

2. Thread count is the number of threads in a square inch of cotton. It is supposed to be an objective measure of the number of threads per square inch of fabric. There is a universal expectation that the higher the thread count, the softer and more luxurious the fabric.

3. Plaintiff and the members of the Class are consumers residing throughout the United States who purchased bed linens from BBB on its website, bedbathandbeyond.com, where the website and the packaging stated that the linens have a thread count significantly in excess of the linens' actual thread count.

4. To create the impression that the Company's store brand bed linens are of better quality and are more affordable than bed linens manufactured by other brands, Defendant violated the industry standard for counting threads and guidelines established by ASTM International and the United States Federal Trade Commission ("FTC") for reporting thread count.

5. Defendant has repeatedly misrepresented the thread count of its store brand linens to Plaintiff and members of the Class on its website.

6. By reason of the above-alleged facts, Plaintiff and the Class have sustained damages in an amount to be proven at trial.

7. This Complaint consists of one Count, alleging a violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et. seq.* Plaintiff seeks all relief permitted by law including, but not limited to, injunctive relief, damages, restitution, disgorgement, interest, attorneys' fees, and expenses.

JURISDICITON AND VENUE

8. This Court has subject-matter jurisdiction over this class action pursuant to the Class Action Fairness Act of 2005, which amended 28 U.S.C. §1332 to add a new subsection (d)

conferring federal jurisdiction over class actions where, as here, “any member of a class of plaintiffs is a citizen of a state different from any defendant and the aggregated amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.”

9. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendant resides, transacts business, or is found within this District, and a substantial part of the events giving rise to Plaintiffs claims arose here.

10. On the “Legal” page of BBB’s website, under the “Jurisdiction” subsection, the Company acknowledged that it maintains its website in New Jersey by stating, “Bed Bath & Beyond controls and operates its Web site from its headquarters in Union, New Jersey, in the United States of America.”

11. Also on the “Legal” page of the website, BBB declares the following “choice of law” provision: “These terms and conditions and the agreement they create, shall be governed by and interpreted according to the laws of the State of New Jersey (without applying the State’s conflict-of-law principles). Bed Bath and Beyond reserves the right to bring any civil action in New Jersey, arising from your violation of the terms and conditions of this Agreement.”

PARTIES

12. Plaintiff, Joe Solo, is an individual who purchased bed linens from BBB on its website, bedbathandbeyond.com. Plaintiff is a resident of California.

13. Defendant, Bed Bath and Beyond, Inc. and its subsidiaries, operate a chain of stores throughout the United States and Puerto Rico. Defendant’s stores offer domestic merchandise and home furnishings, including bed linens, giftware, household items, and health and beauty care items. As of May 28, 2005, the company operated a total of 732 stores. Bed Bath & Beyond, Inc. was founded in 1971. The company is headquartered in Union, New Jersey.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of the Class, consisting of all persons or entities who purchased store brand bed linens on BBB's website, www.badbathandbeyond.com, which bed linens were advertised on BBB's website and/or packaged as indicating thread counts in excess of the actual thread counts of the bed linens purchased. Excluded from the Class are Defendant, the officers and directors of the Company at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant's have or had a controlling interest.

15. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is presently unknown to Plaintiff, and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the Class geographically dispersed throughout the United States.

16. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et. seq.*

17. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action litigation.

18. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et. seq.* was violated by Defendant's acts and omissions as alleged herein;

(b) Whether Defendant's marketing of bed linens on its website, www.bedbathandbeyond.com, during the Class Period misrepresented the thread count of bed linens made available for sale on its website;

(c) To what extent the members of the Class have sustained damages and the proper measure of damages.

19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this class action.

SUBSTANTIVE ALLEGATIONS

20. Defendant, BBB, and its subsidiaries operate a chain of stores throughout the United States and Puerto Rico. Its stores offer domestic merchandise and home furnishings, including bed linens, giftware, household items, and health and beauty care items. As of May 28, 2005, the company operated a total of 732 stores. Bed Bath & Beyond, Inc. was founded in 1971. The company is headquartered in Union, New Jersey.

21. BBB maintains a website, www.bedbathandbeyond.com. This website allows consumers all over the United States to shop for and to purchase goods sold by BBB.

22. One of the menus listed on the Home page of the website is for "Bedding" and one of the sub-Menus is "Sheets." When one clicks on "Solid" sheets, 58 different bed linen items are listed for sale.

23. Some of the bed linens listed for sale are manufactured by others and available in stores other than BBB. For example, one item for sale is listed as “Sateen Extra Deep Sheet Set by Wamsutta, 100% Combed Egyptian Cotton, 500 Thread Count.” This item sells for \$229.99 for a King sized sheet set. This item is available for sale on www.badbathbeyond.com, in BBB stores, and in stores of the Company’s competitors.

24. Some of the bed linens listed for sale, however, are only available at BBB and on its website. Many of these items are designated on the website with the moniker “Exclusively ours.” One example is a bed linen set listed as “Exclusively ours, All Natural Sheet Sets, 100% Cotton, 1000 Thread Count.” BBB sells this King sized bed linen set for \$149.99.

25. Thus, on its website, BBB offers bed linens with a reported 1,000 thread count which are available exclusively from BBB, for 65% of the price of bed linens made by other manufacturers with only a 500 thread count.

26. On its website, BBB touts the importance of “thread count.” On a page captioned “how to choose”, BBB states: “[t]hread count is the most important place to start. Thread count is the number of threads per square inch of fabric. Assuming you are looking for the softest and most durable sheet, the higher thread count will always be the best. Look for it to be at least 200 or higher.”

27. For decades, the common practice in the United States textile bedding industry has been to count thread, or yarns, as one yarn, regardless of whether the yarn was a single ply or multi-ply yarn. A multi-ply yarn is one yarn that has been created by twisting two or more yarns together.

28. ASTM International, an international standards writing organization, addressed the thread count issue in standard D3775-03a, stating that “ends” and “picks” are to be counted as single units regardless of whether they are comprised of single or plied yarns.

29. As reported in the April 2006 edition of *Good Housekeeping* magazine, tests on the sheets sold exclusively by BBB showed that the reported thread counts were significantly exaggerated:

Did you recently buy bedding from Bed Bath & Beyond, Linens ‘n Things, Linen Source, or Walmart.com? If so, you may be in for a surprise. GH Institute tests found that some brands sold exclusively at these retailers carry exaggerated thread counts (the number of threads per square inch of fabric). Of the eight brands we tested, only one delivered the count it advertised: JCPenney Home Collection.

Our textile experts got suspicious because of the prices. High thread count indicates that a sheet is exceptionally soft and luxurious, which usually means it’s also expensive – but these brands were going for as little as \$149 for a queen-size set. (The JCPenney line, which did have the 600 count it claimed, was only \$110 for a queen set). How much did the others exaggerate? Bed Bath & Beyond’s Synergy brand boasts a thread count of 1,000 – but our tests found only 368. (All results were confirmed by an outside lab.) Other offenders: Royal Heritage, Interiors Sunham Home Fashions, Hotel Fine Linens, The Grand, Distinctive Home and Regency Collection.

30. On information and belief, BBB has inflated the thread count of the bed linens it offers on an exclusive basis by counting each “ply” of a thread of yarn as a separate thread. This has the effect of doubling, tripling, or even quadrupling the actual thread count.

31. The misleading representation of thread count, as made by BBB on its website, was brought to the attention of the FTC. In an opinion dated August 2, 2005, the FTC opined:

“A representation about thread count, like other objective, material claims about a product, must be supported by a ‘reasonable basis.’ In determining what constitutes a reasonable

basis for claims, we consider what experts in the field believe is appropriate, including whether there are relevant consensus based test procedures, such as an ASTM test procedure, or other widely accepted industry practices that apply to the matter. If so, we give such procedures or practices great weight in determining whether the advertiser has met its substantiation burden.

“Based upon the ASTM standard, as well as the information you have provided about standard industry practices with regard to disclosing thread count, **we believe that consumers could be deceived or misled by the practice of stating an inflated thread count, achieved by multiplying the actual count by the number of plies within the yarn.** A possible non-deceptive way to disclose both the thread count and the yarn ply would be to state, for example, ‘300 thread count, 2 ply yarn.’ A representation of ‘600 thread count’ for this same product **would likely mislead consumers about the quality of the product being purchased.**” (emphasis added)

32. Notwithstanding industry practice, ASTM International’s standard D3775-03a, the FTC’s opinion, and as demonstrated by the *Good Housekeeping* study, BBB advertises its thread count based on a number calculated by multiplying the actual thread count by the number of plies within the yarn.

33. This practice is designed to, and does in fact, mislead consumers.

COUNT I

VIOLATION OF NEW JERSEY’S CONSUMER FRAUD ACT

34. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in full herein.

35. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-2 (2006) provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, [sic] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any

person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice...

36. Defendant's business practices of advertising, marketing and selling bed linens on bedbathandbeyond.com while misrepresenting and overstating the thread count of their bed linens, when in fact, the actual thread count of the bed linens is less than as represented by Defendant, constitutes the use by Defendant of unconscionable commercial practices, deception, fraud, false promises and misrepresentations and, thus, constitutes multiple, separate violations of N.J. Stat. Ann. § 56:8-2 (2006).

37. Defendant's business practice of advertising, marketing, and selling their bed linens while misrepresenting the thread count of such products, and while knowingly concealing, suppressing or omitting material facts, including the true, lower thread count of the bed linens, with the intent that others, including Plaintiff and members of the Class, rely upon such concealment, suppression or omission in connection with the sale or advertisement of bed linens, constitutes multiple, separate violations of N.J. Stat. Ann. § 56:8-2 (2006).

38. In advertising, marketing and selling bed linens on bedbathandbeyond.com, Defendant made the material misrepresentations and omissions set forth in this Complaint on Defendant's website and on the labeling of the product shipped to consumers and in advertisements and other promotional materials disseminated by or on behalf of Defendant in New Jersey and elsewhere.

39. Defendant's unlawful conduct set forth in this Complaint has the capacity to mislead or deceive consumers, including Plaintiff and members of the Class.

40. Defendant's misrepresentations and omissions set forth in this Complaint are material in that they relate to matters which reasonable persons, including Plaintiff and members

of the Class, would attach importance to in their purchasing decisions or conduct regarding the purchase of bed linens from Defendant.

41. As a result of Defendant's practices as described above, Plaintiff and Class have suffered an ascertainable loss of money or property.

42. Plaintiff and members of the Class seek damages, treble damages, injunctive relief and other appropriate legal or equitable relief, including restitution, filing fees, costs and attorneys' fees, pursuant to N.J. Stat. Ann. § 56:8-19 (2006), and a refund of all monies acquired by Defendant by means of Defendant's unlawful conduct as set forth in this Complaint, pursuant to N.J. Stat. Ann. §§ 56:8-2.11 and 56:8-2.12 (2006).

43. Defendant engaged in the unlawful acts and practices set forth in this Complaint wantonly and with willful disregard for the rights and interests of Plaintiff and members of the Class.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. For an order declaring this a class action;
- B. For declaratory relief finding that Defendant has engaged in unfair, unlawful, fraudulent, or misleading business acts or practices in violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-2 (2006);
- C. For a temporary restraining order and a preliminary and permanent injunction enjoining Defendant and its officers, directors, agents, distributors, servants, employees, attorneys, and all others in active concert or participation with Defendant during the pendency of this action and permanently thereafter from engaging in the false advertising and marketing campaign described herein;
- D. For restitution to all persons from whom Defendant unlawfully, unfairly, or fraudulently took money, including accrued interest, in addition to other unjust enrichment of Defendant, in an amount to be proven at trial, pursuant to N.J. Stat. Ann § 56:8-11 (2006);

E. For damages sustained by Plaintiff and Class members as a result of Defendant's violations of the New Jersey Consumer Fraud Act, including treble damages pursuant to N.J. Stat. Ann § 56:8-19;

F. For interest at the maximum rate allowed by law;

G. For costs of suit;

H. For Plaintiff to be awarded attorneys' fees and all litigation expenses pursuant to N.J. Stat. Ann § 56:8-19; and

I. For such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

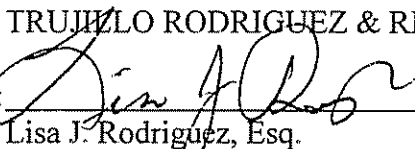
Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: April 20, 2006

Respectfully submitted,

TRUJILLO RODRIGUEZ & RICHARDS, LLC.

By: _____


Lisa J. Rodriguez, Esq.
8 Kings Highway West
Haddonfield, New Jersey 08033
(856) 795-9002

Daniel R. Karon, Esq.
GOLDMAN SCARLATO & KARON, P.C.
55 Public Square, Suite 1500
Cleveland, Ohio 44113
(216) 622-1851

Mark S. Goldman, Esq.
Brian D. Penny, Esq.
GOLDMAN SCARLATO & KARON, P.C.
101 West Elm Street
Suite 360
Conshohocken, PA 19428
(484) 342-0700

Stacey Mills, Esq.
Bryan L. Crawford, Esq.
Brian L. Williams, Esq.
HEINS MILLS & OLSON, P.L.C.
3550 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 338-4605

Garrett Bradley, Esq.
THORNTON & NAUMES, LLP
100 Summer Street
30th Floor
Boston, MA 02110
(617) 720-1333

Attorneys for Plaintiff