

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA**

**OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA,**

Plaintiff,

Case No.: 04-16032 (09)

vs.

ASAP MEDS, INC., a Florida Corporation
d/b/a MEDS-STAT

Defendant.

**PLAINTIFF'S FIRST AMENDED COMPLAINT AND APPLICATION
FOR PRELIMINARY RELIEF**

Plaintiff, **OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA** (hereinafter referred to as "Plaintiff"), hereby files its' First Amended Complaint and Application For Preliminary Relief against Defendant **ASAP MEDS, INC.,** a Florida Corporation d/b/a MEDS-STAT and would state as follows:

JURISDICTION

1. This is an action for damages and injunctive relief, brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2001).
2. This Court has jurisdiction pursuant to the provisions of said statute.
3. Plaintiff is an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act as defined in Chapter 501, Part II, Florida Statutes, and is authorized to seek damages, injunctive and other statutory relief pursuant to this part. The violations occurred in or affected more than one judicial circuit. The Office of the State Attorney for the Seventeenth Judicial Circuit has deferred prosecution of the present cause to the Office of the Attorney General, Department of Legal Affairs.

4. Venue is proper in the Seventeenth Judicial Circuit as the principal place of business of the Defendant entities is Broward County, Florida.

5. Plaintiff has conducted an investigation, and the head of the enforcing authority, Attorney General Charles J. Crist, Jr. has determined that an enforcement action serves the public interest.

6. Defendant, at all times material hereto, provided goods or services as defined within Section 501.203(8), Florida Statutes (2001).

7. Defendant, at all times material hereto, solicited consumers within the definitions of Section 501.203(7), Florida Statutes (2001).

8. Defendant, at all times material hereto, were engaged in a trade or commerce within the definition of Section 501.203(8), Florida Statutes (2001).

9. Defendant, **ASAP MEDS, INC.**, (hereinafter referred to as ASAP) is an active for-profit Florida Corporation d/b/a MEDS-STAT. The principal address of said business is 5100 N. Federal Highway, Suite #204, Fort Lauderdale, Broward County, Florida.

FACTUAL BACKGROUND

10. California based pharmaceutical maker Chiron provided the majority of the nation's supply of flu vaccine for the upcoming flu season. The flu can be a serious and life threatening health risk to the general population. At particular risk are the elderly, infants and the infirm, who are subject to a substantially higher mortality rate as the result of the flu than is the general population.

11. Because Chiron's Liverpool, England facility was not able to ship any flu vaccine due to concerns regarding contamination, Chiron has stated that it could not deliver some 47 million

doses of the vaccine it had promised this year. The result has been a severe shortage of flu vaccine, necessitating a rationing and distribution strategy that focuses on the elderly, infants and the infirm. Otherwise healthy adult individuals have been requested to either forego the vaccine completely or attempt to obtain a nasal spray variant of the vaccine.

12. The sacrifice exhibited by these persons stands in stark contrast to the unconscionable acts and practices of the Defendant.

13. Attached as Plaintiff's Exhibit #1 to the original Complaint is an invoice from MEDS-STAT to Degolar Pharmacy in Kansas City, Kansas. This invoice reflects that the Defendant has taken advantage of the current emergency situation by increasing current market prices for the vaccine ten-fold. Five vials of the vaccine, usually priced in the open market at \$63 to \$85 per vial (10 doses per vial), were sold by the Defendant to Degolar at a rate of over \$900 per vial. This sale took place on or about October 11, 2004. Even where Defendant purchased the vaccine at a higher than market rate, they routinely marked their prices up as much as 200%. Defendant made numerous sales of this flu vaccine to hospitals and pharmacies both within and outside of the State of Florida at these inflated prices. Plaintiff would incorporate said exhibit into the present Amended Complaint.

14. The Center for Disease Control in Atlanta, despite the shortage, is able to purchase the vaccine at a price of approximately \$85 per vial. Florida Medicaid has been paying (at Wholesaler Acquisition Cost +7%) from \$14.86 to \$22.39 per vial for generic Fluzone, the flu vaccine in question. The Broward County Health Department has recently purchased the vaccine from ASD Healthcare for approximately \$95.63 per 5 ml. vial.

15. Due to the huge and unprecedented increase in the prices charged by the Defendant

for this vaccine, there is a significant disparity between the value received and the consideration paid for this product. Defendant preyed on the fears of the consuming public in order to create and justify this disparity. Their actions display a total absence of good faith, honesty in fact and fair dealing. Said actions also exert undue influence over highly susceptible classes of purchasers, such as those with serious illnesses. These actions also create unwarranted health and safety risks.

16. The targets of the Defendant are ultimately the elderly, infants, and the frail and infirm of our society, persons least likely to be able to conduct a detached analysis of Defendants' solicitations. By pricing their product at such an extreme level, their actions reduce the availability of the vaccine to the very citizens that this State most needs to protect.

17. The Plaintiff has received complaints regarding similar egregious acts relating to the overpricing of other pharmaceutical products, including muscle relaxants required for surgical procedures, where said pharmaceuticals are otherwise in short supply.

18. Defendant would seek information relating to shortages of various essential pharmaceuticals and attempt to buy up as much of the product as possible.

19. Salespersons, on a continuing basis, would be provided with inventory sheets naming specific pharmaceuticals that could be sold and a minimum price at which the sale could take place. Salespersons were then instructed to charge as much for the particular drug as possible, with bonuses being provided to those who had made the most profit. There was, therefore, no set and specific markup on pharmaceuticals being sold by the Defendants.

20. If there was a shortage of a particular pharmaceutical, the Defendant would not only seek to purchase as much of the drug as possible, but would hoard same until such time as they believed that they could sell the drug for the maximum profit. To this end, certain drugs were not

listed for sale, even though these pharmaceuticals were, in fact, in the Defendants' inventory. Consumers seeking to purchase the drug would falsely be informed that the company did not have said pharmaceuticals in stock.

21. Salespersons were also instructed to call potential targets and attempt to speak to a representative of the hospital or pharmacy that was not their usual "buyer." In this way, the representative of the target would not have a true and accurate understanding of the actual average market price of the drug in question. Salespersons were further instructed by management to obtain a confirmation number without notifying the target of the actual price of the drug. Should an individual target request a specific drug and insist on learning the actual sales price, salespersons were instructed to "lowball the price" but indicate that the drug was not immediately available.

22. Salespersons were instructed to falsely inform targets that ASAP was not permitted to buy from other wholesalers. The purpose of this deception was to justify the inflated prices charged by the company. In truth and fact, ASAP did purchase pharmaceuticals from other wholesale distributors.

23. In some cases, where a consumer would purchase a specific number of items, Defendant would ship that number of "packs" of items, thereby increasing both the amount delivered and the total purchase price.

COUNT I

DECEPTIVE AND UNFAIR TRADE PRACTICES CHAPTER 501, PART II FLORIDA STATUTES

24. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 23 as if fully set forth bellow.

25. Chapter 501.204(1), Florida Statutes specifically prohibits “unfair,” “deceptive,” and “unconscionable” business acts and practices in the conduct of any trade or commerce.

26. The acts and practices of the Defendant as alleged above violate the provisions of Florida Statute 501 Part II.

27. Should Defendant continue to conduct business and continue the above-cited violations, they will increase the number of consumers already aggrieved by this unlawful and egregious conduct unless enjoined by this Court. Plaintiff has no remedy at law to protect the public against these continuing violations.

WHEREFORE, Plaintiff requests this court to enter the following Orders:

1. Grant permanent injunctions against Defendant, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with Defendant who receive actual notice of this injunction, prohibiting such persons from doing the following acts:
 - a) Charging unconscionable prices not reasonably related to the fair market value of pharmaceuticals sold.
 - b) Violating the provisions of Chapter 501, Part II, Florida Statutes (2001).
2. Award actual damages to all consumers who are shown to have been injured in this action, pursuant to Section 501.206 (1) (c), Florida Statutes (2001).
3. Assess against Defendant herein civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) for each act or practice found to be in violation of Chapter 501, Part II, Florida Statutes (2001) and any increased penalties provided by statute should said victims be shown to be elderly as provided by statute.

4. Award reasonable attorneys fees pursuant to F.S. 501.2105.
5. Grant temporary relief pursuant to F.S. 501.207.
6. Waive the posting of any bond by Plaintiff in this action.
7. Grant such other relief as this Honorable Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of this Amended Complaint and Application for Preliminary Relief has been sent via fax and U.S. mail to Mark Nurik, Esq., Ruden, McClosky, Smith, Schuster & Russell, 200 E. Broward Blvd., Ft. Lauderdale, FL 33301 and Ricardo A. Reyes, Esq., 7251 W. Palmetto Park Rd., Suite 205, Boca Raton, FL 33433 this _____ day of October, 2004.

Respectfully Submitted

CHARLES J. CRIST, JR.
Attorney General

By:

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