

FILED

2012 NOV 15 AM 8:06

CAUSE NO. DC-12-13426

GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS

**THE STATE OF TEXAS,
Plaintiff,**

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IN THE DISTRICT COURT OF _____ **DEPUTY**

VS.

DALLAS COUNTY, TEXAS,

**GLAXOSMITHKLINE LLC,
Defendant.**

132nd-K

_____ **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 GLAXOSMITHKLINE LLC ("Defendant") 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. § 17.41 et seq. ("DTPA"), upon the grounds that Defendant 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 GLAXOSMITHKLINE LLC is a Delaware corporation with a principal place of business at 1 Franklin Plaza, Philadelphia, Pennsylvania 19102.

Defendant transacts business in Texas by promoting, selling, and distributing prescription drugs.

VENUE

3. Venue for this action properly lies in Dallas County on the basis of § 17.47(b) of the DTPA because Defendants' acts and practices that violate these statutes occurred throughout Texas, including Dallas County, Texas.

PUBLIC INTEREST

4. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendant has caused and will 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 Defendant 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 Defendant.

TRADE AND COMMERCE

6. Defendant 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. Plaintiff informed Defendant herein at least seven (7) days before instituting this action of the alleged unlawful conduct of which complaint is now made.

DEFENDANT'S MARKETING OF AVANDIA

Background Information

The Basic Medicine of Diabetes

8. Approximately 18.8 million people in the United States are diagnosed with diabetes.

9. Approximately 90-95% of adults diagnosed with diabetes have type 2 diabetes.

10. Type 2 diabetes results from the body's failure to produce enough insulin and/or the inability to use insulin properly.

11. Insulin is a hormone needed to convert sugar and other food into energy.

12. Without insulin, sugar builds up in the bloodstream that cannot be used by the cells; consequently, the cells are starved for energy, causing numerous health problems.

13. Diabetes is a major cause of heart disease and stroke and is the seventh leading cause of death in the United States.

14. Since diabetics already have high cardiovascular risks, it is important that any treatment not increase these risks.

Treatment of Diabetes

15. The first line drug treatment for type 2 diabetes consists of established and inexpensive oral medications, including metformin and sulfonylureas.

16. Metformin is recognized as the “gold standard” in type 2 diabetes treatment. It reduces the amount of sugar released by the liver between meals, promotes weight loss, and reduces cholesterol and triglycerides levels. Metformin’s side effects, which include nausea and upset stomach, are minimal.

17. Sulfonylureas are another popular first line treatment. They stimulate the pancreas to produce more insulin. Sulfonylureas combine well with other diabetes drugs for maximum effect on blood sugar. Their side effects include hypoglycemia (low blood sugar) and weight gain.

18. As diabetes progresses, patients typically need additional treatment agents and/or insulin therapy.

19. Rosiglitazone, which is sold under the brand name Avandia, is one of a newer generation of diabetes drugs called thiazolidinediones (“TZDs”). Avandia and other TZDs lower blood sugar levels by sensitizing the cells to use insulin more efficiently and effectively.

20. Avandia is available in three forms: Avandia tablets, Avandamet tablets, and Avandaryl tablets, which will all collectively be referred to as Avandia throughout this Petition.

21. Avandamet tablets combine Avandia with metformin.

22. Avandaryl tablets combine Avandia with a sulfonylurea.

23. On May 25, 1999, the FDA approved Avandia for sale in the United States.

Defendant's Marketing of Avandia

24. Defendant promoted Avandia to physicians and other health care providers with false and misleading representations about Avandia's safety profile.

25. Defendant misrepresented that Avandia had a positive cholesterol profile, when in fact, GSK did not possess competent and reliable scientific evidence to substantiate the claim. GSK misrepresented that Avandia had cardiovascular benefits when, in fact, it does not, and may increase cardiovascular risks.

VIOLATIONS OF DTPA

26. Defendant, as set forth above, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading, and deceptive acts and practices declared unlawful by § 17.46 (a) and (b) of the Texas Deceptive Trade Practices-Consumer Protection Act, and violating of § 17.46 (b)(5) of the DTPA including but not limited to:

- A. Making written and oral representations about Avandia when Defendants knew the knew the written and oral representations were not true; and
- B. Representing that Avandia had the benefit of reducing cardiovascular risks when, in fact, it does not and may instead increase cardiovascular risks.

INJURY TO CONSUMERS

27. By means of the foregoing unlawful acts and practices which were producing causes of injury to the persons affected, 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.

CONTINUING VIOLATIONS

28. Defendant has violated and could continue to violate the laws as hereinabove alleged. Defendant, unless restrained by this Honorable Court, could continue to violate the laws of the State of Texas. Defendant has violated and could continue to violate the Deceptive Trade Practices-Consumer Protection Act.

PRAYER

29. WHEREFORE, PREMISES CONSIDERED, the STATE OF TEXAS prays that Defendant be cited accorded to law to appear and answer herein and that upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendant and its agents, servants, employees, representatives, subsidiaries, divisions, successors, and assigns from engaging in false, misleading, or deceptive practices.

30. The STATE OF TEXAS further prays, that upon final hearing, this Court order Defendant to pay civil penalties of not more than \$20,000.00 per violation, as provided in § 17.47(c)(1) of the DTPA.

31. The STATE OF TEXAS further prays that the Office of the Attorney General be awarded their investigative costs, court costs, reasonable attorneys' fees, expenses, and witness fees pursuant to the laws of the State of Texas including the Tex. Gov't Code Ann. § 402.006(c).

32. The STATE OF TEXAS further prays that upon final hearing that this Court grants all other relief to which the State may be justly entitled.

Respectfully submitted,

Plaintiff State of Texas

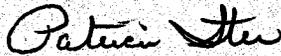
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