

Babyganics To Pay \$2.2M To End 'Organic' Mislabeling Suit

By **Dorothy Atkins**

Law360, San Francisco (August 7, 2017, 1:24 PM EDT) -- The maker of the Babyganics line of popular baby sunscreen and cleaning products has agreed to pay more than \$2.2 million to settle a putative class action claiming it falsely advertised its products as "organic," according to court documents filed in New York federal court Friday.

Under the deal, KAS Direct LLC would provide 100 percent cash refunds to customers who provide a proof of purchase of their Babyganics products, according to an unopposed motion for preliminary settlement approval. Customers without a proof of purchase would receive up to a 50 percent refund. The products at issue generally cost between \$4 and \$50, according to the motion.

"Such a sum hardly justifies the time and expense of civil litigation, attorneys' fees and experts," the motion says.

Meanwhile, class attorneys said they plan to request up to \$733,333 from the settlement fund for fees. In addition to monetary relief, the company agreed to change its labels to clarify which ingredients are organic and which are not. It also agreed to remove the word "natural" from the front label on all of its products and to clarify what "mineral-based" means on its website.

If approved, the deal would mark an end to a putative class action launched by lead plaintiffs Tanya Mayhew and Tanveer Alibhai **in September**. The suit alleges they bought KAS' Babyganics products — including its mineral-based sunscreen lotion, which is the No. 1 best-seller in baby sun protection on Amazon — based on their organic and mineral-based labels. But they later discovered that many of the company's products contain multiple synthetic ingredients, according to the suit.

For example, Babyganics' sunscreens are advertised as organic and mineral-based, but they contain glycerin and butylene glycol, which are synthetic ingredients that aren't approved for use in products labeled as organic, the complaint says.

The suit claimed that the "mineral-based" label is also misleading because the products aren't actually mineral sunscreens, which use physical sunblocks such as titanium dioxide and zinc oxide that sit on top of the skin and deflect UV rays, the complaint says. Instead, the company's products use a combination of physical and chemical sunscreens, which go through the skin and absorb UV radiation, according to the complaint.

The suit sought to certify a nationwide class and state subclasses, and alleged the mislabeling constituted fraudulent, unfair, unlawful and deceptive business practices, in violation of California and New York laws.

KAS Direct declined to comment Monday. Counsel for the consumers didn't immediately respond to requests for comment Monday.

The consumers are represented by Jason P. Sultzer of the Sultzer Law Group PC, Charles J. LaDuca and Katherine Van Dyck of Cuneo Gilbert & LaDuca LLP, and Melissa W. Wolchansky and Amy E. Boyle of Halunen Law.

KAS Direct is represented by Hannah Y. Chanoine of O'Melveny & Myers LLP.

The case is Tanya Mayhew et al. v. KAS Direct LLC, case number 7:16-cv-06981, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Shayna Posses. Editing by Orlando Lorenzo.

Update: This story has been updated to indicate that KAS Direct declined to comment.