The Truth About Health

Maker of Cephalon Prohibits Generic competitors

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The U.S. Federal Trade Commission (FTC) is bringing action against a drug company engaged in activities to keep competition out of their segment of the market. The shenanigans of the drug maker Cephalon, Inc., in suppressing generic alternatives to its patented product have drawn the attention and the ire of the agency.

According to the complaint filed by the FTC in federal district court, the pharmaceutical company Cephalon based in Frazer, Pennsylvania, has engaged in anticompetitive conduct with its branded drug Provigil. The drug Provigil is aimed at handling sleep disorders such as sleep apnea (discontinuation of breathing), narcolepsy (uncontrollable bouts of deep sleeping) and shift work disorder syndrome (problems with sleep associated with working schedules).

Provigil is a mainstay of Cephalon profits, accounting for over $800-million in annual sales. This figure represents about 40 percent of company sales. The company's position and thus its earning potential had come under threat when four rival companies wishing to produce and sell generic versions of Provigil brought suit against the company to be able to enter the market.

Rather than engage in a lengthy and costly court battle, Cephalon worked out agreements with the four companies paying them to refrain from selling their generic versions of the product until the year 2012, the FCA said. Cephalon's anticompetitive scheme denies patients access to lower-cost, generic versions of Provigil and forces consumers and other purchasers to pay hundreds of millions of dollars a year more for Provigil, according to the FTC.

The FTC complaint was filed in U.S. District Court for the District of Columbia. The complaint states that the only remaining patent that covered Provigil had to do with the size of the particles used in the product. The FTC charges that Cephalon was able to induce each of the generic companies to abandon its patent challenge and agree to refrain from selling their product until 2012. Cephalon agreed to pay the companies a total amount in excess of $200 million, thereby achieving a position of protecting its market that its patent rights alone were not able to accomplish, according to the FTC.

The four companies involved in the alleged payments were Teva Pharmaceuticals USA, Inc., Ranbaxy Pharmaceuticals, Inc., Mylan Pharmaceuticals, Inc., and Barr Laboratories, Inc. "Today's suit against Cephalon seeks to undo a course of anticompetitive conduct that is harming American consumers by depriving them of access to lower-cost generic alternatives to an important brand drug," said FTC Bureau of Competition Director Jeffrey Schmidt. "Cephalon prevented competition to Provigil by agreeing to share its future monopoly profits with generic drug makers poised to enter the market, in exchange for delayed generic entry. Such conduct is at the core of what the antitrust laws proscribe."

Source: The U.S. Federal Trade Commission. "FTC Sues Cephalon, Inc. for Unlawfully Blocking Sale of Lower-Cost Generic Versions of Branded Drug until 2012." February 2008, http://www.ftc.gov/opa/2008/02/ceph.shtm