

COMMONWEALTH OF KENTUCKY
SCOTT COUNTY CIRCUIT COURT
DIVISION NO. ____
CIVIL ACTION NO. ____-CI-____

COMMONWEALTH OF KENTUCKY,)
ex rel., RUSSELL COLEMAN,)
ATTORNEY GENERAL)
)
Plaintiff,)
)
)
)
v.)
)
PUBLICIS HEALTH, LLC,)
)
Defendant.)

**COMPLAINT FOR
PERMANENT INJUNCTION AND
OTHER RELIEF**

Plaintiff, the Commonwealth of Kentucky (“Kentucky” or “Commonwealth”), by and through its duly elected Attorney General, Russell Coleman, brings this action pursuant to the Kentucky Consumer Protection Act (“KCPA”), KRS 367.110 et seq. and the common law of the Commonwealth of Kentucky against Defendant, Publicis Health, LLC, (“Publicis” or “Defendant”). In support thereof, the State alleges:

I. Parties

1. Plaintiff is the Commonwealth of Kentucky. The Commonwealth is charged with, among other things, enforcing and seeking redress for violations of Kentucky’s consumer protection laws, including the Kentucky Consumer Protection Act.

2. Defendant Publicis is a Delaware limited liability company headquartered in New York, New York. Publicis's ultimate corporate parent is Publicis Groupe, S.A. ("Publicis Groupe"), a publicly-traded joint stock limited liability company organized under the laws of France. At all times relevant to this proceeding, Publicis did business in Commonwealth of Kentucky. The term "Publicis" as used in this Complaint includes, collectively, Publicis Health, LLC and each of its American affiliated entities that worked on opioid related matters from 2010 through 2021: Razorfish Health, LLC, Verilogue, Inc., Publicis Health Media, LLC, Rosetta Marketing Services, LLC, Saatchi & Saatchi Healthcare Communications, Inc., d/b/a Razorfish Health.

II. Jurisdiction and Venue

3. The Court has jurisdiction over the Defendant pursuant to KRS 367.190 because Publicis has transacted business within the Commonwealth at all times relevant to this Complaint.

4. Venue for this action properly lies in Scott Circuit Court pursuant to KRS 367.190(1) because Defendant transacts business in Kentucky or some of the transactions upon which this action is based occurred in Kentucky.

III. Factual Allegations

5. Beginning in the mid-1990s and continuing through the late 2010s, opioid manufacturers pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions across the United States. The rise in opioid

prescriptions caused an equally devastating rise in opioid abuse, dependence, addiction, and overdose deaths.

6. The opioid epidemic has strained Kentucky's resources for services provided by the Commonwealth, including children's services, labor and employment services, housing, recovery support services, and prevention and education efforts, to name a few. The epidemic has also affected the Commonwealth's police force, filled state prisons, affected state-run hospitals and medical facilities, and overwhelmed the Kentucky Medical Examiner's Office, among other harms to the Commonwealth.

7. Publicis is one of the world's largest healthcare advertising companies with 40 offices and 11 brands worldwide. Publicis advertises to potential clients that it can translate healthcare marketing into healthcare engagement.

8. The State brings this action against Publicis for the advertising and marketing consulting services it provided to opioid manufacturers, including Purdue Pharma L.P. (along with related entities Purdue Pharma Inc., and the Purdue Frederick Company, collectively "Purdue"). Publicis was in a Master Services Agreement with Purdue from 2010 to 2021. Over the decade of the Purdue-Publicis partnership, Purdue paid Publicis more than \$70 million for dozens of unfair and deceptive marketing schemes.

9. From 2010 until 2019, Purdue was Publicis' top opioid client, and Publicis was Purdue's number one marketing partner, serving as Purdue's "agency of record." Publicis worked with

Purdue to promote branded opioids OxyContin, Butrans, and Hysingla and helped develop unbranded marketing campaigns.

10. Publicis's projects covered all aspects of Purdue's marketing and sales, including designing sales strategies and tactics, maximizing the reach and influence of Purdue's sales force, using electronic media, designing content, developing promotional messaging, drafting scripts and other materials for Purdue sales representatives to use with prescribers, helping with internal operations and sales activities, targeting prescribers who would be most likely to prescribe large amounts of opioids, recording intimate discussions between prescribers and patients about opioids, and a variety of other marketing, consulting, and sales activities.

11. Publicis created many of the materials that Purdue's sales representatives used when they met with prescribers including an OxyContin Patient Essentials Kit which contained an OxyContin Savings Card. These kits and savings cards were designed to—and did—lure prescribers and patients into extending the length of opioid prescriptions.

12. Publicis developed and created materials that deceptively promoted (i) physicians' "titration" of extended-release opioids to higher and more dangerous doses, increasing the likelihood of addiction; (ii) physicians' conversion of immediate-release opioid prescriptions to more dangerous extended-release OxyContin prescriptions; (iii) Purdue's false messaging that its abuse-deterrent OxyContin formulation was safe and prevented abuse, despite knowing that the

formulation would not stop illicit use of OxyContin because the pills could still be abused orally; and (iv) Purdue's opioid drugs as safe and appropriate for medical conditions for which they are not approved.

13. Publicis also concocted a strategy to deploy Purdue's sales force to increase opioid sales through unbranded marketing including advising and assisting Purdue in deploying front groups and key opinion leaders to disseminate messaging that prescription opioids were safe and less addictive. Under the guise of neutrality, these groups and opinion leaders conveyed this message to healthcare providers, patients, and policymakers without disclosing that they were being paid or financed by Purdue.

14. In addition to the sales campaigns it created, Publicis facilitated Purdue's partnerships with other entities. Publicis coordinated and implemented Purdue's work with McKinsey and Company, Verilogue, Inc., and Practice Fusion, Inc.

15. Publicis worked alongside McKinsey to strategize, develop and implement Purdue's "Evolve to Excellence" marketing scheme. The "Evolve to Excellence" scheme was intended primarily to—and did—flood the most prolific prescribers of OxyContin with additional sales representative calls and messaging, including messaging involving the purported "abuse deterrent" aspects of OxyContin as well as the claimed benefits of converting patients to OxyContin and titrating them up to higher doses.

16. Publicis enabled Purdue's work with another Publicis subsidiary, Verilogue. Verilogue provided prescribers small digital recording devices to record intimate conversations with patients. These conversations were then used by Verilogue and Purdue to figure out how to best overcome patients' concerns about taking opioids. Publicis implemented Verilogue's recommendations in its marketing materials.

17. Publicis encouraged and facilitated Purdue's partnership with Practice Fusion and the use of Practice Fusion's Clinical Decision Support alerts ("CDS alerts"). As early as 2012, Publicis advocated that Purdue use Practice Fusion's electronic medical records platform to grow opioid prescriptions. Practice Fusion's CDS alerts gave prescribers information about extended-release opioids right at the point of prescribing, the exact time when a decision about treatment was being made. The Practice Fusion alerts continued until the Spring of 2019. In 2020, following an investigation by the United States Department of Justice into Practice Fusion's CDS alerts and Purdue, Practice Fusion paid a \$145 million fine and entered into a deferred prosecution agreement admitting to an illegal kickback scheme in which Practice Fusion was paid by Purdue to create and deploy the CDS alerts in electronic health records to increase prescriptions of Purdue's opioids.

18. Publicis distributed hundreds of millions of dollars up the corporate chain to its foreign corporate parent, Publicis Groupe, during the time period that Publicis worked with Purdue to

deceptively promote opioids. These distributions from Publicis continued—and there are indications that the amounts increased—as Purdue and Publicis faced increasing public and governmental scrutiny for their deceptive conduct.

IV. Claims for Relief

Violation of the Kentucky Consumer Protection Act

19. Plaintiff realleges and incorporates by reference each allegation contained in the preceding paragraphs as if they were set out herein.

20. In the course of its business, Publicis unfairly and unconscionably worked with certain of its opioid manufacturing clients to aggressively promote and sell more opioids to more patients for longer periods of time.

21. Such actions constitute unfair trade practices that are prohibited by the KRS 367.170 of Kentucky's consumer protection act.

22. The acts or practices described herein occurred in trade or commerce as defined in KRS 367.110(2).

23. These acts or practices injured consumers in the Commonwealth of Kentucky. Publicis' actions directly and proximately caused Kentucky's injuries.

V. Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order:

- a. Adjudging and decreeing that Publicis has engaged in the acts or practices complained of herein, and that such constitute unfair acts or practices in violation of KRS 367.110, *et seq.*;
- b. Issuing a permanent injunction prohibiting Publicis, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair trade practices, as outlined in the Consent Judgment being filed simultaneously with this Complaint;
- c. Ordering Publicis to pay an amount of damages or restitution for violating of the laws set forth above of Commonwealth of Kentucky;
- d. That the Court enter the Consent Judgment being filed simultaneously with this complaint as an Order of the Court;
- e. Ordering such other and further relief as the Court may deem just and proper.

Dated: January 31, 2024

Respectfully submitted,

RUSSELL COLEMAN
ATTORNEY GENERAL

By: /s/ J. Christian Lewis

J. Christian Lewis (KY Bar No. 87109)
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Frankfort, Kentucky 40601
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CIVIL SUMMONS

Plaintiff, COMMONWEALTH OF KENTUCKY VS. PUBLICIS HEALTH, LLC, Defendant

TO: PUBLICIS HEALTH, LLC

DE

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Scott Circuit Clerk

Date: **2/1/2024**

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title



4056601F5-C691-458B-935D-72ACB067AED4 : 000009 of 000011

Presiding Judge: HON. JEREMY MATTOX (614374)

CI : 000001 of 000001



CIVIL SUMMONS

Plaintiff, COMMONWEALTH OF KENTUCKY VS. PUBLICIS HEALTH, LLC, Defendant

**TO: W. CRAIG ROBERTSON
WYATT, TARRANT & COMBS, LLP
250 WEST MAIN STREET, SUITE 1600
LEXINGTON, KY 405071746**

Email: WROBERTSON@WYATTFIRM.COM

The Commonwealth of Kentucky to Defendant:

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Scott Circuit Clerk
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To: _____

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Date: _____, 20____

Served By

Title





Commonwealth of Kentucky
Tina Foster, Scott Circuit Clerk

Case #: 24-CI-00109

Envelope #: 7265726

Received From: CHRIS LEWIS

Account Of: CHRIS LEWIS

Case Title: COMMONWEALTH OF KENTUCKY VS. PUBLIC HEALTH, LLC
Confirmation Number: commonwealth
 Filed On 2/1/2024 11:58:20AM

#	Item Description	Amount
1	Court Facilities Fee	\$25.00
2	Court Facilities Fee	-\$25.00
3	Access To Justice Fee	-\$20.00
4	Access To Justice Fee	\$20.00
5	Money Collected For Others(Court Tech. Fee)	\$20.00
6	Money Collected For Others(Court Tech. Fee)	-\$20.00
7	Money Collected For Others(Attorney Tax Fee)	\$5.00
8	Money Collected For Others(Attorney Tax Fee)	-\$5.00
9	Library Fee	-\$1.00
10	Library Fee	\$1.00
11	Civil Filing Fee	\$150.00
12	Civil Filing Fee	-\$150.00
TOTAL:		<u>\$0.00</u>

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