
STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

ABBOTT LABORATORIES, ET AL.,

Defendants.

**BEN VENUE LABORATORIES, INC.'S
RESPONSES AND OBJECTIONS TO PLAINTIFF'S INTERROGATORIES NO. 3
AND REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

Pursuant to Wis. Stat. § 804.08 and § 804.09, defendant Ben Venue Laboratories, Inc. ("Ben Venue"), by its attorneys, objects and responds to Plaintiff State of Wisconsin's Interrogatories No. 3 (the "Interrogatories") and Request for Production of Documents No. 4 (the "Requests") as follows:

PRELIMINARY STATEMENT

1. As to all matters referred to in these answers and objections to the Interrogatories and Requests, Ben Venue's investigation and discovery continues. The specific responses set forth below, and any production made consistent with the accompanying interrogatories and requests, are based upon, and necessarily limited by, information now available to Ben Venue. Ben Venue reserves the right to modify or supplement these responses and objections, to raise any additional objections deemed necessary and appropriate in light of the results of any further review, and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 6:

With respect to any allegation of the Amended Complaint which you denied in your Answer state each fact that supports each such denial.

ANSWER TO INTERROGATORY NO. 6:

Ben Venue objects to Interrogatory No. 6 on the grounds that it is overly broad and unduly burdensome. Ben Venue further objects to this Interrogatory to the extent it seeks information protected by the work-product doctrine. Ben Venue also objects to this Interrogatory to the extent it seeks information related to Ben Venue's denials that are based in whole or part on the application of applicable laws or legal conclusions. Ben Venue also objects to this Interrogatory as a premature contention interrogatory; Ben Venue's investigation and discovery are ongoing and Ben Venue has not yet fully identified all facts that may support its denials. Ben Venue also objects to this Interrogatory to the extent it would require Ben Venue to identify facts and information to prove a negative.

INTERROGATORY NO. 7:

Identify each document that supports each such denial.

ANSWER TO INTERROGATORY NO. 7:

Ben Venue objects to Interrogatory No. 7 on the same grounds as those set forth in its response to Interrogatory No. 6 and incorporates those objections herein. In addition, Ben Venue objects to Interrogatory No. 7 to the extent it seeks information that is publicly available or outside Ben Venue's possession, custody and control.

INTERROGATORY NO. 8:

With respect to each affirmative defense you assert in your Answer to the Amended Complaint state the facts which support that defense.

ANSWER TO INTERROGATORY NO. 8:

Ben Venue objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Ben Venue further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. Ben Venue also objects to this Interrogatory to the extent it seeks information related to Ben Venue's affirmative defenses that are based in whole or part on the application of applicable laws or legal conclusions. Ben Venue also objects to this Interrogatory as a premature contention interrogatory; Ben Venue's investigation and discovery are ongoing and Ben Venue has not yet fully identified all facts that may support its affirmative defenses.

INTERROGATORY NO. 9:

Identify each document that supports the facts upon which you base each such affirmative defense.

ANSWER TO INTERROGATORY NO. 9:

Ben Venue objects to Interrogatory No. 9 on the same grounds as those set forth in its Answer to Interrogatory No. 8 and incorporates these objections herein. In addition, Ben Venue objects to this Interrogatory to the extent it seeks information that is publicly available or outside Ben Venue's possession, custody and control.

INTERROGATORY NO. 10:

Have you ever communicated directly with any official of the State of Wisconsin about the prices of any of your drugs, including AWP, WACs, or any other prices irrespective of the nomenclature used.

ANSWER TO INTERROGATORY NO. 10:

Ben Venue objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ben Venue further objects to this Interrogatory because "any official of the State" is vague and undefined and because this Interrogatory is not limited by

timeframe. Notwithstanding Ben Venue's general and specific objections, and without waiving them, Ben Venue states that its investigation and discovery are ongoing and Ben Venue will supplement its response as required.

INTERROGATORY NO. 11:

If the answer to Interrogatory No. 10 is yes, identify all such communications by date, time, and purpose, the persons who communicated this information, the persons to whom this information was communicated, who said what to whom or who wrote what to whom, and identify any documents containing or describing the information communicated to Wisconsin officials.

ANSWER TO INTERROGATORY NO. 11:

Ben Venue objects to Interrogatory No. 11 on the ground that it is overly broad and unduly burdensome. Ben Venue further objects to this Interrogatory on the ground that it is not limited by timeframe. Notwithstanding Ben Venue's general and specific objections, and without waiving them, Ben Venue states that its investigation and discovery are ongoing and Ben Venue will supplement its response as required.

RESPONSES AND OBJECTIONS TO REQUEST FOR PRODUCTION

DOCUMENT REQUEST NO. 12:

Produce each document identified in response to Interrogatory Nos. 7, 9 and 11.

RESPONSE TO REQUEST NO.12:

Ben Venue objects to Request No. 12 on the ground that it is overly broad and unduly burdensome. Ben Venue further objects to this Interrogatory to the extent it seeks documents that are publicly available or outside Ben Venue's possession, custody and control.

Notwithstanding Ben Venue's general and specific objections, and without waiving them, Ben Venue states that its investigation and discovery are ongoing and Ben Venue will supplement its response as required.

REQUEST NO. 13:

Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.).

RESPONSE TO REQUEST NO. 13:

Ben Venue objects to Request No. 13 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it reports to require information relating to "drugs" without specification as to which "drugs," thus including products that are not manufactured, marketed, or distributed by Ben Venue and/or products not at issue in this litigation. Ben Venue further objects to this Request to the extent it seeks information in the possession of Plaintiff or more appropriately sought from third parties.

GENERAL OBJECTIONS

1. Ben Venue objects to the definition of "Document(s)" as set forth in Definition 2 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ben Venue further objects to this definition to the extent that it purports to require Ben Venue to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Ben Venue as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

2. Ben Venue objects to the Interrogatories and Requests to the extent they seek information or documents outside the knowledge of Ben Venue, its agents or employees, or information or documents not within the possession, custody or control of Ben Venue, its agents or employees.

3. Ben Venue objects to the Interrogatories and Requests to the extent that they seek information or documents covered by the attorney-client privilege, work product privilege, or any other applicable privilege. In the event that Ben Venue supplies information or produces a documents that is privileged, its production is inadvertent and does not constitute waiver of any privilege.

4. Ben Venue objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues contained in the Interrogatories or Requests. Ben Venue's response that it will produce documents in connection with a particular request, or that it has no responsive document, does not indicate that any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories or Requests is accurate, relevant to this litigation, or that Ben Venue agrees with such implications or characterizations.

5. Ben Venue objects to the Interrogatories and Requests to the extent that they are unreasonably cumulative or duplicative or that they call for information or documents that are publicly available, or are obtainable from some other source that is more convenient, less burdensome or less expensive.

6. Ben Venue objects to the Interrogatories and Requests to the extent that they call for information that is confidential, proprietary, and/or a trade secret of a third party.

7. Ben Venue objects to the Interrogatories and Requests as overly broad and unduly burdensome to the extent that they call for the identification of “all” documents or items of information when relevant information can be obtained from fewer than “all” documents or information. Ben Venue objects to the Interrogatories and Requests to the extent they seek information or documents other than information or documents that can be located upon a search of files or other sources where such information or documents reasonably can be expected to be found.

8. Ben Venue objects to the Interrogatories and Requests to the extent they purport to impose upon Ben Venue duties and/or obligations broader than or inconsistent with those imposed by the Wisconsin Rules of Civil Procedure.

9. Ben Venue objects to the Interrogatories and Requests to the extent that they are unreasonably burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation.

10. Ben Venue objects to the Interrogatories and Requests to the extent that they call for the identification or production of documents or information not relevant to the issues in this action and are not reasonably calculated to lead to the discovery of admissible evidence.

11. Ben Venue objects to the Interrogatories and Requests to the extent they seek information or documents generated or compiled in the course of the defense of this action or any other AWP litigation.

12. The documents and information provided in response to the Interrogatories and Requests are for use in this litigation and for no other purpose.

13. Ben Venue's answers to the Interrogatories and Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

Ben Venue expressly incorporates these General Objections into each specific response to the interrogatories and requests set forth above as if set forth in full therein. The response to an interrogatory or request shall not operate as a waiver of any applicable specific or general objection.

Dated: March 13, 2007

Respectfully submitted,



Helen E. Witt, P.C.
Brian P. Kavanaugh
Ceylan Ayasli Eatherton
KIRKLAND & ELLIS LLP
200 East Randolph Drive
Chicago, Illinois 60601
Tel: (312) 861-2000
Fax: (312) 861-2200

Mr. Patrick J. Knight
Gimbel Reilly Guerin & Brown
Two Plaza East, Suite 1170
330 East Kilbourn Avenue
Milwaukee, WI 53202
Tel: (614) 464-6400
Fax: (614) 464-6350

*Attorneys for Defendant Ben Venue
Laboratories, Inc.*

CERTIFICATE OF SERVICE

I, Ceylan Ayasli Eatherton, hereby certify that on this 13th day of March, 2007, a true and correct copy of the foregoing BEN VENUE LABORATORIES, INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S INTERROGATORIES NO. 3 AND REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4 was served on all counsel of record via Lexis Nexis File & Serve®.



Ceylan Ayasli Eatherton