

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**MISEMER PHARMACEUTICALS, INC.,
and ARUN KAPOOR**

PLAINTIFFS

VS.

CIVIL ACTION NO.: 3:21cv107-NBB-RP

VIRTUS PHARMACEUTICALS, LLC

DEFENDANT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Misemer Pharmaceuticals, Inc. (“Misemer”) and Arun Kapoor (“Kapoor” and collectively with Misemer, “Plaintiffs”) file this Complaint against Defendant Virtus Pharmaceuticals, LLC (“Virtus” or “Defendant”), as follows:

INTRODUCTION

1. On April 28, 2021, Virtus commenced an arbitration (the “Arbitration”) against Belcher Pharmaceuticals, LLC (“Belcher”), Supriya Taneja (“Taneja”), Misemer, and Kapoor by filing a notice of arbitration (the “Notice of Arbitration”) with the American Arbitration Association. A true and correct copy of the Notice of Arbitration is attached as Exhibit A.

2. The Notice of Arbitration alleges that Belcher and Misemer are in violation of an exclusive Supply and Distribution Agreement between Virtus and Belcher (the “Virtus Agreement”). A true and correct copy of the Virtus Agreement is attached as Exhibit B.

3. While the Virtus Agreement includes a mandatory arbitration clause, Virtus Agreement at § 13.2, neither Misemer nor Kapoor are parties or signatories

to the Virtus Agreement. Plaintiffs have not agreed to arbitrate any claims with Virtus.

4. In addition, Virtus has sent a letter to Xiromed, LLC (“Xiromed”), a customer of Misemer, demanding that Xiromed cease and desist from purchasing certain pharmaceutical products from Misemer that allegedly violate the Virtus Agreement. Xiromed has since terminated its agreement with Misemer.

5. Accordingly, Plaintiffs have filed this Complaint to seek: (1) a declaration that they are not required to arbitrate any claims with Virtus; (2) an order permanently enjoining Virtus from prosecuting an arbitration against Plaintiffs; and (3) damages to compensate Misemer for Virtus’s tortious interference with its contract with Xiromed.

PARTIES

6. Misemer is a Mississippi corporation with a principal place of business in Ripley, Mississippi. Misemer is a manufacturer and distributor of pharmaceutical products.

7. Kapoor is a citizen of the State of Florida. Kapoor is the president of Misemer.

8. Virtus is a limited liability company licensed in Delaware with a principal place of business in Langhorne, Pennsylvania. On information and belief, no member of Virtus is a citizen of the States of Florida or Mississippi.

JURISDICTION AND VENUE

9. This court has jurisdiction under 28 U.S.C. § 1332(a)(1) because Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds \$75,000.

10. Under 28 U.S.C. § 1391, venue is proper in this district and division because a substantial part of the events giving rise to this case occurred in this district and division.

11. This Court is empowered to issue a declaratory judgment under 28 U.S.C. § 2201 *et. seq.*

FACTS

12. Belcher manufactures and packages a variety of finished pharmaceutical drug products including clidinium bromide, which is a generic pharmaceutical product prescribed to treat irritable bowel syndrome and other gastrointestinal disorders.

13. In July 2014, Belcher and Virtus entered into the Virtus Agreement. The Virtus Agreement is set to expire on July 17, 2021.

14. Under the Virtus Agreement, Belcher contracted to manufacture and supply Virtus with several unapproved pharmaceutical products, including unapproved chlordiazepoxide 5.0 mg/clidinium bromide 2.5 mg capsules. Virtus agreed to distribute and sell the unapproved pharmaceutical products supplied by Belcher.

15. Belcher granted to Virtus the sole and exclusive right to distribute and sell unapproved clidinium bromide products manufactured by Belcher throughout North America for the term of the Virtus Agreement. Virtus Agreement at § 2.1.

16. Likewise, Virtus promised to “purchase from [Belcher] ... all of Virtus’s requirements” for the pharmaceutical products subject to the Virtus Agreement.

17. In the event of a dispute arising out of or related to the Virtus Agreement, Virtus and Belcher covenanted that they would first engage in informal dispute resolution. *Id.* at § 13.1. In the event that informal dispute resolution failed, Virtus and Belcher agreed to submit the dispute to arbitration in the state of New Jersey pursuant to the Commercial Rules for the American Arbitration Association. *Id.* at § 13.2.

18. Neither Misemer nor Kapoor are parties or signatories to the Virtus Agreement.

19. On October 31, 2016, Kapoor, who at the time was employed as Belcher’s Director of Business Development, executed the First Amendment to the Virtus Agreement on behalf of Belcher.

20. In December 2016, Kapoor left his employment with Belcher.

21. In or around August 2019, Kapoor purchased all of the issued shares of Misemer.

22. In October 2019, Belcher and Misemer negotiated and executed a Development and Supply Agreement (the “Misemer Agreement”). The Misemer Agreement is attached as Exhibit C.

23. According to the Misemer Agreement, Belcher agreed to manufacture and supply an approved clidinium bromide product to Misemer. In addition, Belcher agreed to develop the data necessary to prepare and file an ANDA for the approved clidinium bromide product it would supply.

24. On September 8, 2020, Virtus submitted a proposal to Misemer to distribute clidinium bromide products.

25. On October 12, 2020, Virtus offered to pay Misemer a \$1,500,000 licensing fee and 70% of the net revenues from the sale of the clidinium bromide products. Virtus's agent stated that the up-front payment would cover Misemer's contract manufacturing costs.

26. On October 19, 2020, Virtus's agent stated that the minimum future order of clidinium bromide products would be 2,000 units.

27. On October 21, 2020, Virtus sought clarification from Misemer regarding the product labeling noting that Belcher would be the contract manufacturer for the clidinium bromide product.

28. On November 25, 2020, Virtus's counsel sent a letter to Belcher stating that "[i]t has come to Virtus' attention that Belcher has entered into, or is contemplating entering into, an arrangement with Misemer Pharmaceuticals ("Misemer"), regarding the manufacture, distribution and licensing of Clidinium Bromide Virtus expects Belcher and Misemer to refrain from entering into or continuing with any arrangements concerning Clidinium Bromide that violate the

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