COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM FOR DAMAGES UNDER SECTION 47A OF THE COMPETITION ACT 1998

CASE NO 1213/5/7/13

The Registrar of the Competition Appeal Tribunal ("the Tribunal") gives notice of the receipt of a claim for damages ("the Claim") on 12 June 2013, under section 47A of the Competition Act 1998 ("the Act"), by (1) Teva UK Limited and (2) Norton Healthcare Limited, both of Ridings Point, Whistler Drive, Castleford, WF10 5HX (together, "the Claimants") against (1) Reckitt Benckiser Group plc and (2) Reckitt Benckiser Healthcare (UK) Limited, both of 103-105 Bath Road, Slough, Berkshire, SL1 3UH (together, "the Defendants"). The Claimants are represented by Winston & Strawn LLP, CityPoint, One Ropemaker Street, London, EC2Y 9HU (Reference: Peter Crowther).

The Claim arises from a decision of the Office of Fair Trading ("the OFT") dated 12 April 2011 relating to an infringement of section 18(1) of the Act and Article 102 of the Treaty on the Functioning of the European Union (decision CA98/02/2011 in Case CE/8931/08, "Abuse of a dominant position by Reckitt Benckiser Healthcare (UK) Limited and Reckitt Benckiser Group plc") ("the Decision"). Contrary to those provisions, the OFT found that the Defendants had abused their dominant position in the market for the supply of alginates and antacids by prescription in the UK by withdrawing and de-listing NHS presentation packs of Gaviscon Original Liquid ("GL") in June 2005 ("the Withdrawal").

The Claimants distributed a generic version of GL, under the brand name Peptac. While the patent for GL expired in 1997, and generic versions were launched in 1998, a generic name relevant to GL and equivalent products was not published by the two bodies responsible for generating generic names in the UK until 2007 and 2008 respectively. The Claimants contend that this delay operated to the benefit of the Defendants. They reason that the publication of a generic name is critical to the success of generic competition because it allows GPs to write prescriptions that refer to the generic name, rather than to a particular brand, thereby enabling the pharmacist to choose whether to dispense a branded medicine or the generic equivalent. Because of the Defendants' alleged incumbency advantage, the Claimants assert that they were put at a significant disadvantage.

The Claimants argue that the effect of that delay on generic competition was exacerbated by the Withdrawal. By removing GL from the prescription channel, if a GP searched for "Gaviscon" on its prescription database, the returned product would be Gaviscon Advance Liquid ("GA"), rather than the designated generic name for GL, ARFOS. As a result, say the Claimants, GPs continued to write closed prescriptions for Gaviscon products (in particular, GA), instead of starting to write open prescriptions for the generic ARFOS name. GA was introduced by the Defendants in 1997 and has patent protection until February 2016. The Claimants contend that – for the overwhelming majority of patients – there is no clinical reason to prescribe GA in preference to any ARFOS product.

The Claimants contend that the Defendants' breach of statutory duty has caused them substantial loss. Further, they contend that the measure of this loss is the difference between their actual profits following the Withdrawal and the profits they would have earned, had the Withdrawal not occurred.

The Claimants claim:

(a) Damages, in an amount to be assessed;

(b) Interest; and

(c) Costs.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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