STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota, by its Attorney General, Keith Ellison

Plaintiff,

vs.

McKinsey & Company, Inc., United States,

Defendant.

Court File No. ___________________

COMPLAINT

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against the above-referenced Defendant ("McKinsey & Company, Inc., United States"), alleges as follows:

PARTIES

1. Keith Ellison, Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8; the Uniform Deceptive Trade Practices Act, Minnesota Statutes sections 325D.43-.48, the Consumer Fraud Act, Minnesota Statutes sections 325F.68-.694; and has common law authority, including *parens patriae* authority, to bring this action to enforce Minnesota's laws, to vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm arising out of violations of Minnesota's laws.

2. Defendant McKinsey & Company, Inc., United States ("McKinsey" or "Defendant") is a privately owned entity headquartered in New York, New York. At all times relevant to this proceeding, McKinsey did business in Minnesota.

JURISDICTION

3. The Court has subject matter jurisdiction over McKinsey pursuant to Minnesota Statutes sections 8.01, 8.31, 8.32, 325D.45, 325F.70, and common law, and has personal jurisdiction over McKinsey because McKinsey has transacted business within the state at all times relevant to this Complaint.

VENUE

4. Venue for this action properly lies in Ramsey County, Minnesota, pursuant to Minnesota Statutes section 542.09 because McKinsey has carried on a regular business in Ramsey County, Minnesota or some of the transactions out of which this action arose occurred in Ramsey County, Minnesota, as described herein.

FACTUAL ALLEGATIONS

5. Beginning in the mid-1990s, opioid manufacturers pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions in Minnesota. The rise in opioid prescriptions caused an equally devastating rise in opioid abuse, dependence, addiction, and overdose deaths.

6. Prescription opioids continue to kill dozens of people across Minnesota every year. Thousands more suffer from negative health consequences short of death and countless others have had their lives ruined by a friend or family member's addiction or death. Every community in Minnesota suffers from the opioid crisis of addiction and death.

7. McKinsey worked with entities involved in manufacturing and selling opioids and thereby contributed to the opioid crisis.

8. McKinsey is one of the world's largest consulting companies. Its partners work worldwide for corporations and governments across diverse industries. Its influence is vast

because of its best-in-class reputation. McKinsey sells the notion that it can take whatever a company or government is doing and make them do it better.

9. The State brings this action against McKinsey for the consulting services it provided to opioid companies in connection with designing the companies' marketing plans and programs that helped cause and contributed to the opioid crisis. McKinsey sold its ideas to OxyContin maker Purdue Pharma, L.P. ("Purdue") for more than fifteen years, from 2004 through 2019, including before and after Purdue's 2007 guilty plea for felony misbranding.

10. McKinsey advised Purdue and other manufacturers to target prescribers who write the most prescriptions, for the most patients, and thereby make the most money for McKinsey's clients.

11. Early in their relationship, McKinsey advised Purdue that it could increase OxyContin sales through physician targeting and specific messaging to prescribers. These McKinsey strategies formed the pillars of Purdue's sales tactics for the next fifteen years.

12. In 2008, McKinsey worked with Purdue to develop its U.S. Food and Drug Administration ("FDA") mandated risk evaluation and mitigation strategy ("REMS"). McKinsey advised Purdue to "band together" with other opioid manufacturers toward a class REMS to "formulate arguments to defend against strict treatment by the FDA." Ultimately, the FDA adopted a class-wide REMS that resulted in high-dose OxyContin remaining subject to the same oversight as lower-dose opioids.

13. In 2009, Purdue hired McKinsey to increase "brand loyalty" to OxyContin. McKinsey recommended the best ways to ensure loyalty to the brand by targeting specific patients, including patients new to opioids, and developing targeted messaging for specific prescribers.

14. Purdue thereafter adopted McKinsey's proposed prescriber messaging and patient targeting advice and incorporated them into Purdue's marketing and sales strategies.

15. In 2013, McKinsey conducted another analysis of OxyContin growth opportunities for Purdue, laying out new plans to increase sales of OxyContin. Among the key components of McKinsey's plan adopted by Purdue were to:

a. focus sales calls on high-volume opioid prescribers, including those who wrote as many as 25 times as many OxyContin prescriptions as their lower volume counterparts;

b. remove sales representative discretion in targeting prescribers;

c. focus Purdue's marketing messaging to titrate to higher, more lucrative dosages;

d. significantly increase the number of sales visits to high-volume prescribers; and

e. create an "alternative model for how patients receive OxyContin," including direct distribution to patients and pharmacies, to help address the "product access" problem.

16. Purdue approved McKinsey's plan, and together with McKinsey, moved to implement the plan to "Turbocharg[e] Purdue's Sales Engine," under the name Evolve 2 Excellence ("E2E"). E2E significantly increased Purdue's opioid sales, in particular for OxyContin.

17. McKinsey partners participated as part of an Executive Oversight Team and Project Management Office, reporting to Purdue's Executives, the Purdue board, and with the Sacklers, individually. McKinsey worked side by side with Purdue and helped Purdue plan and implement E2E, assisting with sales representative training, productivity, messaging, and call plans, IT systems, promotional strategies, and market forecasting.

18. In developing the targeted messaging to increase sales of OxyContin, McKinsey conducted significant market research, including through "ride-alongs" with Purdue sales representatives to learn how they promoted OxyContin. McKinsey carefully monitored Purdue sales representatives and provided guidance on prescriber messaging and adhering to target prescriber lists. McKinsey advised that sales representatives do more to promote the so-called abuse deterrent properties of a reformulated version of OxyContin to address prescriber concerns about abuse risk.

19. When a large pharmacy chain took steps to scrutinize suspicious opioid orders, McKinsey stressed to Purdue's owners the "need to take action" on this "urgent" issue affecting OxyContin. McKinsey told Purdue's owners to engage in senior level discussions with the pharmacy chain, increase efforts with patient advocacy groups to clamor against dispensing limits, and accelerate considerations of an alternative distribution channel, such as delivering OxyContin directly to patients through mail-order pharmacies.

20. After E2E, McKinsey continued to work with Purdue, including on a project that identified the growing addiction crisis as a profit-making opportunity. McKinsey told Purdue that it should strive to become a provider across the spectrum of drug abuse and addiction because of the opportunities it presented. McKinsey advised Purdue to get into the manufacturing and marketing of opioid rescue and treatment medications in order to profit from the realities of dependence, addiction, and abuse. Indeed, in 2018, Purdue owner Dr. Richard Sackler received a patent for a drug to treat opioid addiction.

21. McKinsey also partnered with Purdue to test a program called FieldGuide, a proprietary software that McKinsey sought to license to other manufacturers. This software would enable other opioid manufacturers to target and aggressively pursue high-volume prescribers.

22. McKinsey continued to design and develop ways that Purdue could increase sales of OxyContin well after the opioid epidemic peaked. One proposal McKinsey recommended was for Purdue to pay "additional rebates on any new OxyContin related overdose or opioid use disorder diagnosis." McKinsey advised Purdue on its strategies to obtain and maintain broad formulary coverage for OxyContin with insurers and pharmacy benefit managers, even as payors began reducing coverage for OxyContin as the opioid crisis mounted.

23. Subsequently, in the wake of hundreds of thousands of opioid deaths and thousands of lawsuits, McKinsey proposed a plan for Purdue's exit from the opioid business whereby Purdue would continue selling opioids as a way to fund new Purdue ventures. According to McKinsey, this change was necessary because of the negative events that materially compromised the Purdue brand.

24. McKinsey's work for opioid manufacturers extended beyond Purdue. McKinsey collected millions of dollars designing and implementing marketing programs for the country's largest opioid manufacturers, including Johnson & Johnson and Endo, increasing the sale and use of opioids in Minnesota. McKinsey designed and implemented for other opioid manufacturers marketing plans similar to those it created for Purdue.

25. At the same time McKinsey was working for opioid companies, McKinsey also consulted with governments and non-profits working to abate the raging opioid crisis—a crisis that McKinsey's own research showed was caused in large part by prescription opioids.

26. There are indications that individuals at McKinsey considered destroying or deleting documents related to their work for Purdue.

27. In 2019, McKinsey announced that it no longer worked for Purdue or other opioid manufacturers. But the harm created by McKinsey's marketing plans for opioid manufacturers has not stopped.

28. Opioids have killed thousands in Minnesota, and continue to ravage the lives of many more, creating one of the largest public health epidemics in the country's history. Economically, the toll is equally grim. The opioid crisis has forced Minnesota to many millions of dollars for increased costs in health care, child welfare, criminal justice, and many other programs needed to abate the epidemic.

29. Months after McKinsey stopped its opioid work, Purdue filed for bankruptcy. More than a hundred thousand individuals filed claims for personal injuries. States and local governments filed claims for trillions of dollars incurred as a result of the opioid crisis. Another McKinsey client, opioid manufacturer Mallinckrodt plc, similarly filed for bankruptcy protection in October 2020.

30. In 2019, an Oklahoma state court found that McKinsey client Johnson & Johnson helped cause the opioid epidemic in Oklahoma, ordering it to pay $465 million to help abate the crisis.

31. In 2020, Purdue pleaded guilty to three felonies as a result of conduct spanning a decade—from 2007 to 2017—during which Purdue worked side-by-side with McKinsey to design and implement marketing campaigns to increase dangerous opioid sales.

32. In 2020, Purdue and the members of the Sackler family who owned Purdue also settled civil claims by the Department of Justice for hundreds of millions of dollars. The materials filed in connection with that plea and settlement agreements contain a statement of facts regarding

McKinsey's conduct and involvement in the conduct leading to the civil claims against Purdue and the Sackler family.

COUNT I
MINNESOTA STATUTES SECTIONS 325D.44 and 325F.69

33. The State of Minnesota re-alleges all prior paragraphs of this Complaint.

34. In the course of its business, McKinsey worked with certain of its opioid manufacturing clients to promote and sell more opioids to more patients for longer periods of time.

35. Such actions constitute deceptive practices that are prohibited by Minnesota Statutes sections 325D.44, subdivision 1(2) and (13) and 325F.69.

36. These acts or practices injured consumers in the State of Minnesota. McKinsey's actions directly and proximately caused Minnesota's injuries.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to award judgment against Defendant, and enter an Order:

1. Declaring that Defendant's acts described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 325D.44 and 325F.69;

2. Enjoining Defendant, 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 conduct in violation of Minnesota Statutes sections 325D.44 and 325F.69;

3. Ordering McKinsey to pay monetary relief pursuant to Minnesota Statutes section 8.31, subdivisions 3 and 3a, for violations of Minnesota Statutes sections 325D.44 and 325F.69;

4. Granting such further relief as provided by law or equity as the Court deems appropriate and just.

Respectfully submitted,

Dated: February 4, 2021

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ATTORNEYS FOR PLAINTIFF
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MINN. STAT. § 549.211
ACKNOWLEDGEMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: February 4, 2021

/s/ Evan Romanoff
EVAN ROMANOFF

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