

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION

600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Plaintiff,

v.

TEIKOKU PHARMA USA, INC.,

1718 Ringwood Avenue
San Jose, California 95131; and

TEIKOKU SEIYAKU CO., LTD.,

567 Sanbonmatsu, Higashikagawa,
Kagawa 769-2695 Japan

Defendants.

Case Number:

**Joint Motion for Entry of
Stipulated Order for Permanent Injunction**

Plaintiff Federal Trade Commission (“FTC”) and Defendants Teikoku Pharma USA, Inc. and Teikoku Seiyaku Co., Ltd. (collectively, “Teikoku”), by their respective attorneys, respectfully move this Court to enter the accompanying proposed Stipulated Order for Permanent Injunction (“Stipulated Order”). Entry of the Stipulated Order will end the litigation between the FTC and Teikoku. A copy of the proposed Stipulated Order is attached as Exhibit 1. As grounds for this request, the parties state as follows:

Introduction

1. On March 30, 2016, the FTC filed its Complaint against Teikoku and others pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Complaint alleges that Teikoku, Endo Pharmaceuticals Inc., and Watson Laboratories, Inc. violated Section 5 of the FTC Act by entering into a reverse-payment settlement agreement that induced Watson to abandon its patent challenge and forgo entering the market with its lower-cost generic version of Lidoderm until September 2013. Lidoderm is a transdermal lidocaine patch indicated for relief of pain associated with post-herpetic neuralgia.

2. In its Complaint, the FTC seeks a permanent injunction to prevent Teikoku and the other Defendants from engaging in similar and related conduct in the future and “such other equitable relief as the Court finds necessary to redress and prevent recurrence of defendants’ violations.”

3. Teikoku has reached a settlement with the FTC. In doing so, Teikoku admits only the facts necessary to establish the personal and subject matter jurisdiction of this Court in this matter. Moreover, Teikoku denies that it engaged in any conduct violating Section 5 of the FTC Act.

4. On February 16, 2016, Teikoku executed a Stipulated Order for Permanent Injunction in settlement of all claims against it in the above-captioned case. On March 29, 2016, the Commission voted unanimously to approve the proposed Stipulated Order. Thus, Teikoku and the Commission jointly seek entry of the attached proposed Stipulated Order by the Court, thereby bringing the litigation between the Commission and Teikoku to an end.

Proposed Stipulated Order

5. The proposed Stipulated Order prohibits Teikoku from repeating the same or similar allegedly anticompetitive conduct in the future. Paragraph I of the proposed Stipulated Order prohibits Teikoku from entering into any settlement agreement involving: (1) a payment by the branded drug company to a generic company; and (2) an agreement by the generic company to refrain from researching, developing, manufacturing, marketing, or selling the drug product at issue in the patent infringement litigation (the “Subject Drug Product”) for some period of time. The term “payment” is defined to include any transfer of value (including money, goods, or services) where such transfer is either expressly contingent upon, or within 30 days prior to or after, the companies entering into the settlement agreement. The term “payment” also includes a “No-AG Commitment,” in which the brand company agrees not to compete with an authorized generic version of the Subject Drug Product for some period of time.

6. The proposed Stipulated Order excludes certain forms of value from the definition of payment. The transfer of these excluded forms of value would not be prohibited by Paragraph I:

- a. compensation for saved future litigation expenses of up to \$7 million, adjusted annually for inflation;
- b. a provision that allows the generic company to begin selling the Subject Drug Product on a particular date, or when another generic company begins selling the same product;
- c. an agreement that settles a different litigation claim, so long as that agreement independently complies with the terms of this Order; and

d. the continuation or renewal of a pre-existing agreement under certain circumstances.

7. Paragraph V of the proposed Stipulated Order includes certain provisions relating to Teikoku's obligation to cooperate in connection with discovery in this case.

8. The remaining paragraphs of the proposed Stipulated Order contain reporting and other standard requirements designed to assist the Commission in monitoring compliance with the orders. Paragraph VII provides that the proposed Stipulated Order will expire in twenty years.

Conclusion

For the reasons set forth above, the FTC and Teikoku jointly request that the Court enter the proposed Stipulated Order that accompanies this motion.

Respectfully submitted,



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