

DISTRICT COURT, COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	
STATE OF COLORADO, <i>ex rel.</i> JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. GLAXOSMITHKLINE LLC; and SB PHARMCO PUERTO RICO, INC.; Defendants.	COURT USE ONLY
JOHN W. SUTHERS, Attorney General JAY B. SIMONSON First Assistant Attorney General, Reg. No. 24077* 1525 Sherman Street, 7th Floor Denver, Colorado 80203 (303) 866-5079 *Counsel of Record	Case No.: Courtroom:
COMPLAINT	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. The Colorado Attorney General brings this action on behalf of the State of Colorado pursuant to the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 through 115 (2010) (“CCPA”), to enjoin and restrain the Defendants from engaging in certain deceptive and unfair business practices, as well as for statutorily-mandated civil penalties, for disgorgement, restitution, and for other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly-elected Attorney General of the State of Colorado and is authorized to enforce the CCPA under Colo. Rev. Stat. § 6-1-103. (2010)

3. Defendant, GLAXOSMITHKLINE LLC (“GSK”) is a Delaware corporation with a principal place of business at 1 Franklin Plaza, Philadelphia, Pennsylvania 19102. GSK transacts business in the state of Colorado by promoting, selling and distributing prescription drugs.

4. Defendant SB PHARMCO PUERTO RICO, INC. (“SB PHARMCO”) was a corporation organized under the laws of the Commonwealth of Puerto Rico with a principal place of business at Rd. 172, Km 9.2, Bo. Certenejas, Cidra, PR 00739. SB PharmCo was an indirect subsidiary of Glaxo Smith Kline plc, a British corporation with a principal place of business in Brentford, Middlesex, England. SB Pharmco was dissolved effective July 3, 2008 but continues to exist under operation of law for three years for purposes of litigation, prosecution, and settlement of its affairs. Together with GSK, SB Pharmco operated and managed a manufacturing facility located in Cidra, Puerto Rico. SB PharmCo engaged in business in Oregon by manufacturing prescription drugs that were sold in Oregon.

JURISDICTION AND VENUE

5. Pursuant to the CCPA, Colo. Rev. Stat. § 6-1-103 and 6-1-110(1), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

6. At all times relevant to this action, Defendants have advertised and sold its products within the City and County of Denver, Colorado, and at least a portion of the transactions involving deceptive trade practices occurred in the City and County of Denver. Accordingly, venue is proper under Colo. Rev. Stat. § 6-1-103, and Colorado Rule of Civil Procedure 98.

7. This action is timely brought pursuant to Colo. Rev. Stat. § 6-1-115 in that it is brought within three years of the date on which false, misleading, and deceptive acts or practices occurred and/or were discovered, and the series of false, misleading, and deceptive acts and practices may be continuing in nature.

PUBLIC INTEREST

8. Through deceptive marketing practices, Defendants have deceived and financially injured consumers in Colorado and throughout the United States.

9. Therefore, the Attorney General believes these legal proceedings are in the public interest and are necessary to safeguard Colorado citizens from Defendants’ unlawful business activities.

STATUTORY BACKGROUND

10. The CCPA prohibits deceptive trade practices as set forth in the statute. § 6-1-105 (2010). Violators of the CCPA are subject to fines, payment of restitution, disgorgement, and payment of attorney fees and costs necessary for the investigation and filing of this action. The

CCPA also provides broad injunctive powers to this Court to remedy and to prevent further violations.

SPECIFIC ALLEGATIONS

11. In or around January 2001, Defendants' Cidra manufacturing facility became one of their largest manufacturing facilities worldwide and a major supplier of prescription drugs to the United States. Defendants were responsible for making a complex portfolio of drugs, including pills, creams, ointments, and injectables at the Cidra facility.

12. Among other drugs manufactured at the Cidra facility, Defendants made the following drugs available for distribution to the United States: Kytril, Bactroban, Paxil CR, and Avandamet.

13. Kytril is a sterile drug used to prevent nausea and vomiting caused by cancer chemotherapy and radiation therapy.

14. Bactroban is an antibiotic ointment used to treat skin infections.

15. Paxil CR is the controlled release formulation of the popular antidepressant drug, Paxil.

16. Avandamet is a combination Type II diabetes drug.

17. When these drugs are sold consumers, there is an implied representation that they are unadulterated.

18. Between 2001 and 2004, Defendants manufactured and put into the stream of commerce certain lots of Kytril, Bactroban, Paxil, and Avandamet that were adulterated because the manufacturing process used to produce these lots were substandard.

FIRST CLAIM FOR RELIEF (All Defendants)

(Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods or benefits of goods in violation of C.R.S. § 6-1-105(1)(b))

19. Plaintiff alleges and incorporates each and every allegation contained in the preceding paragraphs of this Complaint.

20. Defendants, by representing that prescription drugs had sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have as a result of the manner in which the prescription drugs were manufactured, knowingly made a false representation as to the source, sponsorship, approval, or certification of goods or benefits of goods in violation of C.R.S. § 6-1-105(1)(b).

21. Through the conduct set forth in the Complaint and in the course of their business, vocation, or occupation, Defendants violated C.R.S. § 6-1-105(1)(b)

SECOND CLAIM FOR RELIEF

(All Defendants)

(Knowingly makes a false representation as to the characteristics, uses, or benefits of goods in violation of C.R.S. § 6-1-105(1)(e))

22. Plaintiff alleges and incorporates each and every allegation contained in the preceding paragraphs of this Complaint.

23. Defendants, by making written and oral representations about prescription drugs when the Defendants knew the written and oral representations were not true as a result of the manner in which the prescription drugs were manufactured, knowingly made false representations regarding the characteristics, uses, or benefits of their goods.

24. Through the conduct set forth in the Complaint and in the course of their business, vocation, or occupation, Defendants violated C.R.S. § 6-1-105(1)(e).

THIRD CLAIM FOR RELIEF

(All Defendants)

(Fails to disclose material information concerning goods which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction in violation of C.R.S. § 6-1-105(1)(u))

25. Plaintiff alleges and incorporates each and every allegation contained in the preceding paragraphs of this Complaint.

26. Defendants, by making written and oral representations about prescription drugs when the Defendants knew the written and oral representations were not true as a result of the manner in which the prescription drugs were manufactured, failed to disclose material information concerning goods which information was known at the time of an advertisement or sale and the failure to disclose such information was intended to induce the consumer to enter into a transaction, and as a result deceived and misled consumers.

27. Through the conduct set forth in the Complaint and in the course of their business, vocation, or occupation, Defendants violated C.R.S. § 6-1-105(1)(u).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendants and the following relief:

- A. An order declaring Defendants' above-described conduct to be in violation of the CCPA, including Colo. Rev. Stat. § 6-1-105(b) (2010), § 6-1-105(e) (2010), and § 6-1-105(u) (2010).
- B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with any Defendant with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.
- C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.
- D. For a judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to Colo. Rev. Stat. § 6-1-110(1) (2010).
- E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado civil penalties pursuant to Colo. Rev. Stat. § 6-1-112(1) (2010).
- F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to Colo. Rev. Stat. § 6-1-113(4) (2010).
- G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 23rd day of June, 2011.

JOHN W. SUTHERS
Attorney General

/s/ Jay B. Simonson

JAY B. SIMONSON*
First Assistant Attorney General

Attorneys for Plaintiff
*Counsel of Record

Plaintiff's Address:
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Denver, Colorado 80203

Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request..