

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff,

Case No.: 05 C 0408C

v.

ABBOTT LABORATORIES, ET AL.,

Defendants.

**DEFENDANT TEVA PHARMACEUTICALS USA, INC.'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO ALL
DEFENDANTS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Teva Pharmaceuticals USA, Inc. ("Teva"), by its undersigned counsel, hereby responds to Plaintiff's First Set of Interrogatories to All Defendants (the "Interrogatories") as follows:

GENERAL OBJECTIONS

Teva expressly incorporates all of the General Objections set forth below into the Specific Objections for each Interrogatory. Any specific objections provided are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver of that or any other objection.

1. Teva objects to Plaintiff's definitions and instructions to the extent they purport to impose discovery obligations on Teva beyond the parameters of the Federal Rules, and Teva will not comply with any such non-conforming definitions and instructions.

2. Teva objects to the definition of “Average Manufacturer Price” and “AMP” as set forth in Definition No. 1 on the grounds that it is vague and ambiguous. Teva further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP, which is a term legally defined by federal statute.

3. Teva objects to the definition of the term “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous.

4. Teva objects to the definition of “Defined Period of Time” as set forth in Definition No. 3, to the extent it seeks information outside of the limitations period applicable to the claims in the Complaint, or beyond the time period relevant to this litigation. Teva further objects to this Definition on the grounds that it is overly broad, vague and ambiguous.

5. Teva objects to the definition of “Document” as set forth in definition No. 4 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with Teva’s obligations under the Federal Rules. Teva also objects to the Definition to the extent it requires Teva to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different format; (c) produce data, fields, records, or reports about produced documents or data; (d) produce documents or data on any particular media; (e) search for and/or produce documents or data on back-up tapes; or (f) produce proprietary software, data, programs, or databases.

6. Teva objects to the definition of the term “Incentive” as set forth in Definition No. 5 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome.

7. Teva objects to the definition of “National Sales Data” in Definition No. 6 to the extent that it requests information beyond the State of Wisconsin. Teva further objects to this definition to the extent it seeks information outside the relevant time period of the litigation and

information about drugs not at issue on the grounds that such information is not relevant nor reasonably calculated to the discovery of admissible evidence.

8. Teva objects to the definition of the term “Pharmaceutical” as set forth in Definition No. 7 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome. Teva further objects to this definition to the extent it seeks information outside the relevant time period of the litigation and information about drugs not at issue on the grounds that such information is not relevant nor reasonably calculated to the discovery of admissible evidence.

9. Teva objects to the definition of the term “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, vague, ambiguous and unduly burdensome, particularly with respect to “actual acquisition cost,” “purchase price,” “third party payers,” “gross profit actually or potentially realized,” and “purchasers.”

10. Teva objects to the definition of the term “Targeted Drugs” as set forth in Definition No. 9 on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome.

11. Teva objects to the Interrogatories to the extent they seek information covered by the attorney-client communication privilege, work product doctrine, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected information is inadvertently produced in response to the Interrogatories, the disclosure of such information shall not constitute a waiver of Teva’s right to assert the applicability of any privilege or immunity to the information.

12. Teva objects to the Interrogatories to the extent they seek confidential, proprietary, commercially sensitive, or trade secret information regarding its products, business activities, and strategies.

13. Teva objects to any Interrogatory that seeks information which: (a) is outside the knowledge, custody, control or possession of Teva, its agents or employees; (b) is already in Plaintiff's custody, control or possession; (c) is publicly available; (d) is obtainable with equal or greater facility by the Plaintiff; or (e) is more appropriately sought from third-parties to whom requests have been made or directed.

14. Teva objects to each and every Interrogatory as irrelevant, overbroad, unduly burdensome, vague, and not reasonably calculated to lead to admission of relevant evidence to the extent it seeks documents and/or information relating to pharmaceuticals not at issue in this litigation.

15. Teva objects to the Interrogatories to the extent they seek information relating to Teva's activities other than those relating to the State of Wisconsin, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

16. Teva objects to any implications and to any explicit or implicit characterizations of the facts, events, circumstances, or issues in the Interrogatories. Any response by Teva is not intended to indicate that Teva agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.

17. Teva objects to the Interrogatories to the extent they purport to impose obligations beyond or inconsistent with those imposed by applicable law. Teva will respond to the Interrogatories, subject to other objections, as required by applicable federal law.

18. Teva objects to each and every Interrogatory to the extent it seeks information which would require Teva to create, compile or develop new data or sources of information.

19. Teva states that its investigation into the allegations of this matter is ongoing, and Teva reserves the right, but undertakes no obligation beyond that required by the applicable federal law, to supplement, clarify or amend these responses as additional information comes to light.

20. Teva hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation or rights is not inconsistent with Teva's position in this litigation.

SPECIFIC OBJECTIONS

Subject to the General Objections, and without waiving and expressly preserving all such objections, Teva responds to Plaintiff's individually numbered Interrogatories as follows:

INTERROGATORY NO. 1:

Have you ever determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination, identify:

- (a) the beginning and ending dates of each period applicable to each such determination;
- (b) the applicable class(es) of trade for which each determination was made;
- (c) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;
- (g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and

(h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

ANSWER:

Teva objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Teva further objects to the terms “average sales price” and “other composite price” as vague and ambiguous. Pursuant to Fed. R. Civ. P. 33(d), Teva invokes its option to produce business records from which the information sought by this Interrogatory may be derived with equal facility by Plaintiff. Moreover, to the extent the Interrogatory seeks documents in the custody, control or possession of third-parties, the Interrogatory is improper and unduly burdensome. Subject to and without waiving these objections, to the extent that responsive non-privileged documents exist and are in Teva’s custody, control or possession, Teva will produce documents.

INTERROGATORY NO. 2:

Identify each electronic database, data table or data file that you now maintain or have maintained during the Defined Period of Time in the ordinary course of business which contains a price for a Targeted Drug. For each such electronic data entity, identify, describe or produce the following:

- (a) the name or title of each such database, data table, or data file;
- (b) the software necessary to access and utilize such data entities;
- (c) describe the structure of each database, data table or data file identified in response to Request No. 2(a) above and identify all files or tables in each such database, data table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table record or row.
- (d) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and
- (e) the custodian(s) of such data entity.

ANSWER:

Teva objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Teva further objects to this Interrogatory to the extent it demands that Teva “describe” each database, data table, or data file on the grounds that such demand is vague and ambiguous. Teva further objects to this Interrogatory to the extent it seeks the proprietary information of third-parties. Pursuant to Fed. R. Civ. P. 33(d), Teva invokes its option to produce business records from which the information sought by this Interrogatory may be derived with equal facility by Plaintiff. Moreover, to the extent the Interrogatory seeks documents in the custody, control or possession of third-parties, the Interrogatory is improper and unduly burdensome. Subject to and without waiving these objections, to the extent that responsive non-privileged documents exist and are in Teva’s custody, control or possession, Teva will produce documents.

INTERROGATORY NO. 3:

Describe each type of Incentive you have offered in conjunction with the purchase of any Targeted Drug. For each such Incentive, identify:

- (a) the type(s) of Incentive(s) offered for each Targeted Drug;
- (b) the class(es) of trade eligible for each Incentive;
- (c) the general terms and conditions of each Incentive; and
- (d) the beginning and ending dates of each period during which the Incentive was offered.

ANSWER:

Teva objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Teva further objects to this Interrogatory to the extent it demands that Teva “describe” each incentive offered or made available by Teva on the grounds that such demand is vague and ambiguous. Pursuant to Fed. R.

Civ. P. 33(d), Teva invokes its option to produce business records from which the information sought by this Interrogatory may be derived with equal facility by Plaintiff. Moreover, to the extent the Interrogatory seeks documents in the custody, control or possession of third-parties, the Interrogatory is improper and unduly burdensome. Subject to and without waiving these objections, to the extent that responsive non-privileged documents exist and are in Teva's custody, control or possession, Teva will produce documents.

INTERROGATORY NO. 4:

Describe in detail how you determined each price you used in the ordinary course of business of each Targeted Drug for each year during the Defined Period of Time and identify the person(s) most knowledgeable in making such determinations for each Targeted Drug for each year.

ANSWER:

Teva objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Teva further objects to this Interrogatory to the extent it demands that Teva "describe" how it determined each price it used on the grounds that such demand is vague and ambiguous. Pursuant to Fed. R. Civ. P. 33(d), Teva invokes its option to produce business records from which the information sought by this Interrogatory may be derived with equal facility by Plaintiff. Moreover, to the extent the Interrogatory seeks documents in the custody, control or possession of third-parties, the Interrogatory is improper and unduly burdensome. Subject to and without waiving these objections, to the extent that responsive non-privileged documents exist and are in Teva's custody, control or possession, Teva will produce documents.

INTERROGATORY NO. 5:

Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between an AWP or WAC published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Targeted Drug? If so, provide the following information for each Targeted Drug:

- a. the drug name and NDC;
- b. the beginning and ending dates during which such marketing occurred;
- c. the name, address and telephone number of each customer to whom you marketed a Targeted Drug in whole or in part by making a reference to such difference(s) or spread(s); and
- d. identify any document published or provided to a customer which referred to such difference(s) or spread(s).

ANSWER:

Teva objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Teva further objects to this Interrogatory to the extent it seeks documents that are protected by the attorney-client privilege and/or work product doctrine. Teva further objects to the term "AWP" as vague and ambiguous. Pursuant to Fed. R. Civ. P. 33(d), Teva invokes its option to produce business records from which the information sought by this Interrogatory may be derived with equal facility by Plaintiff. Moreover, to the extent the Interrogatory seeks documents in the custody, control or possession of third-parties, the Interrogatory is improper and unduly burdensome. Subject to and without waiving these objections, to the extent that responsive non-privileged documents exist and are in Teva's custody, control or possession, Teva will produce documents.

Dated: July 15, 2005

TEVA PHARMACEUTICALS USA, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2005, a true and correct copy of Teva Pharmaceuticals, USA Inc.'s Responses And Objections To Plaintiff's First Set of Interrogatories was served upon the Plaintiff's counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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