

Contact:

Jonathan K. Tycko
Tycko & Zavareei LLP
(202) 973-0900

**Information About The Airborne Health, Inc. Settlement, And Other Ongoing
Litigation Alleging False And Deceptive Marketing Of Airborne®**

March 4, 2008-- Today, a settlement entered into by Airborne Health, Inc. – the maker of the Airborne® brand “effervescent health formula” – became widely publicized. In that settlement, Airborne Health, Inc. agreed to pay approximately \$23.3 million to settle a class action lawsuit filed in California. The settlement has been reported in the national media as a victory for consumers, and a blow to Airborne Health, Inc.

But there is more to the story. Airborne Health, Inc. continues to face other litigation from consumers, including a lawsuit pending in federal court in New Jersey titled *Geis, et al. v. Airborne Health, Inc., et al.* The plaintiffs in *Geis* are represented by a group of consumer rights attorneys, including Jonathan K. Tycko at the law firm of Tycko & Zavareei LLP.

Airborne Health, Inc. faces continued litigation, including the *Geis* case, because the California settlement is actually *not* a great victory for consumers. Most significantly, the settlement agreed to by the California plaintiff and his attorneys does not require Airborne Health, Inc. to actually change its advertising practices. In other words, after this settlement – which will potentially wipe out the legal claims of millions of consumers – Airborne Health, Inc. will be free to continue to engage in its highly-deceptive advertising. The California federal court – which will conduct a “fairness hearing” on June 16, 2008 – will ultimately need to decide whether that aspect of the settlement is fair and reasonable to consumers.

Although \$23.3 million sounds like a large sum of money, Airborne Health, Inc. claims that it sells approximately \$300 million worth of its product each year, and the settlement would cover anyone who purchased Airborne® since May, 2001, a period of more than six years. Accordingly, the \$23.3 million available in the California settlement will cover only a miniscule fraction of the potential consumer claims. Yet, if the settlement receives final approval by the California federal court overseeing the settlement, all of those claims will be deemed to have been “released,” meaning consumers will no longer be able to bring claims against Airborne Health, Inc. for its deceptive practices. (Consumers do have an option to “opt out” of the settlement, in which case their legal claims will be preserved.)

Moreover, Airborne Health, Inc. has agreed, as part of the settlement, not to oppose a request for attorneys’ fees of up to 25% of the settlement amount. And those attorneys’ fees, if approved by the court, will be deducted from the \$23 million settlement amount. Accordingly, the amount that will ultimately be available to cover consumer

refund claims may actually be as low as approximately \$17.5 million. Thus, if all or most of the consumers who bought Airborne® since May, 2001 make claims under the settlement, they each would receive only a tiny percentage of what they paid for the Airborne® product. The California federal court overseeing the settlement will eventually need to determine whether that amount is adequate compensation for a fraud scheme alleged to have cost consumers hundreds of millions of dollars.

Because of these serious concerns about the substance of the California settlement, the *Geis* plaintiffs and their attorneys are continuing with their litigation against Airborne. They believe the California settlement is potentially bad for consumers. And they have alleged claims against Airborne Health, Inc. that, if successful, will actually force that company to finally cease the deceptive practices alleged in the lawsuit, something the California settlement does not even try to do.

Tycko & Zavareei LLP represents the *Geis* plaintiffs with co-counsel at the law firms of Mehri & Skalet, PLLC, PinillisHalpern, LLP, and the Law Offices of David M. Wacksman, Esq., LLC.

Copies of the *Geis* complaint may be obtained from Jonathan K. Tycko at Tycko & Zavareei LLP. Mr. Tycko is also available to respond to all media inquiries concerning the Airborne Health, Inc. settlement, or concerning other ongoing litigation against Airborne Health, Inc.

###