FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Last Remaining Defendant Settles FTC Suit that Led to Landmark Supreme Court Ruling on Drug Company "Reverse Payments"

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The Federal Trade Commission has reached a settlement in *FTC v. Actavis*, the 2009 FTC case alleging that the brand-name drug company Solvay and three generic drug companies illegally agreed to restrict generic competition to Solvay's branded testosterone-replacement drug AndroGel for nine years.

After the district court dismissed the FTC's complaint and the appellate court affirmed the district court decision, the Supreme Court, in June 2013, rejected

lower court rulings that treated “reverse-payment” patent settlements (agreements in which the patent holder pays the alleged infringer) as largely immune from antitrust law. The Court held such agreements are subject to antitrust scrutiny. The case was remanded to the district court, and trial was scheduled to begin on March 4, 2019.

“*FTC v. Actavis* turned the tide on anticompetitive reverse payments in the pharmaceutical industry,” said Chairman Joe Simons. “After the Supreme Court recognized the harmful effects that reverse-payment agreements can have on competition and ultimately on consumers, we have seen fewer of these types of agreements.”

The settlement covers those products that Solvay may have been marketing or developing before its purchase in 2010 by Abbott Laboratories, which later spun off its worldwide pharmaceutical business into AbbVie Inc.

Under the settlement, Solvay’s current owner AbbVie is prohibited from entering into certain patent infringement settlement agreements that restrict generic entry for certain drugs and contain common forms of reverse payments, such as: (1) a side deal, in which the generic company receives compensation in the form of a business transaction entered at the same time as the patent litigation settlement; or (2) a no-AG commitment, in which a brand company agrees not to compete with an authorized generic version of a drug for a period of time.

The settlement exempts licenses to enter the market on a later date, compensation for saved future litigation costs up to $7 million, a continuation or renewal of a pre-existing agreement, and several other types of agreements that are unlikely to be anticompetitive.

The order, if approved by the court, will remain in effect for 10 years.

The Commission vote approving Stipulated Order for Permanent Injunction was 4-0-1. Commissioner Christine S. Wilson was recused. The FTC filed the proposed order in the U.S. District Court for the Northern District of Georgia.

NOTE: Stipulated final orders have the force of law when signed and entered by a District Court judge.

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