

CAUSE NO. _____

THE STATE OF TEXAS,
Plaintiff

v.

MULTIMEX DISTRIBUTIONS INC.
AND SAN MARTIN DISTRIBUTING
INC.,

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION,
REQUEST FOR EX PARTE TEMPORARY RESTRAINING ORDER AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE STATE OF TEXAS, Plaintiff in the above-entitled and numbered cause, acting by and through the Attorney General of Texas, GREG ABBOTT, and files this first original petition, complaining of MULTIMEX DISTRIBUTION, INC. (MULTIMEX) and SAN MARTIN DISTRIBUTING INC. (SAN MARTIN), Defendants, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rules of Civil Procedure 190.2(b)(3) and 190.3.

NATURE OF THIS SUIT

2.1 The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection

Act, Texas Business and Commerce Code section 17.41, -.904 (hereinafter "DTPA"). The DTPA grants authority to the Attorney General to seek a restraining order, injunctive relief and civil penalties for violations of its provisions. Section 17.47 of the DTPA.

DEFENDANTS

3.1 Defendant MULTIMEX DISTRIBUTIONS INC. is a corporation, doing business in Travis County, Texas. MULTIMEX is located at 754 Avalon Forest Way, Lawrenceville, Georgia 30044-3533. Service of process will be completed by serving its registered agent, Sandra A. Salazar at 3326 Lansbury Village Dr., Apt. 4, Atlanta, Georgia 30341-5736.

3.2 Defendant SAN MARTIN DISTRIBUTING INC. is a corporation doing business in Travis County, Texas. SAN MARTIN may be served with process, through its registered agent, Annette Simmons, at 17101 Kuykendahl, Suite 120, Houston, Texas 77068.

AUTHORITY

4.1 This Court has jurisdiction over this action pursuant to section 17.47(b) of the DTPA.

VENUE

5.1 The venue of this suit lies in Travis County, Texas under DTPA section 17.47(b) because Defendants have been doing business in the county of suit.

PUBLIC INTEREST

6.1 The Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes, and is of the opinion, that these proceedings are in the public interest.

TRADE AND COMMERCE

7.1 Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce," as those terms are defined by section 17.45(6) of the DTPA.

ACTS OF AGENTS

8.1 Whenever in this petition it is alleged that a Defendant did any act, it is meant that such Defendant performed or participated in the act, or that the officers, agents or employees of such Defendant performed or participated in the act on behalf of and under the authority of such Defendant.

NOTICE BEFORE SUIT

9.1 The Consumer Protection and Public Health Division did not inform Defendants at least seven (7) days before instituting this action pursuant to DTPA §17.47(a) because the State is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order by allowing Defendants to continue to advertise, offer for sale, and sell the dietary supplement called "Amoxilina" in Texas.

NATURE OF DEFENDANTS' OPERATIONS

10.1 MULTIMEX DISTRIBUTIONS INC. distributes a dietary supplement called "Amoxilina" in the State of Texas through, inter alia, wholesale distributors. SAN MARTIN is one of its wholesale distributors in Texas. These supplements are sold in stores that serve primarily Hispanic consumers. The supplement's name is similar to Amoxicilina, the Spanish translation for Amoxicillin, an antibiotic. However, the supplement Amoxilina does not contain the same ingredients. Consumers buying the supplements believe they are buying the medication, Amoxicillin, which they could previously purchase in Mexico without a prescription. The consumers inform the doctors that they are taking medications when they are not, which has the potential to lead to over- medication or unnecessary medical procedures.

EXHIBITS

11.1 Plaintiff relies on the following exhibits in support of its Petition:

- A. Exhibit A, which is the affidavit of Mirna Beltran, an employee with the Texas OAG Consumer Protection Division.
- B. Exhibit B, which is the picture of the labels for Amoxilina and Amoxicillin.
- C. Exhibit C, which is the affidavit of Cynthia Rubio, the translator for Dell Hospital that witnessed the confusion between Amoxilina and Amoxicillin.
- D. Exhibit D, which is the affidavit of Dr. Patrick Crocker.
- E. Exhibit E, which is the affidavit of Chris Flores, investigator for the Texas OAG Consumer Protection Division.

SPECIFIC FACTUAL ALLEGATIONS

12.1 MULTIMEX distributes a dietary supplement in Texas called "Amoxilina." SAN MARTIN is one of its wholesale distributors in Texas. Defendants sell this dietary supplement which is labeled in both Spanish and English. However, not all statements in English have been translated to Spanish. One statement which was not translated is the disclaimer "[t]hese statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat cure, or prevent any disease." See Exhibit A, Attachment 1.

12.2 In contrast, the package does contain the statement "[w]ithout side affects[sic] and Naturally Combat[s] Infection " in both English and Spanish. Id. Further, one phrase is in Spanish only on the back of the capsule membrane and states "(Cualidades Antibioticas Naturales)" which means "Quality Natural Antibiotics." Id.

12.3 Spanish-speaking consumers have purchased the dietary supplement to give to their children with throat and ear infections under the impression that it is the antibiotic

“Amoxicillin,” which is sometimes written as “Amoxicilina” in Spanish. Amoxicillin was available at one time for purchase in Mexico without a prescription, while Texas has always required a prescription for this antibiotic.

12.4 The confusion is easy to understand once the package for Amoxilina is compared to the Spanish language packaged Amoxicillin, which is branded as “Amoxil” for sale in Spanish language countries. See Exhibit B. Both boxes are two-toned with the top of the labeling a sky-blue color with white lettering. The bottom of both boxes is white, with blue lettering. The strength (500 mg) on both is in red and both have a red dot at the top of the label. Id. The labeling on the table with “gsk” in the corner is the label for Amoxicillin. Id.

12.5 Spanish speaking parents have been giving this supplement to their children suffering from throat or ear infections. See Exhibit C and D. One parent informed medical personnel at a local hospital that she was treating her child with antibiotics but the child was not improving. Exhibit C. One medical doctor commenting on this supplement noted that the fact the parents believe they are treating the children with antibiotics and have not seen an improvement causes a myriad of problems. Exhibit D. If the doctor believes that antibiotics are not helping the child, stronger antibiotics may be prescribed or medical procedures such as lumbar punctures could be attempted. Id.

12.6 These supplements are in stores in Central Texas. One employee of the Texas OAG Consumer Protection and Public Health Division found Amoxilina in a store in San Antonio on April 27, 2011. Exhibit A. On May 3, 2011, the Investigator in the Austin office found Amoxilina in three stores in Austin. Exhibit E.

DTPA VIOLATIONS

13.1 Defendants, as alleged above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in sections 17.46(a) and (b) of the DTPA as follows:

- A. By implicitly representing to consumers that "Amoxilina," was the same as "Amoxicillin," Defendants are passing off their goods as those of another, in violation of section 17.46(b)(1) of the DTPA.
- B. By implicitly representing to consumers that "Amoxilina," was the same as "Amoxicillin," Defendants are causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services in violation of section 17.46(b)(2) of the DTPA.
- C. By implicitly representing to consumers that "Amoxilina," was the same as "Amoxicillin," Defendants represented that their goods and services had characteristics, uses or benefits which they did not have, in violation of section 17.46(b)(5) of the DTPA.
- D. By implicitly representing to consumers that "Amoxilina," was the same as "Amoxicillin," Defendants represented that their goods and services were of a particular standard, quality, or grade, or that goods are of a particular style or model, when they are of another, in violation of section 17.46(b)(7) of the DTPA.
- E. By failing to disclose that Amoxilina is not Amoxicillin when such failure to disclose was intended to induce the consumers into purchasing Amoxilina, a transaction into which the consumers would not have entered had the information been disclosed, Defendants are in violation of section 17.46(b)(24) of the DTPA.

INJURY TO CONSUMERS

14.1 Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause damage to the general public.

APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

15.1 The State alleges that by reason of the foregoing, Defendants should not continue to sell and distribute, or offer for sale the dietary supplement Amoxilina in violation of the laws of Texas. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the laws as alleged in this Petition. Unless immediately restrained by this Honorable Court, the Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. The interests of the State of Texas and the public require immediate action to keep this dietary supplement Amoxilina out of commerce in Texas. Therefore, the State requests an Ex Parte Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, as indicated below.

15.2 The State is exempt from filing a bond for a temporary restraining order or temporary injunction under section 6.001 of the Texas Civil Practice and Remedies Code.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

16.1. The State requests leave of this Court to conduct telephone, oral, written, and other depositions of witnesses, including Defendants or employees of Defendants, prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of

witnesses who may need to be deposed prior to any scheduled Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendants and their attorneys if known.

PRAYER

17.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued as set out below; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants and their agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the proceeding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas, as follows:

- A. Representing, directly or by implication, that Amoxilina, the dietary supplement is the same or will have the same benefits as Amoxicillin, the prescription antibiotic.
- B. Selling, distributing or offering for sale in Texas any dietary supplement whose packaging is similar to the prescription medication of the same or similar name.
- C. Selling, distributing or offering for sale in Texas the dietary supplement Amoxilina without the disclosure in Spanish that “[t]hese statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.”
- D. Selling, distributing or offering for sale in Texas the dietary supplement

Amoxilina until the packaging has been significantly changed so that it does not resemble the packaging for Amoxicillin.

- E. Selling, distributing or offering for sale in Texas the dietary supplement Amoxilina until any mention of "antibiotic" is removed from the package.
- F. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to Defendants' business currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause.

17.2 In addition, Plaintiff respectfully requests that this Court Order as part of the Temporary Restraining Order, Temporary Injunction and Permanent Injunction Defendants MULTIMEX DISTRIBUTIONS INC. AND SAN MARTIN DISTRIBUTING INC to:

A. Immediately inform all retailers and wholesalers in Texas to which they have sold, distributed or supplied the dietary supplement Amoxilina and/or the child's Amoxilina syrup of the granting of any Temporary Restraining Order or Injunction.

B. Immediately, but no later than three days of the date of the granting of any Temporary Restraining Order or Injunction, remove and retrieve the dietary supplement Amoxilina and the child's Amoxilina syrup from all retailers and wholesalers in Texas to whom they have sold distributed or supplied the dietary supplement Amoxilina and/or the child's Amoxilina syrup.

17.3 In addition, Plaintiff respectfully requests that this Court:

- A. Adjudge against each Defendant civil penalties in favor of Plaintiff in the amount of not more than \$20,000.00 per violation of the DTPA;

- B. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses;
- C. Order Defendants to pay all costs of Court, costs of investigation, and reasonable attorney's fees pursuant to Tex. Govt. Code Ann. Section 402.006(c);
- D. Adjudge against Defendants prejudgment and postjudgment interest at the highest lawful rate; and
- E. Adjudge that all fines, penalties, or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).

17.4 Finally, Plaintiff respectfully requests that this Court grant all other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

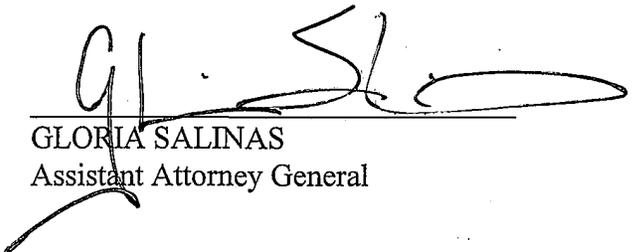
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