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6 MEDICAL WEEK NEWS, INC. and
MILTON R. BENJAMIN
7

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 MEDICAL WEEK NEWS, INC. and MILTON) No. _____
12 R. BENJAMIN,)
13 Plaintiffs,) **COMPLAINT FOR DECLARATORY**
14) **JUDGMENT**
v.) **DEMAND FOR JURY TRIAL**
15)
16 SANOFI-AVENTIS GROUP and SANOFI-)
SYNTHELABO INC.,)
17 Defendant[s].)
18 _____)

19 **I. INTRODUCTION**

20 1. This is a civil action seeking declaratory relief of non-infringement of trademarks.

21 2. At issue is the ability of Web publishers to engage in fair use of trademarks in order
22 to provide the general public with independent news reports about trademarked products. Hundreds
23 of websites and magazines incorporate trademarked terms in their domain names and titles,
24 signifying their coverage of news relating to a particular company, product or service. U.S. federal
25 trademark law principles recognize this as a species of fair use.

26 3. Plaintiff Medical Week News, Inc. maintains a health news website,
27 AcompliaReport.com, that reports on a new anti-obesity and smoking cessation drug, known as
28 Acomplia, that is now awaiting regulatory approval in the United States. Defendant Sanofi-Aventis

1 Group, which claims ownership of the “Acomplia” trademark, has threatened Plaintiffs Milton R.
2 Benjamin and Medical Week News, Inc. with legal action for trademark infringement and
3 instigated legal proceedings to have the AcompliaReport.com domain name transferred from
4 Plaintiffs to the Sanofi-Aventis Group. In light of established U.S. trademark law principles,
5 however, Plaintiffs’ use of the word “Acomplia” is entirely lawful.

6 4. Plaintiffs therefore seek a declaration that the use of “Acomplia” in connection with
7 the AcompliaReport.com website, including in its domain name, is entirely lawful and does not
8 infringe any of Defendants’ trademark rights.

9 **II. PARTIES**

10 5. Plaintiff Medical Week News, Inc., is a Florida corporation that publishes medical
11 news on several websites including AcompliaReport.com.

12 6. Plaintiff Milton R. Benjamin, a natural person, is the sole owner and President of
13 Medical Week News, Inc.

14 7. On information and belief, Defendant Sanofi-Aventis Group is a French corporation
15 that, as the third-largest pharmaceutical company in the world and owner of U.S. trademarks for a
16 variety of drugs sold in California, engages in substantial business in this judicial district and
17 maintains substantial contacts within this judicial district.

18 8. On information and belief, Defendant Sanofi-Synthelabo, Inc. is the U.S. affiliate of
19 Sanofi-Aventis Group, resides in this judicial district, and is registered to do business in California.
20 On information and belief, Defendant Sanofi-Synthelabo, Inc. is the agent of Sanofi-Aventis Group
21 for purposes of the company’s business in this judicial district, maintains an office in this district,
22 and otherwise has substantial contacts within this judicial district.

23 **III. JURISDICTION**

24 9. Plaintiffs bring this action seeking a declaration of rights with respect to federal
25 trademark laws. The court has jurisdiction over this action under 28 U.S.C. § 1331 and 1338
26 (federal question), 15 U.S.C. § 1121(a) (federal trademarks), and 28 U.S.C. § 2201 (Declaratory
27 Judgment Act).

28 10. Plaintiffs are informed, believe and thereon allege that Defendants have sufficient

1 contacts with this district generally and, in particular, with the events herein alleged, that each
2 Defendant is subject to the exercise of jurisdiction of this court over its person.

3 **IV. VENUE AND INTRADISTRICT ASSIGNMENT**

4 11. Venue is proper in this district under 28 U.S.C. § 1391(b) and (d).

5 12. This civil action is not premised on facts that provide any basis for specific
6 intradistrict assignment.

7 **V. FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

8 **Medical Week News**

9 13. Medical Week News, Inc. is an independent health news network that operates
10 several websites, including AcompliaReport.com. These online newsletters publish original news
11 reporting about a variety of medical issues.

12 14. Milton R. Benjamin, founder and President of Medical Week News, Inc., is an
13 experienced career journalist who has previously served as an editor at *The Washington Post* and
14 president of United Press International (UPI). Medical Week News also relies on an advisory board
15 of medical and journalist experts, including luminaries like Reese Schonfeld, co-founder and
16 former president of the Cable News Network (CNN).

17 15. On March 30, 2004, Mr. Benjamin registered the domain name
18 AcompliaReport.com, adding the site to the Medical Week News, Inc. network. Since then, the
19 site has provided visitors with original news reporting and commentary about Acomplia, an anti-
20 obesity drug that Defendants are currently shepherding through regulatory approval.

21 16. Acomplia has received considerable press attention. The public has expressed
22 enormous interest in current and forthcoming anti-obesity drugs, including Acomplia. Defendant
23 Sanofi-Aventis Group has called obesity “the number one health epidemic of the 21st century” and
24 has characterized the drug as “revolutionary.”

25 17. The AcompliaReport.com website includes prominent disclaimers that it is an
26 independent news site not affiliated with Sanofi-Aventis Group. Its news reports include
27 information about Acomplia’s clinical trials, the drug approval process, and anti-obesity drugs in
28 general, information that helps consumers make more informed decisions about their health.

The Present Dispute

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2 18. On April 21, 2005, Mr. Benjamin received an e-mail from Isabelle Leroux, an
3 attorney at Bird & Bird representing Sanofi-Aventis Group. Attached to the e-mail was a
4 document entitled “Warning Letter.” In the letter—dated April 21, 2005, and addressed to
5 Benjamin MILTON (as opposed to Milton Benjamin)—Ms. Leroux warned that Sanofi-Aventis
6 Group would take legal action against Mr. Benjamin unless he transferred the domain name
7 AcompliaReport.com to Sanofi-Aventis Group within ten days of receiving the letter. Ms. Leroux
8 claimed the domain name created a “risk of confusion” and noted that “WIPO systematically
9 ordered the transfer of domain names including the word ACOMPLIA to SANOFI-AVENTIS
10 when, in particular, the registrant could not justify of [sic] a legitimate interest.” A copy of that
11 letter is attached as Exhibit A.

12 19. On April 22, 2005, Mr. Benjamin received an e-mail from Carole Tricoire, an
13 attorney in the Legal Trademark Department of Sanofi-Aventis Group, claiming the registration of
14 the AcompliaReport.com domain name infringed Sanofi-Aventis Group’s trademarks. The e-mail
15 urged Mr. Benjamin to “return the ... domain name without any delay” or face legal action. A copy
16 of that e-mail is attached as Exhibit B.

17 20. On April 28, 2005, after responding to the April 22 message, Mr. Benjamin received
18 another e-mail from Ms. Tricoire. In the e-mail, Ms. Tricoire wrote that “unless you confirm by
19 Friday 6th May 2005 that you agree to the amicable transfer of ACOMPLIAREPORT to Sanofi-
20 Aventis, we shall lodge a legal action to obtain the same.” A copy of that e-mail is attached as
21 Exhibit C.

22 21. On May 20, 2005, Sanofi-Aventis Group filed a complaint with the World
23 Intellectual Property Organization (WIPO) Arbitration and Mediation Center pursuant to WIPO’s
24 Uniform Domain Name Dispute Resolution Policy (UDRP). In the complaint, Sanofi-Aventis
25 Group alleged that the AcompliaReport.com domain name is confusingly similar to its Acomplia
26 trademark. The complaint demands that the AcompliaReport.com domain name be transferred to
27 Sanofi-Aventis Group. A copy of the complaint is attached as Exhibit D. Plaintiffs have requested
28 that the WIPO proceeding be stayed pending outcome of this action.

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- 2. For Plaintiffs' attorneys' fees;
- 3. For Plaintiffs' costs and disbursements in this action; and
- 4. For such other and further equitable and legal relief as the court shall find just and proper.

DATED: June 27, 2005

By _____
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Plaintiffs hereby request a jury trial for all issues triable by jury including, but not limited to, those issues and claims set forth in any amended complaint or consolidated action.

DATED: June 27, 2005

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