

CAUSE NO. 08-12714

FILED
08 OCT -7 AM 8:14
GARY PITTSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

STATE OF TEXAS,

Plaintiff,

vs.

ELI LILLY AND COMPANY

Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

M-298th

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, acting by and through Attorney General GREG ABBOTT ("State"), filing Plaintiff's Original Petition complaining of and against ELI LILLY AND COMPANY ("Defendant" or "Eli Lilly"), and would respectfully show the court the following:

AUTHORITY

1. This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.21 *et seq.* ("DTPA"), upon the grounds that Defendant Eli Lilly has engaged in false, misleading or deceptive acts or practices in the course of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

PARTY DEFENDANT

2. Defendant Eli Lilly is an Indiana corporation that conducts business nationwide, including in the State of Texas; its principal place of business is Lilly Corporate Center, Indianapolis, Indiana 46285. Eli Lilly transacts business in the State of Texas by advertising,

soliciting, selling, promoting and distributing prescription drugs, including Zyprexa®, to consumers in the State of Texas and nationwide.

VENUE

3. Venue of this action lies in Dallas County pursuant to § 17.47(b) of the DTPA and is proper because Eli Lilly has done business in Dallas County.

PUBLIC INTEREST

4. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant Eli Lilly has engaged in, and will continue to engage in, the unlawful practice set forth below, Plaintiff STATE OF TEXAS has reason to believe that Eli Lilly have caused and will cause immediate and irreparable injury, loss and damage to the STATE OF TEXAS, and its citizens, and will also cause adverse effects to legitimate business enterprises which conduct their trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the STATE OF TEXAS believes and is of the opinion that these proceedings are in the public interest.

ACTS OF AGENTS

5. Whenever in this petition it is alleged that Defendant Eli Lilly did any act or thing, it is meant that Defendant performed or participated in such act or thing or that such act was performed by agents or employees of Defendant and in each instance, the agents or employees of Defendant were then authorized to and did in fact act on behalf of Defendant or otherwise acted under the guidance and direction of Eli Lilly.

TRADE AND COMMERCE

6. Defendant Eli Lilly has, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by §17.45(6) of the DTPA.

NOTICE BEFORE SUIT

7. Defendant Eli Lilly was informed in general of the alleged unlawful conduct described below from and has waived any further notice requirements.

NATURE OF CONDUCT

8. Zyprexa belongs to a class of drugs traditionally used to treat schizophrenia and commonly referred to as “atypical antipsychotics.” When these drugs were first introduced to the market in the 1990s, it was hypothesized that they might be used as long-term treatment for schizophrenia without posing the same risks as first-generation antipsychotics. More specifically, experts thought that atypical antipsychotics would be less likely to produce extrapyramidal symptoms (“EPS”) and tardive dyskinesia (“TD”).

9. While these drugs may reduce the risk of EPS and TD associated with first-generation antipsychotics, they also produce dangerous side effects, including weight gain, hyperglycemia, diabetes, cardiovascular complications, and other severe conditions. Zyprexa has been shown to pose an especially high risk of weight gain, hyperglycemia, and diabetes and these risks were not disclosed to physicians and/or consumers.

10. Eli Lilly began marketing Zyprexa to health care professionals for the treatment of schizophrenia in 1996. Since then, the Food and Drug Administration (“FDA”) has approved Zyprexa for the treatment of acute mixed or manic episodes of bipolar I disorder and for maintenance treatment in bipolar disorder.

11. In 2001, Eli Lilly began an aggressive marketing campaign called “Viva Zyprexa!” As part of that campaign, the company marketed Zyprexa for a number of uses for which it was not approved by the FDA. For example, Eli Lilly marketed Zyprexa for pediatric

use, for use at high dosage levels, for the treatment of symptoms rather than diagnosed conditions, and for the treatment and/or chemical restraint of patients suffering from dementia.

12. Through this Viva Zyprexa! campaign, and all of the company's efforts to promote Zyprexa for uses for which it was not approved by the FDA, Eli Lilly misrepresented the drug's approved uses, safety, and effectiveness.

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

13. Defendant Eli Lilly, as alleged above in paragraphs 1 through 13, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §17.46(a) of the DTPA by its promotion of Zyprexa.

14. Additionally, Defendant has violated §17.46(b) of the DTPA as follows:

- A. Causing confusion or misunderstanding as to the approval of the drug Zyprexa manufactured by Defendant, in violation of § 17.46(b)(2) of the DTPA;
- B. Representing that Defendant's drug Zyprexa has benefits which they do not have, in violation of § 17.46(b)(5) of the DTPA;
- C. Representing that Defendant's drug Zyprexa is of a particular standard, quality, or grade, if it is of another, in violation of § 17.46(b)(7) of the DTPA; and
- D. Failing to disclose that Defendant' drug Zyprexa had increased risks, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

15. Each time that Defendant violated §17.46(a) and/or (b) of the DTPA is a separate and distinct violation of these provisions of the DTPA.

INJURY TO CONSUMERS

16. By means of the foregoing unlawful acts and practices in paragraphs 1 through 15 above, Defendant has acquired money or other property from identifiable persons to whom such money or property should be restored, or who in the alternative are entitled to an award of damages.

PERMANENT INJUNCTION

17. The State alleges that by reason of the foregoing, Defendant should not continue to advertise, offer to sell, or sell its drug Zyprexa in violation of the laws of Texas. The interests of the State of Texas also require a permanent injunction to prohibit Defendant from advertising and selling its drug Zyprexa unless Defendant is in compliance with the DTPA.

18. Unless injunctive relief is granted, Defendant will continue to violate the laws of the State of Texas to irreparable injury of the State of Texas and to the general public.

PRAYER

19. WHEREFORE, Plaintiff prays that Defendant Eli Lilly be cited according to law to appear and answer herein; that after due notice and upon hearing a temporary injunction and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant their successors, assigns, officers, agents, servants, employees, and any other person in active concert or participation with Defendant from engaging in the following acts or practices:

- A. Causing confusion or misunderstanding as to the approval of the drug Zyprexa manufactured by Defendant;
- B. Representing that Defendant's drug Zyprexa has benefits which they do not have;
- C. Representing that Defendant's drug Zyprexa is of a particular standard, quality, or

grade, if they are of another; and

- D. Failing to disclose that Defendant' drug Zyprexa had increased risks, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

20. Plaintiff further prays that, upon final hearing, this Court will order Defendant Eli Lilly to pay civil penalties in favor of the STATE OF TEXAS in the amount of \$20,000.00 per violation of the DTPA pursuant to of § 17.47(c)(1) of the DTPA.

21. Plaintiff further prays that upon final hearing that his Court order Defendant Eli Lilly to restore all money or other property taken from persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages to compensate for such losses pursuant to §17.47(d) of the DTPA.

22. Plaintiff further prays that upon final hearing that this Court order Defendant Eli Lilly to pay to the STATE OF TEXAS attorney fees and costs of court pursuant to the TEX. GOVT. CODE § 402.006 (c) (Vernon 2005, Supp. 2007).

23. Plaintiff further prays that upon final hearing that this Court grant all other relief to which the STATE OF TEXAS may show itself entitled.

Respectfully submitted,

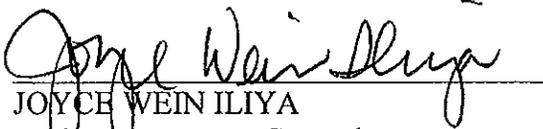
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