

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
SUMMONS

**MYLAN PHARMACEUTICALS INC and
MYLAN INC**

Plaintiff(s)

Civil Action: 09-C-592

Vs

**PG PUBLISHING COMPANY d/b/a
PITTSBURGH POST GAZETTE
34 Blvd of the Allies
Pittsburgh, PA 15222**

**PATRICIA SABATINI
708 Acorn Lane
Clairton, PA 15025**

**LEN BOSELOVIC
10089 Oakridge Drive
Wexford, PA 15090**

JOHN DOE 1

JOHN DOE 2

JOHN DOE 3

To The Above Named Defendant(s):

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve Plaintiff's attorney, **Grant H. Hackley, 38th Floor, One Oxford Center, Pittsburgh, PA 15219** an answer, including any related counterclaim you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **20** days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled action.

DATED: **August 19, 2009**


JEAN FRIEND, CIRCUIT CLERK

BY: 

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

MYLAN PHARMACEUTICALS INC. and
MYLAN INC.,

Plaintiffs,

vs.

PG PUBLISHING COMPANY, d/b/a
PITTSBURGH POST-GAZETTE, PATRICIA
SABATINI, LEN BOSELOVIC, JOHN DOE
1, JOHN DOE 2, and JOHN DOE 3,

Defendants.

CIVIL DIVISION

090592

No.

COMPLAINT

Filed on behalf of PLAINTIFFS

Counsel of Record for this Party:

Clem C. Trischler, Esquire
West Virginia Bar No. 5267
Robert J. D'Anniballe, Jr., Esquire
West Virginia Bar No. 920
Grant H. Hackley, Esquire
West Virginia Bar No. 10790
William Pietragallo, II, Esquire
PA I.D. # 16413

PIETRAGALLO GORDON ALFANO BOSICK
& RASPANTI, LLP

3173 Main Street
Weirton WV 26062
Tel: (304) 748-7740
Fax: (304) 748-0620

One Oxford Centre, 38th Floor
Pittsburgh PA 15219
Tel: (412) 263-2000
Fax: (412) 263-2001

JURY TRIAL DEMANDED

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
CIVIL DIVISION

MYLAN PHARMACEUTICALS INC. and)
MYLAN INC.,)
)
Plaintiffs,)
)
vs.)
)
PG PUBLISHING COMPANY, d/b/a)
PITTSBURGH POST-GAZETTE, PATRICIA)
SABATINI, LEN BOSELOVIC, JOHN DOE)
1, JOHN DOE 2, and JOHN DOE 3)
)
Defendants.)
)
)

COMPLAINT

AND NOW, come the Plaintiffs, Mylan Pharmaceuticals Inc. and Mylan Inc. (hereinafter collectively referred to as "Mylan"), by and through their attorneys, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and hereby submits this Complaint, averring in support as follows:

1. Plaintiff, Mylan Pharmaceuticals Inc., is a corporation registered and doing business under the laws of the State of West Virginia, and maintains a registered office at P.O. Box 4310, Morgantown WV 26505.

2. Plaintiff, Mylan Inc., is the parent corporation of Mylan Pharmaceuticals Inc. registered and doing business under the laws of the Commonwealth of Pennsylvania, and maintains a registered office at 1500 Corporate Drive, Washington County, Canonsburg, PA 15317.

3. Mylan, which started as a small local West Virginia business, has grown into a global, publicly-traded corporation, providing jobs for thousands of West Virginia citizens, with its largest manufacturing plant in Morgantown, West Virginia.

4. Mylan, through its wholly-owned subsidiaries, engages in the development, manufacture, distribution, and sale of pharmaceutical products, with its primary business being generic pharmaceuticals.

5. The generic pharmaceutical industry is highly competitive, and a manufacturer's proprietary internal processes and its reputation for the quality and integrity of its products and practices are important to its success.

6. Regulations promulgated under the federal Food Drug & Cosmetic Act by the Federal Food & Drug Administration ("FDA") regulate, among other things, the manufacture of pharmaceutical products, including production practices and quality control procedures.

7. Mylan has developed its own internal standard operating procedures ("SOPs"), in regard to quality control and other manufacturing functions.

8. In May 2009, Mylan management with the advice of counsel conducted an investigation relating to an internal Mylan SOP.

9. The investigation reports were protected by the attorney-client privilege.

10. These internal reports regarding Mylan SOPs contain highly confidential Mylan trade secrets, including details of Mylan's proprietary SOPs governing quality assurance; investigatory protocols; results of its quality control testing and investigations; its production processes; and its deployment of software and other proprietary technology, all of which are critical to maintaining its competitive advantage, as well as information regarding employees.

11. Mylan's investigation concluded that quality of the product was not affected.

12. Defendant, PG Publishing Co., d/b/a Pittsburgh Post-Gazette (“Post-Gazette”), is a corporation organized and doing business under the laws of the Commonwealth of Pennsylvania, and maintains a principal place of business at 34 Boulevard of the Allies, Allegheny County, Pittsburgh, PA 15222.

13. Defendant Post-Gazette publishes the “Pittsburgh Post-Gazette,” a daily news publication available online at <http://www.post-gazette.com>, with a print edition circulated in and around Pennsylvania, West Virginia, Ohio, and beyond.

14. Defendant, Patricia Sabatini, is an adult individual, residing at 708 Acorn Lane, Allegheny County, Clairton, PA 15025.

15. Defendant Sabatini is employed by Post-Gazette as a staff writer.

16. Defendant, Len Boselovic, is an adult individual, residing at 10089 Oakridge Drive, Allegheny County, Wexford, PA 15090.

17. Defendant Boselovic is employed by Post-Gazette as a staff writer.

18. Defendant Sabatini and Defendant Boselovic are hereinafter collectively referred to as “Reporter-Defendants.”

19. Defendants, John Doe 1, John Doe 2, and John Doe 3 (hereinafter collectively referred to as “Doe Defendants”) are individuals in the employ of Mylan and/or Post-Gazette or otherwise, whose identity and residence are unknown after reasonable investigation, who improperly obtained and/or transferred possession of certain confidential, proprietary and/or privileged documents to Defendants Sabatini and Boselovic, Post-Gazette, and/or other individuals employed by the Post-Gazette.

20. On Sunday, July 26, 2009, the Post-Gazette published an article entitled “Mylan workers overrode drug quality controls” (“the Article” and thereafter follow-up articles), which

appeared on the front page of its final print edition. The Article also appeared at the top of its online edition, and was accompanied by a "Timeline" purporting to provide a chronological account of certain events detailed in the Article. The Article's byline credited authorship of the Article to Defendants Sabatini and Boselovic.

21. The Article ascribes much of its content to "a confidential internal report," which was wrongfully obtained and mischaracterized by the Post-Gazette and Reporter-Defendants. Upon information and belief, in addition to a "confidential internal report," the Defendants have additional internal Mylan documents specifically referenced herein and internal Mylan documents unknown to Mylan at this time (hereinafter collectively referred to as "Documents"). The Documents believed to be in Defendants' possession are confidential, proprietary, and protected by both the attorney-client and work product privilege, and are so labeled in bold type.

22. The Article also contains numerous statements that adversely affect the business reputation of Mylan; impugn the integrity of its manufacturing and quality control procedures; impugn the integrity of the management personnel; and thereby threaten current and prospective business relationships in the highly competitive market of generic pharmaceuticals.

23. The Post Gazette's Article, and a series of articles that followed, are sensational and misleading articles based on improperly obtained and misconstrued confidential, proprietary and/or privileged internal documents. The articles mischaracterized facts relating to an internal Mylan procedure, creating the false appearance of significant quality and regulatory issues at Mylan's Morgantown, W.Va., plant when no such issues existed.

24. An FDA investigation was conducted in follow-up to the Article.

25. The FDA observed no significant discrepancies and closed its investigation.

26. The Post-Gazette and Reporter-Defendants failed to respect the confidential, proprietary and/or privileged nature of the Mylan Documents.

27. Neither Post-Gazette nor Reporter-Defendants had Mylan's express or implied authority to obtain, possess, or reveal to other parties the Documents, or to publish the information purportedly contained therein, which clearly were marked "privileged, proprietary and/or confidential."

28. Specifically, the following notice is found on each page:

Confidentiality Notice: This document and all attachments transmitted with it may contain legally privileged, proprietary and/or confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution, duplication or other use of this message and/or its attachments is strictly prohibited. If you are not the intended recipient, please contact the sender by return memorandum and destroy all copies of the original message and its attachments. Thank you.

29. Based upon this confidentiality notice, the Post-Gazette and Reporter Defendants knew, or should have known, from the moment that they obtained the Documents up to the present, that the Documents and information in their possession are confidential, proprietary and/or privileged. The Post-Gazette and Reporter-Defendants acknowledged the same by referring to the Documents as a "confidential internal report."

30. The confidential Documents were created and designated as confidential to allow management to analyze and consider facts, regulations, and compliance. Public disclosure inhibits such internal investigations from being conducted fairly and completely with the willing participation of all involved, and without undue outside influences.

31. The sensationalized misuse of the Documents caused harm to Mylan and its shareholders, evidenced by substantial market volatility, a decrease in its stock price, and the

resulting decrease in market capitalization, all of which occurred on the second largest trading day in Mylan's history.

32. The Article also contains numerous quotes from consultants in the pharmaceutical industry. In soliciting these statements, Post-Gazette and Reporter-Defendants shared, read, or distributed copies of the Documents to certain consultants ("Consultants"), in further disregard for the Documents' confidential, proprietary and/or privileged nature.

33. The Article further revealed confidential Mylan trade secrets found in the Documents, including aspects of its production and quality practices, its standard operating procedures ("SOPs"), and its anonymous compliance hotline, all of which help Mylan establish and maintain a competitive advantage.

34. Without Mylan's knowledge or consent, Post-Gazette, by and through its agents and/or employees Sabatini, Boselovic, and/or Doe Defendants, either improperly obtained copies, or knowingly received copies that were improperly obtained, of Mylan's confidential, proprietary, and/or privileged internal reports and documents concerning the matter and the subsequent investigation, including a report of a call to Mylan's anonymous compliance hotline, which Mylan has gone to great lengths to protect, and the utility of which is undermined by Post-Gazette's publication of same.

35. Due to the nature of Mylan's business, and in order to protect its proprietary interest, each Mylan employee owes a duty of confidentiality to Mylan that remains in full force and effect even after the employment relationship ends. All employees have confidentiality obligations and certain employees also enter into a written confidentiality agreement.

36. In addition, from time to time, Mylan management advises its employees of their obligation to maintain the confidentiality of all confidential, proprietary and/or privileged

information, and specifically notifies employees that they should not communicate confidential information to third parties.

37. The Post-Gazette and Reporter-Defendants were well aware of this obligation, as specifically acknowledged in a July 31, 2009 article referencing and quoting another internal Mylan communication which directed employees “to be vigilant against unauthorized disclosures of company information.”

38. As described above, the Documents obtained by the Post-Gazette and Reporter-Defendants and distributed to the Consultants are clearly marked confidential, proprietary and/or privileged.

39. In obtaining the Documents, the Reporter-Defendants directly or indirectly induced Mylan employees to violate their duty of confidentiality, and/or collaborated in these violations.

40. Additionally, the Post-Gazette and Reporter-Defendants contacted Mylan employees in West Virginia in numerous ways, including, but not limited to in-person contact, as well as communications to employees at their residence, and relatives’ residences. These attempts to influence Mylan employees continued over at least a two month period, even after the Post-Gazette and Reporter-Defendants were aware that the Documents were confidential, proprietary and/or privileged.

41. In soliciting statements from past and present Mylan employees, the Post-Gazette and Reporter-Defendants, directly or indirectly, induced or attempted to induce these individuals to violate their duty of confidentiality.

42. In attempting to solicit such statements, the Post-Gazette and Reporter-Defendants made improper statements designed to elicit information the Post-Gazette and

Reporter-Defendants knew or should have known was confidential, proprietary and/or privileged.

43. Defendants' actions were willful, wanton, malicious and in reckless disregard or reckless indifference to the rights and interests of Mylan and its employees.

44. Post-Gazette and Reporter-Defendants recognized that their actions were improper, for example, by asserting in an August 13, 2009 online article, in defense of their actions, that they had used "proper news-gathering techniques," only to omit this reference in the same article as it appeared in print the following day.

45. Defendants, collectively, have taken and used trade secrets and confidential, proprietary and/or privileged information properly belonging to Mylan.

COUNT ONE

DETINUE

46. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 45 of the Complaint as if set forth more fully herein.

47. The Documents, compliance hotline, and information revealed therein, confidential, proprietary and/or privileged in nature, were wrongfully obtained by Defendants, individually or in concert.

48. The Documents obtained by Doe Defendants, Post-Gazette, and Reporter-Defendants were marked confidential, proprietary and/or privileged, thus Doe Defendants, Post-Gazette, and Reporter-Defendants had notice that the disclosure of the Documents and the information contained therein constituted a breach of duty by Mylan employees.

49. Because Doe Defendants, Post-Gazette, and Reporter-Defendants knew that the Documents, compliance hotline, and information contained therein were confidential, proprietary

and/or privileged, their circulation of those Documents to Consultants and any other third parties was intentionally wrongful.

50. No relationship existed among Doe Defendants, Post-Gazette, Reporter-Defendants and Consultants with Mylan that authorized Defendants to obtain, possess, or publish the Documents or the confidential, proprietary, and/or privileged trade-secret information contained therein in print or electronically.

51. The proprietary compilations, techniques, and processes contained in the Documents are disclosed, as necessary, only to a limited group of Mylan employees.

52. In following internal processes, the reports generated from the anonymous compliance hotline are strictly protected to assure the integrity of the promise of anonymity upon which the hotline's effectiveness depends.

53. All Mylan employees owe a duty of confidentiality to Mylan.

54. Mylan took appropriate measures to guard the secrecy of its proprietary information.

55. The Defendants have, and continue to possess the Documents and information described above.

56. Mylan has requested the return of its confidential, proprietary and/or privileged documents. The Post Gazette and Reporter-Defendants have failed to comply with that request.

57. While the precise dollar value of these items of intangible personal property is unascertainable, it is clear that the cost for Mylan to develop is tens, perhaps hundreds of thousands of dollars.

58. On information and belief, each Defendant possesses a copy of the Documents.

59. Defendants, individually and collectively, have no right to continued possession of the Documents.

WHEREFORE, Plaintiffs, Mylan Pharmaceuticals Inc. and Mylan Inc., respectfully request that this Court grant equitable relief as authorized by the laws of West Virginia, compelling an accounting of all persons to whom the Documents have been given; compelling the identity of all persons delivering the Documents to the Post-Gazette or Reporter-Defendants; and compelling Post-Gazette, Reporter-Defendants, Doe Defendants, and any other party in receipt of same to return all copies of the Documents and any other improperly obtained confidential, proprietary, and/or privileged documents to Mylan.

Further, Plaintiffs respectfully request that judgment be entered in their favor for equitable relief and for compensatory and exemplary damages, plus attorneys' fees, interests, costs, and such other relief as the Court deems just and appropriate.

COUNT TWO

MISAPPROPRIATION OF TRADE SECRETS

60. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 59 of the Complaint as if set forth more fully herein.

61. Mylan's SOPs relating to manufacture, quality assurance, and FDA compliance constitute compilations of information and processes, used in furtherance of Mylan's business, that enable it to maintain an advantage over its competitors that has made it a leading and competitive manufacturer of generic pharmaceuticals.

62. Mylan's use of software and other technologies in its production and quality assurance operations constitute compilations of information and processes, used in furtherance of

Mylan's business, that enable it to maintain an advantage over its competitors that has made it a leading and competitive manufacturer of generic pharmaceuticals.

63. Mylan's anonymous compliance hotline, to which Mylan has dedicated considerable time and resources, and which depends for its effectiveness on its promise of anonymity, provides a venue for its employees to report concerns regarding compliance related issues. This hotline, its processes and procedures, provide a confidential venue for employees to raise concerns. This process constitutes a compilation of information used in furtherance of Mylan's business that enables it to maintain a competitive advantage that has made it a leading manufacturer of generic pharmaceuticals.

64. The Documents, compliance hotlines, and information revealed therein, which are confidential, proprietary and/or privileged as described above, were wrongfully obtained by Defendants, individually or in concert.

65. The Documents obtained by Doe Defendants, Post-Gazette, and Reporter-Defendants were marked confidential, proprietary and/or privileged, thus Doe Defendants, Post-Gazette, and Reporter-Defendants had notice that the disclosure of the Documents and the information contained therein constituted a breach of duty by Mylan employees.

66. Because Doe Defendants, Post-Gazette, and Reporter-Defendants knew that the Documents, compliance hotline, and information contained therein were confidential, proprietary and/or privileged, their circulation of those Documents to Consultants and any other parties was intentionally wrongful.

67. No relationship existed among Doe Defendants, Post-Gazette, Reporter-Defendants and Consultants with Mylan that authorized Defendants to obtain, possess, or publish

the Documents or the confidential, proprietary, and/or privileged trade-secret information contained therein in print or electronically.

68. The proprietary compilations, techniques, and processes contained in the Documents are disclosed, as necessary, only to a limited group of Mylan employees.

69. In following internal processes, the reports generated from the anonymous compliance hotline are strictly protected to assure the integrity of the promise of anonymity upon which the hotline's effectiveness depends.

70. All Mylan employees owe a duty of confidentiality to Mylan.

71. Mylan took appropriate measures to guard the secrecy of its proprietary information.

72. Mylan has expended significant time, effort and resources to develop the proprietary compilations, techniques, and processes that comprise their SOPs.

73. Mylan's use of software and other technology in its production processes, as well as the production processes itself, are the result of years of innovation and refinement and a tremendous commitment of resources, all of which have been essential to making Mylan a leading manufacturer of generic pharmaceuticals.

74. The Defendants knew or should have known that the Documents were wrongfully obtained at the time that they received them.

75. The Documents disclose various aspects of the processes, techniques, software, and equipment employed in production and quality assurance at the manufacturing facility.

76. Mylan's trade secrets, protected under common law and W. Va. Code 47-22-1, protect their competitive position in the marketplace and, in so doing, the employment of thousands of citizens of West Virginia.

77. In the Article, Post Gazette and Reporter-Defendants disclosed Mylan's trade secrets without Mylan's consent or any other privilege to do so.

78. Defendants' conduct has caused pecuniary harm to Plaintiffs both known and unknown, for which Mylan seeks compensatory and exemplary damages.

WHEREFORE, Plaintiffs, Mylan Pharmaceuticals Inc. and Mylan Inc., respectfully request that judgment be entered in their favor for equitable relief and for compensatory and exemplary damages, plus attorneys' fees, interests, costs, and such other relief as the Court deems just and appropriate.

COUNT THREE

CONVERSION

79. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 78 of the Complaint as if set forth more fully herein.

80. Defendants have unlawfully taken possession of Mylan's confidential, proprietary and/or privileged materials.

81. The Documents at issue are confidential, proprietary and/or privileged Mylan property, created by Mylan in furtherance of its internal review process for the purpose of maintaining and improving the quality of its products and investigating employee related matters.

82. Mylan's SOPs relating to manufacture, quality assurance, and FDA compliance constitute compilations of information and processes, used in furtherance of Mylan's business, that enable it to maintain a competitive advantage that has made it a leading manufacturer of generic pharmaceuticals.

83. Mylan's use of software and other technologies in its production and quality assurance operations constitute compilations of information and processes, used in furtherance of Mylan's business, that enable it to maintain the advantage over its competitors that has made it a leading and competitive manufacturer of generic pharmaceuticals.

84. Mylan's anonymous compliance hotline, to which Mylan has dedicated considerable time and resources, and which depends for its effectiveness on its promise of anonymity, provides a venue for its employees to report concerns regarding compliance related issues. This hotline, its processes and procedures, provide a confidential venue for employees to raise concerns. This process constitutes a compilation of information used in furtherance of Mylan's business that enables it to maintain a competitive advantage that has made it a leading manufacturer of generic pharmaceuticals.

85. The Documents and trade secrets protect Mylan in its market and competitive position, and help to ensure the jobs of thousands of residents of West Virginia.

86. Defendants intentionally dispossessed or intermeddled with Mylan's property interest in the Documents and trade secrets by obtaining them and using the confidential, proprietary and/or privileged information therein.

87. Post-Gazette had no authorization, express or implied, in law or in equity, to take and use Mylan's confidential, proprietary and/or privileged Documents, and knew or should have known this fact.

88. Defendants exercised control over the Documents and trade secrets, misusing them in a way that led to the publication of the Article, which, in addition to interfering with Mylan's interest in the Documents and trade secrets, unfairly cast Mylan in a negative manner.

89. This use of the Documents and trade secrets by Defendants caused harm to Mylan through the dispossession and dissemination of the information contained therein and the loss of Mylan's property interest in the confidential, proprietary and/or privileged Documents and trade secrets.

90. As a result of Defendants' conduct, Mylan suffered pecuniary and other damages.

WHEREFORE, Plaintiffs, Mylan Pharmaceuticals Inc. and Mylan Inc., respectfully request that judgment be entered in their favor for equitable relief and for compensatory and exemplary damages, plus attorneys' fees, interests, costs, and such other relief as the Court deems just and appropriate.

COUNT FOUR

TRESPASS TO CHATTELS

91. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 90 of the Complaint as if set forth more fully herein.

92. Defendants have unlawfully taken possession of Mylan's confidential, proprietary and/or privileged materials.

93. The Documents at issue are confidential, proprietary and/or privileged Mylan property, created by Mylan in furtherance of its internal review process for the purpose of maintaining and improving the quality of its products and investigating employee related matters.

94. Mylan's SOPs relating to manufacture, quality assurance, and FDA compliance constitute compilations of information and processes, used in furtherance of Mylan's business, that enable it to maintain a competitive advantage that has made it a leading manufacturer of generic pharmaceuticals.

95. Mylan's use of software and other technologies in its production and quality assurance operations constitute compilations of information and processes, used in furtherance of Mylan's business, that enable it to maintain the advantage over its competitors that has made it a leading and competitive manufacturer of generic pharmaceuticals.

96. Mylan's anonymous compliance hotline, to which Mylan has dedicated considerable time and resources, and which depends for its effectiveness on its promise of anonymity, provides a venue for its employees to report concerns regarding compliance related issues. This hotline, its processes and procedures, provide a confidential venue for employees to raise concerns. This process constitutes a compilation of information used in furtherance of Mylan's business that enables it to maintain a competitive advantage that has made it a leading manufacturer of generic pharmaceuticals.

97. The Documents and trade secrets protect Mylan in its market and competitive position, and help to ensure the jobs of thousands of residents of West Virginia.

98. Defendants intentionally dispossessed or intermeddled with Mylan's property interest in the Documents and trade secrets by obtaining them and using the confidential, proprietary and/or privileged information contained therein.

99. Post-Gazette had no authorization, express or implied, in law or in equity, to take and use Mylan's confidential, proprietary and/or privileged Documents, and knew or should have known this fact.

100. Defendants exercised control over the Documents and trade secrets, misusing them in a way that led to the publication of the Article, which, in addition to interfering with Mylan's interest in the Documents, unfairly cast Mylan in a negative manner.

101. This use of the Documents and trade secrets by Defendants caused harm to Mylan through the dispossession and dissemination of the information contained therein and the loss of Mylan's property interest in the confidential, proprietary and/or privileged Documents and trade secrets.

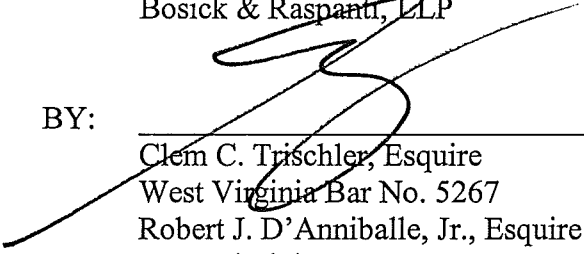
102. As a result of Defendants' conduct, Mylan suffered pecuniary and other damages.

WHEREFORE, Plaintiffs, Mylan Pharmaceuticals Inc. and Mylan Inc., respectfully request that judgment be entered in their favor for equitable relief and for compensatory and exemplary damages, plus attorneys' fees, interests, costs, and such other relief as the Court deems just and appropriate.

Respectfully submitted,

Pietragallo Gordon Alfano
Bosick & Raspanti, LLP

BY: _____



Clem C. Trischler, Esquire
West Virginia Bar No. 5267
Robert J. D'Anniballe, Jr., Esquire
West Virginia Bar No. 920
Grant H. Hackley, Esquire
West Virginia Bar No. 10790
William Pietragallo, II, Esquire
PA I.D. #16413

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

3173 Main Street
Weirton WV 26062
Tel: (304) 748-7740
Fax: (304) 748-0620

One Oxford Centre, 38th Floor
Pittsburgh PA 15219
Tel: (412) 263-2000
Fax: (412) 263-2001

Email: CCT@Pietragallo.com
RJD@Pietragallo.com
GHH@Pietragallo.com
WP@Pietragallo.com;

Attorneys for Plaintiffs

JURY TRIAL DEMANDED

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