

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
____ DIVISION

STATE OF ARKANSAS, *ex rel.* TIM GRIFFIN
ATTORNEY GENERAL

PLAINTIFF

v. Case No. _____

PUBLICIS HEALTH, LLC

DEFENDANT

COMPLAINT

Comes now the Plaintiff, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General, who brings this action pursuant to the Arkansas Deceptive Trade Practices Act and the State’s *parens patriae* capacity to advance the public interest, and the common law of the State of Arkansas against Defendant, Publicis Health, LLC, (“Publicis” or “Defendant”). In support thereof, the State alleges:

I. Parties

1. This enforcement action is brought by Attorney General Tim Griffin, pursuant to the authority granted by Ark. Code Ann. § 16-13-201 for equitable and legal relief, and by § 4-88-101 *et seq.*, upon the ground that Defendant has engaged in false, deceptive, and misleading acts and practices in the course of business, commerce, or trade and declared unlawful by the Arkansas Deceptive Trade Practices Act (“ADTPA”) and the common law of the State of Arkansas.

2. 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 Arkansas. 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.

II. Jurisdiction and Venue

3. At all times described below, Defendant and its agents have engaged in conduct affecting business, commerce, or trade in Arkansas pursuant to Ark. Code Ann. § 4-88-107(a)(10).

4. Plaintiff has reason to believe Defendant has caused and will cause immediate, irreparable injury, loss, and damage to the State of Arkansas by deceptively marketing prescription opioids to consumers while misrepresenting the risk of addiction, potential benefits, effectiveness, and potential side effects. Therefore, these proceedings are in the public interest.

5. This Court has personal jurisdiction over Defendant because it conducts business, commerce, or trade in Arkansas. Defendant: (1) does business in Arkansas and/or purposely direct or directed its actions towards Arkansas; (2) committed torts in part in Arkansas against the State and its residents; (3) solicited and continues to seek business, and performed and continues to conduct business services such as marketing, advertising, promoting, distributing, and dispensing of its products in Arkansas; and (4) has the requisite minimum contacts with Arkansas.

6. Plaintiff has reason to believe that Defendant has caused and will cause immediate, irreparable injury, loss, and damage to the State of Arkansas by unlawfully dispensing prescription opioids.

7. Venue is proper in Faulkner County under Ark. Code Ann. §§ 4-88-115, 16-60-101(a) and (c).

III. Factual Allegations

8. 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.

9. 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.

10. The State 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.

11. From 2010 until 2019, Purdue was Publicis’s 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 & Company, Verilogue, Inc., and Practice Fusion, Inc.

17. 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.

18. 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.

19. 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.

20. Publicis distributed hundreds of millions of dollars up the corporate chain to its foreign corporate parent, Publicis Groupe, during the time period 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.

IV. Claims for Relief

Violation of Ark. Code Ann. § 4-88-101 et seq.

Arkansas Deceptive Trade Practices Act

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

22. The ADTPA renders unlawful “[d]eceptive and unconscionable trade practices,” which are defined to include, inter alia, “[k]nowingly making a false representation as to the

characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model.” Ark. Code Ann. § 4-88-107(a)(1).

23. It is a deceptive trade practice to engage in “any other unconscionable, false, or deceptive act or practice in business, commerce, or trade.” Ark. Code Ann. § 4-88-107(a)(10).

24. These unlawful deceptive and unconscionable trade practices are in addition to other unfair trade practices actionable at common law or under other statutes of Arkansas. Ark. Code Ann. § 4-88-107(b).

25. The ADTPA also provides that “in connection with the sale or advertisement of any goods, services, or charitable solicitation, the following shall be unlawful: (1) [t]he act, use, or employment by any person of any deception, fraud, or false pretense; or (2) [t]he concealment, suppression, or omission of any material fact with the intent that others rely upon the concealment, suppression, or omission.” Ark. Code Ann. § 4-88-108.

26. In the course of its business, Publicis deceptively and unconscionably worked with certain of its opioid manufacturing clients to aggressively promote and sell more opioids to more patients for longer periods of time.

27. Such actions constitute deceptive and unconscionable trade practices that are prohibited by the ADTPA.

28. The acts or practices described herein occurred in trade or commerce as defined in Ark. Code Ann. § 4-88-101 *et seq.* and Arkansas’s common law.

29. These acts or practices damaged consumers in the State of Arkansas.

30. These deceptive acts or practices damaged the State in that Arkansas would have expended millions of dollars of its resources as to remedy the opioid crisis that has injured, harmed, and otherwise disrupted the lives of thousands of Arkansas residents.

31. The Defendant knew, or in the exercise of reasonable care and diligence should have known, that its actions and inactions would lead to this result.

32. Each of the Defendant's deceptive statements, misrepresentations, or omissions, constitutes a distinct and separate violation of the ADTPA.

33. Pursuant to Ark. Code Ann. § 4-88-113(a)-(e), the State seeks a declaratory judgment that Publicis violated the ADTPA, an injunction enjoining Publicis's misrepresentations described in this Complaint, civil penalties of \$10,000 per violation, costs, attorney's fees, and all other relief available under Ark. Code Ann. § 4-88-113(a)-(e) in an action brought by the State in a *parens patriae* capacity. The State also seeks enhanced civil penalties of \$10,000 per violation pursuant to Ark. Code Ann. § 4-88-202 because Publicis's deceptive practices were directed towards elder and disabled persons.

V. Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order:

- a. Adjudging and decreeing that Publicis has engaged in the acts or practices complained of herein, and that such constitute unfair acts or practices in violation of Arkansas law;
- b. Issuing a permanent injunction prohibiting Publicis, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair trade practices,

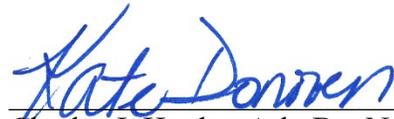
- as outlined in the Consent Judgment filed simultaneously with this Complaint;
- c. Ordering Publicis to pay an amount of damages or restitution for violating of the laws set forth above of Arkansas;
 - d. That the Court enter the Consent Judgment being filed simultaneously with this complaint as an Order of the Court;
 - e. Ordering such other and further relief as the Court may deem just and proper.

JURY DEMAND

The State demands a jury trial.

Respectfully submitted,

TIM GRIFFIN
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