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Husch Blackwell Prevails for Trupharma in False Advertising Litigation

THIRD CIRCUIT AFFIRMS DISTRICT COURT'S "PITHY AND WELL-CRAFTED OPINION"

Husch Blackwell secured a victory before the U.S. Court of Appeals for Trupharma, LLC in federal court litigation brought by a competitor alleging false advertising and unjust enrichment, among other counts, in connection with the manufacture and sale of a medical cream.

Plaintiffs Sebela Pharmaceuticals Inc. and Perrigo New York, Inc. filed a complaint in December 2020 alleging that Trupharma misrepresented its medical cream as a generic “equivalent” of the plaintiffs’ own formulation and that such misrepresentations were included in drug databases utilized by purchasers such as pharmacies, pharmacists, wholesalers, pharmaceutical buyers, and insurance companies. The plaintiffs sought a full accounting of the implicated product sales; compensatory, treble, punitive, and exemplary damages; injunctive relief; and “corrective” advertising to cure prior misrepresentations.

Husch Blackwell led Trupharma’s legal defense and moved for judgment on the pleadings, arguing that the plaintiffs’ allegations lacked a factual basis and were themselves a misrepresentation of Trupharma’s product and marketing efforts. After reviewing the case, Circuit Judge Stephanos Bibas, sitting by designation as a trial judge in the U.S. District Court for the District of Delaware, granted Trupharma’s motion and dismissed the case in May 2021, finding that plaintiffs had failed to demonstrate false advertising claims made by Trupharma. Further, the court determined that the plaintiffs’ argument

“does not plausibly state an unjust enrichment claim. At best, it shows TruPharma was enriched. But Sebela has not explained why the enrichment was unjust.” The court gave the plaintiff an opportunity to amend its complaint; however, on September 8, 2021, Judge Bibas again granted Trupharma’s renewed motion to dismiss, summarizing that “[a]fter two failed attempts, Sebela still cannot show that TruPharma advertised its product falsely.”

In affirming the district court’s opinion, a Third Circuit panel wrote that the plaintiffs lacked a “cognizable claim” in pressing its complaint of false or misleading advertising under the Lanham Act and that “for all the reasons that Sebela’s Lanham Act claims fail, its other claims are likewise deficient,” providing Trupharma with a full defense victory.

The Husch Blackwell trial team included Don Mizerk, Aron Carnahan, and Laurie A. Haynie.