trial.

COUNT V
UNJUST ENRICHMENT

75. Plaintiff, MICHAEL FEUER, individually and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 79 as though fully set forth herein.

76. Plaintiff argues, in the alternative to a finding of breach of contract, that it is unjust to allow Defendant to retain the profits from its deceptive, misleading, and, unlawful conduct alleged herein without providing compensation to Plaintiff and the Class Members.

77. Defendant's deceptive, misleading, and unlawful advertisements, commercials, and other media communications wrongly induced Plaintiff into purchasing Defendant's Dial Complete, the proceeds of which went unjustly to Defendant. Defendant retained the benefits of this (these) purchase(s) without compensating Plaintiff, who conferred this (these) benefits on Defendant.

78. Defendant's conduct created between Defendant and Plaintiff a quasi-contract, through which Defendant received a benefit from Plaintiff without providing compensation to Plaintiff in exchange.

79. Plaintiff sustained a loss because Plaintiff did not receive the benefit for which he paid – an antibacterial hand soap that conformed to the performance promised throughout

Defendant's advertisements, commercials, and other media communications. Defendant received a gain because it accepted payment; this gain is unjust because Defendant did not provide in exchange for the payment a product that conformed to Defendant's promises.

80. Plaintiff and the Class Members are entitled to restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all profits, benefits, and other compensation obtained by the Defendants from their deceptive, misleading, and unlawful conduct.

COUNT VI
TORTIOUS BREACH OF WARRANTY

81. Plaintiff, MICHAEL FEUER, individually and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 52 as though fully set forth herein

82. Plaintiff, by and through his undersigned counsel, individually and on behalf of all others similarly situated, and for Plaintiff's sixth cause of action in her Amended Complaint against Dial, states as follows:

83. Plaintiff restates each and every paragraph of the Amended Complaint as if fully rewritten herein.

84. At all times material, Defendants manufactured, marketed and sold Dial Complete, and represented and impliedly warranted that Dial Complete was of good merchantable quality and fit for their intended use as superior and more effective hand soaps that killed 99.99% of bacteria, kill 99.9% of illness-causing bacteria, with over 1,000 times greater effectiveness in killing disease-causing germs than other antibacterial liquid hand soaps, 50% greater effectiveness in preventing disease transmissions as compared to washing with a plain soap and water and that Dial Complete otherwise prevents or protects consumers from contracting illnesses and disease better than less expensive ordinary soap.

85. The Dial Complete was defective in design and/or formulation, in that they

were not properly made and fit for their ordinary and intended purposes as superior and more effective hand soaps the killed far more bacteria and significantly reduced rates for disease transmission as compared to washing with plain soap. Defendants in fact misrepresented the superiority and effectiveness of Dial Complete when they knew or should have known that Dial Complete did not actually provide the advantages they purported to offer.

86. At the time Plaintiff and other Class members purchased them, the Dial Complete was defective in design and/or formulation, in that they were unfit for their intended use as superior and more effective hand soaps, and Plaintiff and other Class members were directly and proximately injured as a result of Defendants' tortious breach of this warranty.

87. As a direct and proximate result of Defendants' warranty breach, Plaintiff and other members of the Class have been injured and suffered damages, in part for losses attributable to the decreased value of Dial Complete, the cost they each incurred to purchase Dial Complete, and other damages to be determined according to proof at the time of trial.

COUNT VII
NEGLIGENT DESIGN AND FAILURE TO WARN

88. Plaintiff, MICHAEL FEUER, individually and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 52 as though fully set forth herein

89. Plaintiff asserts this cause of action on his own behalf and on behalf of other members of the Class.

90. At all times material, Defendant manufactured, marketed and sold Dial Complete, and represented and impliedly warranted that Dial Complete was of good merchantable quality and fit for their intended use as superior and more effective hand soaps that killed 99.99% of bacteria, kill 99.9% of illness-causing bacteria, with over 1,000 times greater effectiveness in killing disease-causing germs than other antibacterial liquid hand soaps, and 50% greater effectiveness in

preventing disease transmissions as compared to washing with a plain soap and water.

91. At all times material, Defendant knew, or by exercise of reasonable care, should have known, that Dial Complete was defectively designed and/or formulated, in that they were not properly made and fit for their ordinary and intended purposes as superior and more effective hand soaps that killed far more bacteria and significantly reduced rates for disease transmission as compared to washing with plain soap. Defendant in fact misrepresented the superiority and effectiveness of Dial Complete when they knew or should have known that Dial Complete did not actually provide the advantages they purported to offer.

92. Defendant knew that Plaintiff and other members of the Class would likely purchase and use Dial Complete for their intended purposes as superior and more effective hand soaps that offered increased health benefits, and it was therefore highly foreseeable that Plaintiff and other Class members would wrongfully incur expenses and other costs and damages as the result of their purchasing and using the defectively designed and/or formulated Dial Complete.

93. At the time Defendant formulated, manufactured, distributed and/or sold Dial Complete, they owed a non-delegable duty to persons like Plaintiff and other members of the Class to exercise ordinary and reasonable care to properly design and formulate Dial Complete, and owed a continuing duty to warn Plaintiff and other Class members about design/formulation defects that made Dial Complete fail to perform as intended in reducing bacterial health risks, and exposed purchasers to the risk of incurring unnecessary cost and other financial disadvantage.

94. Defendant had a pre-sale duty to warn Plaintiff and other potential purchasers that Dial Complete did not, in fact, diminish bacterial health risks and failed to provide benefits the ordinary consumer would expect when using Dial Complete in their intended and reasonably foreseeable purposes.

95. In fact, any alleged health benefits that Dial Complete killed more bacteria and reduced disease transmission were outweighed by the inherent risks that Plaintiff and other Class members would falsely believe that Dial Complete provided superior protection against disease

causing bacteria, and thereby incur unnecessary and unjustified costs to purchase those products.

96. Defendant failed to appropriately and reasonably design and formulate Dial Complete prior to marketing and selling them to Plaintiff and other Class members, and thereby recklessly, carelessly and negligently breached their duties to Plaintiff and other members of the Class.

97. Defendant failed to warn Plaintiff that repeated use of Dial Complete may cause bacteria develop immunity to Triclosan.

98. As a direct and proximate result of Defendants recklessness, carelessness, and negligence, Plaintiff and other members of the Class have been injured and suffered damages, in part for losses attributable to the decreased value of Dial Complete, the cost they each incurred to purchase Dial Complete, and other damages to be determined according to proof at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, MICHAEL FEUER, individually and on behalf of the proposed class, prays for the Court to:

A. Enter an order certifying a class action pursuant to Federal Rules Civil Procedure Rule 23 (a), (b) (2) and (b)(3) consisting of the class defined herein and directing that appropriate notice to class members be delivered;

B. Designate Plaintiff as representative of the proposed class and designate his counsel as class counsel;

C. Enter judgment in favor of Plaintiff and the class and against Defendant THE DIAL CORPORATION;

D. Award Plaintiff and the class members' restitution, disgorgement, actual, statutory and punitive damages, and attorneys' fees and costs, including pre-judgment and post-judgment interest thereon;


E. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

F. Provide such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff, MICHAEL FEUER, individually and on behalf of the Plaintiff Class Members,
hereby demands a trial by jury as to all issues so triable

DATED: May 5, 2011

By: 
Fred R. Rosenthal (FRR4528)
PARKER WAICHMAN ALONSO LLP
6 Harbor Park Drive
Port Washington, New York 11050
Telephone: (516) 466-6500
Facsimile: (516) 466-6665
Email: froenthal@yourlawyer.com

JS 44 (Rev. 12/07)

SUMMONS ISSUED COVER SHEET

MAY 25 2011

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MICHAEL FEUER, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Nassau
(EXCEPT IN U.S. PLAINTIFF CASES)

11 2205

(c) Attorney's (Firm Name, Address, and Telephone Number)

Parker Walchman Alonso LLP, 6 Harbor Park Drive
Port Washington, NY 11050
516-486-6500

DEFENDANTS

BROOKLYN OFFICE

THE DIAL CORPORATION, an Arizona Corporation,

County of Residence of First Listed Defendant Maricopa
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

WEXLER, J. LINDSAY, M.J.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(d)

Brief description of cause:
Class action based on false, misleading & deceptive advertising & marketing by Dial

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

05/05/2011

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE Wexler MAG. JUDGE Lindsay

2205

ARBITRATION CERTIFICATION

I, Fred R. Rosenthal, counsel for Plaintiff do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Henkel AG & Co.

RELATED CASE STATEMENT (SECTION VIII)

All cases that are arguably related pursuant to Division of Business Rule 50.3.1 should be listed in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No

2.) If you answered "no" above:

a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes

b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes [checked] No []

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes [] (If yes, please explain) No [checked]

Please provide your E-MAIL address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court. (This information must be provided pursuant to local rule 11.1(b) of the civil rules).

Attorney Bar Code: 4528

E-MAIL Address: froenthal@yourlawyer.com

Electronic filing procedures were adopted by the Court in Administrative Order No. 97-12, "In re: Electronic Filing Procedures (ECF)." Electronic filing became mandatory in Administrative Order 2004-08, "In re: Electronic Case Filing." Electronic service of all papers is now routine.

I certify the accuracy of all information provided above.

Signature: [Handwritten Signature]