

Winston & Strawn Files “Refusal to Deal” Antitrust Lawsuit on Behalf of Spring Pharmaceuticals

OCTOBER 23, 2018

On October 23, 2018, on behalf of Spring Pharmaceuticals, LLC, Winston & Strawn filed a federal antitrust lawsuit against convicted fraudster Martin Shkreli (notoriously known as the “Pharma Bro”), Retrophin, Inc., Mission Pharmacal Company, and Alamo Pharma Services, Inc. The federal complaint, filed in Philadelphia, Pennsylvania, alleges multiple violations of federal antitrust law, unfair competition, and unjust enrichment arising from the Defendants’ refusal to deal with a new generic pharmaceutical competitor, Spring Pharmaceuticals.

The lawsuit alleges that Shkreli and Retrophin acquired the exclusive rights to a brand name drug known as Thiola®, a lifesaving treatment for a genetic kidney stone disease, moved the drug into a restricted distribution system, and increased the drug’s price by nearly 2,000%—a scheme designed to prevent generic competition and to price gouge consumers. The scheme created by Shkreli and Retrophin, and further enabled by Mission and Alamo, has unlawfully blocked competition from generic competitors such as Spring Pharmaceuticals and has allowed the defendants to illegally maintain a high-price monopoly. Spring Pharmaceuticals is suing the defendants for injunctive relief and monetary damages, including an order requiring the defendants to sell samples of Thiola® to Spring Pharmaceuticals at market prices so it may develop a lower-cost generic alternative to Thiola.

The lawsuit states that Shkreli, Retrophin, Mission, and Alamo have conspired to deny access to essential product samples necessary to develop a competing generic product—instead keeping Thiola® in a restricted distributed system, refusing to sell to generic firms such as Spring Pharmaceuticals even at market prices, and reaping supracompetitive profits at the expense of patients and consumers. According to the complaint, Martin Shkreli—currently imprisoned in New Jersey on a federal securities fraud conviction—implemented the unlawful monopoly of Thiola® in 2014. Since that time, Retrophin and its business partner, Mission, together with its exclusive sales-force subsidiary Alamo, have continued to use and profit from their exclusive licensing deal, restricted distribution scheme, and other anticompetitive tactics.

Through this lawsuit, Spring Pharmaceuticals seeks to break the illegal monopoly that Retrophin and its co-conspirators have had over Thiola®, and inject much-needed competition into the marketplace in an effort to reduce prices to patients that rely on the lifesaving treatment. In addition to ending the defendants’ artificial monopoly, Spring Pharmaceuticals seeks redress for the commercial injuries it has suffered as a result of the defendants’ exclusive and unlawful business practices.

The lawsuit was filed by Winston Partners Dan Webb, David Dahlquist, and Kurt Mathas, together with Joseph Wolfson of Stevens & Lee on behalf of Spring Pharmaceuticals.

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