



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ABBVIE INC. and ABBVIE)
BIOTECHNOLOGY LTD,)
)
Plaintiffs,)
) C.A. No. 2023-0617-SG
v.)
) PUBLIC VERSION
COHERUS BIOSCIENCES, INC.,)
) filed June 16, 2023
)
Defendant.)

PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Court of Chancery Rule 65, Plaintiffs AbbVie Inc. and AbbVie Biotechnology Ltd (collectively “AbbVie” or “Plaintiffs”), by and through their undersigned attorneys, respectfully move this Court for entry of a preliminary injunction prohibiting Defendant Coherus Biosciences, Inc., (“Coherus” or “Defendant”) or any entity with which it is affiliated or with which it is acting in concert, from breaching the [REDACTED] between Coherus and AbbVie (the “Agreement”) through the [REDACTED] [REDACTED] Coherus’s adalimumab biosimilar product, YUSIMRY™, in the United States, and/or any other relief this Court deems appropriate. In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs offer their Verified Complaint and Motion to Expedite, contemporaneously filed herewith, in support of this Motion.

2. “To obtain a preliminary injunction, the movant must demonstrate: (i) a reasonable probability of success on the merits; (ii) a threat of irreparable injury if an injunction is not granted; and (iii) that the balance of the equities favors the issuance of an injunction.” *Next Level Ventures, LLC v. AVID USA Techs. LLC*, 2023 WL 3141054, at *13 (Del. Ch. Mar. 16, 2023) (citing *Revlon, Inc. v. MacAndrews & Forbes Hldgs., Inc.*, 506 A.2d 173, 179 (Del. 1986)). This standard is a “flexible one” and a “strong showing on one element may overcome a weak showing on another element.” *AM Gen. Hldgs. LLC v. Renco Grp., Inc.*, 2012 WL 6681994, at *3 (Del. Ch. Dec. 21, 2012) (citation omitted).

3. *A reasonable probability of success on the merits*: Plaintiffs have a reasonable probability of success in showing that Coherus breached and continues to breach [REDACTED] of the Agreement by [REDACTED] [REDACTED] its adalimumab biosimilar product, YUSIMRY™ [REDACTED] Plaintiffs’ Verified Complaint and Motion to Expedite explain that Plaintiffs have a colorable claim against Coherus for breach of contract. Complaint ¶¶ 38-46; Motion to Expedite ¶¶ 14-21, 29-33. For the same reasons, Plaintiffs have a reasonable probability of success on their claim. As set forth more fully in Plaintiffs’ Verified Complaint and Motion to Expedite, incorporated here, Coherus has breached and continues to breach the Agreement through its (1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] of YUSIMRY™; (3) public statements identifying the sale price and/or list price of YUSIMRY™ through Cost Plus Drugs and the availability of YUSIMRY™ to payors and patients; and/or (4) any other activities amounting to an [REDACTED] *Id. See, e.g., Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors USA, Inc.*, 617 F.3d 1307, 1311 (Fed. Cir. 2010) (“A ‘sale’ is not limited to the transfer of tangible property; a sale may also be the agreement by which such a transfer takes place.”).

4. As the Court of Appeals for the Federal Circuit has explained, an [REDACTED] can be found based on an offer to enter into and entry into a contract for sale and does not require the transfer of the property. *See id.*; *see also Enercon GmbH v. International Trade Comm’n*, 151 F.3d 1376, 1382–83 (Fed. Cir. 1998) (finding contract for future delivery completed a “[REDACTED]” for purposes of patent infringement under 19 U.S.C. § 1337); *Steuben Foods, Inc. v. Nestle USA, Inc.*, 2016 WL 5858930, at *3 (W.D.N.Y. Oct. 7, 2016); *3D Sys., Inc. v. Aarotech Labs., Inc.*, 160 F.3d 1373, 1379 (Fed. Cir. 1998) (finding a letter’s “description of the allegedly infringing merchandise and the price at which it can be

purchased” to be an [REDACTED]

5. *A threat of irreparable injury if an injunction is not granted:* If injunctive relief is not provided, Plaintiffs will suffer irreparable harm for at least the following reasons:

6. *First*, Coherus agreed that [REDACTED]

[REDACTED]

7. *Second*, consistent with Coherus’s acknowledgment in [REDACTED]

[REDACTED] Coherus’s breach has impacted and will continue to impact the biosimilar adalimumab market in unknown ways given the complexity of the market and AbbVie’s relationship with its licensees, including licensees owing royalties to AbbVie. Complaint ¶¶48-49; Motion to Expedite ¶¶ 37-41. *See, e.g., ZRii, LLC v. Wellness Acq. Grp., Inc.*, 2009 WL 2998169, at *13 (Del. Ch. Sept. 21, 2009) (“[T]he danger of losing valuable revenue-generating relationships is a harm that may not be compensable in any manner other than injunctive relief.”); *Canon, Inc. v. GCC Int’l Ltd.*, 263 F. App’x 57, 62 (Fed. Cir. 2008) (holding that “an award

of money damages would not be sufficient” where entry of the generic product “will likely result in . . . loss of [the branded product’s] market share” due to “the difficulty (if not impossibility)” of determining the full measure of damages).

8. **Third**, Coherus’s ongoing breach may impact AbbVie’s ability to enter into future settlement agreements relating to Biologics Price Competition and Innovation Act (42 U.S.C. §262) litigation, Hatch-Waxman litigation against generic competitors, and/or intellectual property litigation more generally. Motion to Expedite ¶¶ 26, 42. *See, e.g., Next Level Ventures*, 2023 WL 3141054, at *17 (“[I]rreparable harm to a corporation has been found to include harm to a corporation’s reputation, goodwill, [and] customer relationships[.]” (citations omitted)); *see also Federal Trade Comm’n v. Actavis, Inc.*, 570 U.S. 136, 153–54 (2013) (recognizing “the value of settlements and the patent-litigation problem” and that “settlement on terms permitting the patent challenger to enter the market before the patent expires would . . . bring about competition . . . to the consumer’s benefit”); *D.R. by M.R. v. East Brunswick Bd. of Educ.*, 109 F.3d 896, 901 (3d Cir. 1997) (enforcing settlement and holding “[s]ettlement agreements are encouraged as a matter of public policy because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts”).

9. *The balance of the equities favors the issuance of an injunction*: The balance of the equities favors the issuance of an injunction. At this time, Plaintiffs simply seek an order enjoining Defendant from breaching its previously negotiated agreement, including to prevent further harm. Equity strongly favors holding Defendant to its obligations under the Agreement. *See, e.g., Kansas City S. v. Grupo TMM, S.A.*, 2003 WL 22659332, at *5 (Del. Ch. Nov. 4, 2003) (holding that, where plaintiff sought injunction to prevent a further breach of contract, defendant “cannot now assert that it will be harmed due to the Court’s enforcement of the rights and obligations for which it specifically bargained”).

10. In contrast, and as explained above and in Plaintiffs’ Complaint and Motion to Expedite, Plaintiffs will be harmed, including in irreparable ways, if Coherus continues to breach the Agreement. Complaint ¶¶ 47-54; Motion to Expedite ¶¶ 22-26. The harm to Plaintiffs of Defendant declining to adhere to the agreed scope of activity in the Agreement outweighs any harm to Defendant of maintaining the status quo contemplated by the Agreement. *See id.*; *see also AM Gen. Hldgs.*, 2012 WL 6681994 at *6 n.69 (“[T]he equities heavily favor the plaintiffs” who “raised colorable claims about the defendant’s conduct” which was “precisely the conduct that the Agreement sought to prevent”) (quoting *In re Cencom Cable Income Partners, L.P. Litig.*, 2000 WL 130629, at *8 (Del. Ch. Jan. 27, 2000)).

11. Therefore, a preliminary injunction pending resolution of this litigation should be granted.

12. Plaintiffs will supplement this Motion with additional argument and evidence once expedited discovery, if permitted, takes place and on a schedule set by the Court.

CONCLUSION

13. For the foregoing reasons, Plaintiffs respectfully move this Court for a preliminary injunction preventing Coherus or any entity with which it is affiliated or acting in concert from breaching the Agreement and any other relief this Court deems appropriate, pending the outcome of this litigation.

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Word Count: 1,379

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June 13, 2023