

# Burt's Bees Baby Formula Buyers Say Maker Overstates Yield

By Donald Morrison

Law360 (September 7, 2022, 6:02 PM EDT) -- Burt's Bees baby formula buyers filed a proposed class action in California federal court alleging the product's maker Perrigo Co. falsely advertises its organic infant formula by overstating the number of bottles a can of the powdered product can produce when mixed with water.



A consumer filed a proposed class action against Perrigo Co., which manufactures and sells Burt's Bees line of powdered baby formulas, claiming the company is misleading consumers by overstating the amount of baby formula the product makes after being mixed with water. (Court Documents)

In a 17-page complaint filed Tuesday against Perrigo, which produces the formula under a license with Burt's Bees Product Co., customer Chelsea Frederick said that the Burt's Bees Infant Milk she bought on Amazon in June 2022 advertised itself as making 63 four-ounce bottles of baby formula. But she alleges the canister's labeling oversold its contents, and that the powdered formula inside only produces 56 bottles.

"Burt's Bees formulas do not yield the number of bottles promised when following the preparation instructions provided and set forth on the product's back label," the suit states. "Burt's Bees formulas were under-filled, such that plaintiff

received a different and substantially lesser value — one with a higher cost — than Perrigo represented."

Burt's Bees Products Co. is not named as a defendant in the suit.

Perrigo's Burt's Bees line of baby formulas comes in powder form and includes the brands "Ultra Gentle," "Infant Milk," and "Sensitive," each of which feature a "feeding chart" on the label that acts as mixing instructions and provides the amount of formula it makes in ounces. Frederick claims the products contain at least 12% less baby formula than what's being advertised after mixing.

"Consumers can make only approximately 88% of the bottles Perrigo promised," the suit states. "Because the Burt's Bees formulas are typically used over the course of several days or weeks, consumers are unlikely to notice the discrepancy through normal use."

Frederick claims that customers can easily miss Perrigo's false advertising because the instant formula is only needed for the first year of a child's life, after which most consumers are no longer in the market for baby formula.

The complaint also states that larger packages of Burt's Bees formulas similarly feature faulty "feeding charts" that misrepresent the amount of formula the product produces.

The suit makes claims for unjust enrichment, intentional and negligent misrepresentation, breach of express warranty and violations of the California Consumers Legal Remedies Act, the False Advertising Law and the Unfair Competition Law.

It seeks to represent people who purchased Burt's Bees "Ultra Gentle," "Infant Milk," or "Sensitive" powder infant formulas in packaging with a label stating that the product makes any specified number of bottles after Sept. 6, 2018.

Frederick is seeking an injunction barring Perrigo from engaging in the purported false advertising, a corrective ad campaign, a recall of the products at issue, disgorgement of profits, restitution, other damages and attorney fees.

Representatives for the proposed class, Perrigo and Burt's Bees did not immediately respond to requests for comment on Wednesday.

Frederick is represented by Caroline S. Emhardt, Jack Fitzgerald, Melanie Rae Persinger, Paul K. Joseph and Trevor Matthew Flynn of Fitzgerald Joseph LLP.

Counsel information for Perrigo was not immediately available.

The case is Chelsea Frederick v. Perrigo Company, case number 3:22-cv-01333, in the U.S. District Court for the Southern District of California.

--Editing by JoVona Taylor.