

in the State of Texas.

VENUE

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

PUBLIC INTEREST

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

TRADE AND COMMERCE

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

NATURE OF CONDUCT

8. Vioxx is a type of non-steroidal anti-inflammatory drug (“NSAID”) commonly known as a “selective COX-2 inhibitor” or “COX-2.” NSAIDs are widely prescribed to treat the symptoms

of arthritis as well as chronic and acute pain from other causes. NSAIDs are highly effective against pain and inflammation; however, they can cause gastro intestinal (GI) side effects, including serious adverse events such as obstructions, bleeds, and perforations.

9. NSAIDs work against pain and inflammation by inhibiting enzymes known as cyclooxygenase or COX. There are two forms of COX enzymes: COX – 1 and COX-2. COX-1 is involved in the maintenance and repair of the GI system as well as the production of thromboxane, a substance that promotes blood clots. In addition to its role in pain and inflammation, COX-2 is involved in the production of prostacyclin, a substance that helps prevent blood clots. For cardiovascular health, prostacyclin and thromboxane must be in balance.

10. Selective COX-2 inhibitors are NSAIDS that block COX-2 without affecting COX-1. This class of drugs was developed in the 1990s in hope of treating pain and inflammation without blocking COX-1's beneficial effect on the GI system. Unfortunately, it turned out that COX-2 drugs create an imbalance between thromboxane and prostacyclin that result in an increased risk of heart attack and other adverse cardiovascular events. Any advantage COX-2's have regarding GI safety is offset by increased cardiovascular risk.

11. Merck began marketing Vioxx in May of 1999 with an aggressive and deceptive promotional campaign directed at both consumers and at health care professionals.

12. When promoting Vioxx directly to consumers and to health care professionals, Merck misrepresented the cardiovascular safety of Vioxx in deceptive direct to consumer (DTC) advertising and deceptive use of scientific data when marketing to doctors. Merck also employed deceptive acts and practices by using "ghost writing" of articles and studies; misuse of Continuing Medical Education (CME); and potential conflicts of interest in Merck sponsored Data Safety Monitoring Boards (DSMBs).

13. On September 30, 2004, Merck withdrew the drug from the market based on numerous allegations that Vioxx caused serious cardiovascular adverse events.

14. For the entire period of time Vioxx was on the market, Merck's advertisements and promotional activities misrepresented Vioxx's cardiovascular safety.

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

15. Defendant, as alleged above in paragraphs 1 through 14, 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 Vioxx.

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

- A. Causing confusion or misunderstanding as to the approval of the drugs manufactured by Defendant, in violation of § 17.46(b)(2) of the DTPA;
- B. Representing that Defendant's drugs have benefits which they do not have, in violation of § 17.46(b)(5) of the DTPA;
- C. Representing that Defendant's drugs are of a particular standard, quality, or grade, if they are of another, in violation of § 17.46(b)(7) of the DTPA; and
- D. Failing to disclose that Defendant' drug Vioxx had increased cardio-vascular 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.

17. Each time that Defendants 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

18. By means of the foregoing unlawful acts and practices in paragraphs 1 through 17 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

19. The State alleges that by reason of the foregoing, Defendant should not continue to advertise, offer to sell, or sell their products 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 their products unless Defendant is in compliance with the DTPA.

20. 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

21. WHEREFORE, Plaintiff prays that Defendant Merck 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 drugs manufactured by Defendant;
- B. Representing that Defendant's drugs have benefits which they do not have;
- C. Representing that Defendant's drugs are of a particular standard, quality, or grade, if they are of another; and
- D. Failing to disclose that Defendant' drug Vioxx had increased cardio-vascular 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.

22. Plaintiff further prays that, upon final hearing, this Court will order Defendant Merck & Co., Inc., 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.

23. Plaintiff further prays that upon final hearing that his Court order Defendant Merck & Co., Inc., 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.

24. Plaintiff further prays that upon final hearing that this Court order Defendant Merck & Co., Inc., 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).

25. 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,

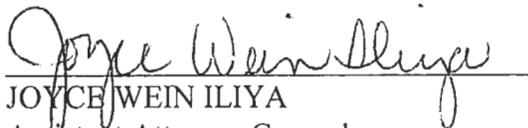
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