

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

IN RE DIAL COMPLETE MARKETING AND SALES PRACTICES LITIGATION

Case No. 11-md-2263-SM

**REPORT
OF
STEFAN BOEDEKER**

December 28, 2018

1. I, Stefan Boedeker, a Managing Director at the Berkeley Research Group, LLC (“BRG”), was retained by counsel for Plaintiffs in *IN RE DIAL COMPLETE MARKETING AND SALES PRACTICES LITIGATION*, to develop an economic loss model to quantify the damages suffered by the proposed class attributable to the purchase of a product that does not have the attributes as advertised. Specifically, I was retained to develop and perform a market research study to assess the value that relevant customers place on a liquid hand soap product feature – specifically, the claim “kills 99.99% of germs” (the “Claim”). I was further asked to use the results of the market research study and other data to develop an econometric/statistical model to estimate class-wide damages suffered by purchasers of Dial Complete products (the “Product”) with the false claim due to not receiving the germ-killing feature that they paid for.

2. I submitted an Expert Report on June 20, 2016 and a Rebuttal Report on October 25, 2016. I was deposed on August 30, 2016 and provided testimony at the class certification hearing in the United States District Court, District of New Hampshire on November 16, 2016.

3. The results of my extensive economic loss calculations indicated that the median economic loss to the consumers who had purchased Dial’s liquid hand soap products that claim to provide – but do not actually provide – a 99.99% germ-killing feature was 10.89%¹ of the purchase price.

4. It is my understanding that the parties agreed to the following scope of the injunctive relief:

1.1 Rule 23(b)(2) Component.

1.1.1 Subject to the terms and conditions of this Settlement Agreement, the Parties agree that they will jointly move the Court to enter, as part of the Final Approval Order and Judgment, the following injunctive relief providing that:

¹ Over 900 market simulations indicated a range for the economic loss between 7% and 19% of the purchase price (See Boedeker Rebuttal Report).

1.1.1.1 Dial shall not reintroduce triclosan as an active ingredient in Dial Complete.

1.1.1.2 Dial shall not use an advertising or labeling claim that Dial Complete “Kills 99.99%* of Germs” as that product is currently formulated.

1.1.1.3 The terms and requirements of the Injunctive Relief shall expire on the earlier of the following dates: (a) five years following the Final Effective Date; or (b) the date upon which there are changes to any applicable statute, regulation, or other law that Defendant reasonably believes would require a modification to the labeling and marketing of Dial Complete in its current formulation required by the Injunctive Relief provisions in order to comply with the applicable statute, regulation, or law.

1.1.1.4 This Settlement Agreement does not preclude Dial from making further changes to the advertising and marketing of Dial Complete as Dial sees fit, provided that those changes neither contravene nor undermine the provisions of this Agreement.

It is my understanding that by agreeing to all of the foregoing Dial changed the product and the packaging. I was asked to quantify the monetary value of the foregoing agreement.

5. The change of Dial’s practices in marketing the Product effectively ended the actions which caused the economic harm to the consumers who purchased the Product with the false claim due to not receiving the germ-killing feature that they paid for. Based on data produced during discovery and utilized by defense expert Dr. Ugone, I performed computations to quantify the implicit monetary value of the injunctive relief.

6. Dr. Ugone provided complete revenue and units sold data for a four-year period for the Products who were marketed with the Claim in the support materials accompanying Exhibits 16-19 to his expert report dated September 19, 2016.

7. The following Table 1 shows the computations I performed combining results of my economic loss computations to actual sales figures:

Table 1

| | Revenue | Total Value over 5 Years - Minimum Loss (in \$) | Total Value over 5 Years - Median Loss (in \$) |
|---------|---------|---|--|
| Year 1 | | 24,154,759.55 | 37,577,904.50 |
| Year 2 | | 24,479,991.63 | 38,083,872.69 |
| Year 3 | | 24,993,516.52 | 38,882,770.71 |
| Year 4 | | 26,295,818.33 | 40,908,780.24 |
| Average | | 24,981,021.51 | 38,863,332.03 |

7% Minimum Loss

11% Median Loss

8. The average annual sales revenue over the four-year time period analyzed by Dr. Ugone was [REDACTED]. For my calculations of the monetary value of the injunctive relief I used this value. I further utilized the minimum economic loss value of 7% of the purchase price rather than the median of 10.89%. Based on the additional assumption that price increases will equal changes of the CPI in the next five years agreed on in the injunctive relief.

9. In my opinion, utilizing the results of my computations presented in Table 1, a conservative estimate of the monetary value of the injunctive relief over a five-year period can be obtained from the minimum economic loss based on my economic loss model and the average sales revenue derived from the Product marketed with the false and misleading Claim. This number can be found in the bottom row (“Average”) of the second column from the right (Total Value over 5 Years – Minimum Loss (in\$)) in Table 1 above: \$24,981,021.51 or approximately \$25 Million is a conservative

estimate for the monetary value of the injunctive relief given my economic loss calculations and the additional sales and revenue data that I reviewed.

Respectfully submitted on December 28, 2018

A handwritten signature in black ink, appearing to read 'Stefan Boedeker', written in a cursive style.

Stefan Boedeker