

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*)
DAVE YOST,)
ATTORNEY GENERAL)
30 East Broad Street)
State Office Tower – 14th Floor)
Columbus, Ohio 43215)
)
Plaintiff,)
)
v.)
)
PUBLICIS HEALTH, LLC)
375 Hudson Street)
New York, NY 10014)
)
Defendant.)

CASE NO.:

JUDGE:

**COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, CIVIL
PENALTIES AND COSTS**

COMPLAINT

1. Plaintiff, State of Ohio, by and through Ohio Attorney General Dave Yost and his Consumer Protection Section, brings this action to enjoin Defendant Publicis Health, LLC (“Publicis” or “Defendant”) from engaging in unfair or deceptive trade practices in the course of offering and selling consumer goods and services, and to obtain relief for consumers as a result of Defendant’s unfair or deceptive trade practices in violation of the Consumer Sales Practices Act, (“CSPA”), R.C. 1345.01 *et seq.*

PARTIES

2. Plaintiff is the State of Ohio, by and through Ohio Attorney General Dave Yost and his Consumer Protection Section.

3. Defendant Publicis is a Delaware limited liability company headquartered in New York, New York. Publicis’s ultimate corporate parent is Publicis Groupe, S.A. (“Publicis

Groupe”), a publicly traded joint stock limited liability company organized under the laws of France. At all times relevant to this proceeding, Publicis did business in Ohio. The term “Publicis” as used in this Complaint includes, collectively, Publicis Health, LLC and each of its American affiliated entities that worked on opioid related matters from 2010 through 2021: Razorfish Health, LLC, Verilogue, Inc., Publicis Health Media, LLC, Rosetta Marketing Services, LLC, Saatchi & Saatchi Healthcare Communications, Inc., d/b/a Razorfish Health.

JURISDICTION AND VENUE

4. Plaintiff, State of Ohio, by and through Ohio Attorney General Dave Yost and his Consumer Protection Section, having reasonable cause to believe that violations of Ohio’s consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him pursuant to R.C. 1345.07 of the CSPA.

5. The actions of Defendant, hereinafter described, have occurred in the State of Ohio, County of Franklin and various other counties, and as set forth below, are in violation of the CSPA, R.C. 1345.01 *et seq.*

6. Publicis is a “supplier” as that term is defined in R.C. 1345.01(C) of the CSPA, as Publicis was, at all times relevant herein, engaged in the business of effecting “consumer transactions” by serving as marketing promoter for Opioid manufacturers to promote branded opioid products and help develop unbranded marketing campaigns for opioid manufactures, in the State of Ohio for purposes that were primarily for personal, family or household use within the meaning specified in R.C. 1345.01(A) and (D) of the CSPA.

7. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.

8. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C), in that some

of the transactions complained of herein and out of which this action arose, occurred in Franklin County.

FACTUAL ALLEGATIONS

9. Beginning in the mid-1990s and continuing through the late 2010s, opioid manufacturers pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions across the United States. The rise in opioid prescriptions caused an equally devastating rise in opioid abuse, dependence, addiction, and overdose deaths.

10. Prescription opioids continue to kill hundreds of people across Ohio every year. Thousands more suffer from negative health consequences short of death and countless others have had their lives ruined by a friend or family member's addiction or death. Every community in Ohio suffers from the opioid crisis of addiction and death.

11. Publicis is one of the world's largest healthcare advertising companies with 40 offices and 11 brands worldwide. Publicis advertises to potential clients that it can translate healthcare marketing into healthcare engagement.

12. The Plaintiff brings this action against Publicis for the advertising and marketing consulting services it provided to opioid manufacturers, including Purdue Pharma L.P. (along with related entities Purdue Pharma Inc., and the Purdue Frederick Company, collectively "Purdue"). Publicis was in a Master Services Agreement with Purdue from 2010 to 2021. Over the decade of the Purdue-Publicis partnership, Purdue paid Publicis more than \$70 million for dozens of unfair and deceptive marketing schemes.

13. From 2010 until 2019, Purdue was Publicis' top opioid client, and Publicis was Purdue's number one marketing partner, serving as Purdue's "agency of record." Publicis worked

with Purdue to promote branded opioids OxyContin, Butrans, and Hysingla and helped develop unbranded marketing campaigns.

14. Publicis's projects covered all aspects of Purdue's marketing and sales, including designing sales strategies and tactics, maximizing the reach and influence of Purdue's sales force, using electronic media, designing content, developing promotional messaging, drafting scripts and other materials for Purdue sales representatives to use with prescribers, helping with internal operations and sales activities, targeting prescribers who would be most likely to prescribe large amounts of opioids, recording intimate discussions between prescribers and patients about opioids, and a variety of other marketing, consulting, and sales activities.

15. Publicis created many of the materials that Purdue's sales representatives used when they met with prescribers including an OxyContin Patient Essentials Kit which contained an OxyContin Savings Card. These kits and savings cards were designed to—and did—lure prescribers and patients into extending the length of opioid prescriptions.

16. Publicis developed and created materials that deceptively promoted (i) physicians' "titration" of extended-release opioids to higher and more dangerous doses, increasing the likelihood of addiction; (ii) physicians' conversion of immediate-release opioid prescriptions to more dangerous extended-release OxyContin prescriptions; (iii) Purdue's false messaging that its abuse-deterrent OxyContin formulation was safe and prevented abuse, despite knowing that the formulation would not stop illicit use of OxyContin because the pills could still be abused orally; and (iv) Purdue's opioid drugs as safe and appropriate for medical conditions for which they are not approved.

17. Publicis also concocted a strategy to deploy Purdue's sales force to increase opioid sales through unbranded marketing including advising and assisting Purdue in deploying front

groups and key opinion leaders to disseminate messaging that prescription opioids were safe and less addictive. Under the guise of neutrality, these groups and opinion leaders conveyed this message to healthcare providers, patients, and policymakers without disclosing that they were being paid or financed by Purdue.

18. In addition to the sales campaigns it created, Publicis facilitated Purdue's partnerships with other entities. Publicis coordinated and implemented Purdue's work with McKinsey and Company, Verilogue, Inc., and Practice Fusion, Inc.

19. Publicis worked alongside McKinsey to strategize, develop, and implement Purdue's "Evolve to Excellence" marketing scheme. The "Evolve to Excellence" scheme was intended primarily to—and did—flood the most prolific prescribers of OxyContin with additional sales representative calls and messaging, including messaging involving the purported "abuse deterrent" aspects of OxyContin as well as the claimed benefits of converting patients to OxyContin and titrating them up to higher doses.

20. Publicis enabled Purdue's work with another Publicis subsidiary, Verilogue. Verilogue provided prescribers small digital recording devices to record intimate conversations with patients. These conversations were then used by Verilogue and Purdue to figure out how to best overcome patients' concerns about taking opioids. Publicis implemented Verilogue's recommendations in its marketing materials.

21. Publicis encouraged and facilitated Purdue's partnership with Practice Fusion and the use of Practice Fusion's Clinical Decision Support alerts ("CDS alerts"). As early as 2012, Publicis advocated that Purdue use Practice Fusion's electronic medical records platform to grow opioid prescriptions. Practice Fusion's CDS alerts gave prescribers information about extended-release opioids right at the point of prescribing, the exact time when a decision about treatment

was being made. The Practice Fusion alerts continued until the Spring of 2019. In 2020, following an investigation by the United States Department of Justice into Practice Fusion's CDS alerts and Purdue, Practice Fusion paid a \$145 million fine and entered into a deferred prosecution agreement admitting to an illegal kickback scheme in which Practice Fusion was paid by Purdue to create and deploy the CDS alerts in electronic health records to increase prescriptions of Purdue's opioids.

22. Publicis distributed hundreds of millions of dollars up the corporate chain to its foreign corporate parent, Publicis Groupe, during the time that Publicis worked with Purdue to deceptively promote opioids. These distributions from Publicis continued—and there are indications that the amounts increased—as Purdue and Publicis faced increasing public and governmental scrutiny for their deceptive conduct.

CAUSE OF ACTION: VIOLATION OF THE CONSUMER SALES PRACTICES ACT

UNFAIR OR DECEPTIVE ACTS OR PRACTICES

23. Plaintiff realleges and incorporates by reference each allegation contained in the preceding paragraphs as if they were set out herein.

24. Publicis, in the course of marketing and promoting opioid products, engaged in a course of trade or commerce which constitutes false, deceptive, or misleading acts or practices, and is therefore unlawful under the CSPA, R.C. 1345.01 *et seq.*, including but not limited to, violating R.C. 1345.02(B)(1) by representing that opioid products had performance characteristics, uses, or benefits that they did not have.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Adjudge and decree that Defendant has engaged in acts or practices in violation of the CSPA, R. C. 1345.01 *et seq.*, as previously set forth.
2. Permanently enjoin and restrain the Defendant from engaging in unfair or deceptive consumer sales practices set forth herein and from violating the CSPA, R.C. 1345.01 *et seq.*
3. Adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions.
5. Order Defendant to make such financial payments as required by law.
6. Order that all costs in this cause be taxed against the Defendant.
7. Grant Plaintiff such other and further relief as this Court deems just, equitable and appropriate.

Respectfully Submitted,

DAVE YOST
Attorney General

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