

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO. 12/5605

In the matter between:

TREATMENT ACTION CAMPAIGN

First Applicant

SOUTH AFRICAN MEDICAL ASSOCIATION

Second Applicant

and

MATTHIAS RATH

First Respondent

DR RATH HEALTH FOUNDATION AFRICA

Second Respondent

SAM MHLONGO

Third Respondent

DAVID RASNICK

ANTHONY BRINK

ALEXANDRA NIEDWIECKI

REGISTRAR: HIGH COURTURE Respondent

2005 -11- 25

Fifth Respondent

TREATMENT INFORMATION GROUP CAF

Sixth Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH

AFRICA

Eighth Respondent

eventh Respondent

DIRECTOR GENERAL OF THE DEPARTMENT OF

HEALTH

Ninth Respondent

CHAIRPERSON MEDICINES CONTROL COUNCIL

Tenth Respondent

REGISTRAR OF MEDICINES

Eleventh Respondent

MEMBER OF THE EXECTIVE COUNCIL FOR

HEALTH WESTERN CAPE PROVINCE

Twelfth Respondent

NOTICE OF MOTION

W Kerfoot Ph: 4813000 KINDLY TAKE NOTICE that the Treatment Action Campaign and the South African Medical Association (the Applicants) intend to make application to this honourable Court for an order in the following terms:

- 1 It is declared that:
 - 1.1 the distribution and/or sale by the First and Second Respondents and any of their agents of the products Vitacor Plus, Epican Forte, Lysin C Drink Mix and VitaCell in South Africa, and
 - 1.2 the clinical trials conducted in South Africa by and/or under the direction of the First, Second, Third, Fourth and Fifth Respondents

are unlawful.

- The First and Second Respondents are interdicted from either directly or through agents distributing and/or selling the products Vitacor Plus, Epican Forte, Lysin C Drink Mix and VitaCell in South Africa except in accordance with the provisions of the Medicines and Related Substances Act 101 of 1965.
- The First, Second, Third, Fourth and Fifth Respondents are interdicted from conducting unauthorised clinical trials in South Africa.

- The First, Second, Third, Fourth, Fifth, Sixth and Seventh Respondents are interdicted from publishing false or misleading advertisements concerning vitamins, multivitamins, and the products Vitacor Plus, Epican Forte, Lysin C Drink Mix and VitaCell.
- It is declared that the Eighth and Ninth Respondents are under a duty to take reasonable measures to
 - 5.1 prevent the sale or distribution of medicines contrary to the provisions of the Medicines and Related Substances Act 101 of 1965;
 - 5.2 prevent persons from conducting unauthorized clinical trials;
 - 5.3 prevent persons from publishing false or misleading advertisements concerning medicines.
- The Eighth and Ninth Respondents are ordered to take reasonable measures to
 - 6.1 prevent the First and Second Respondents from selling or distributing the products Vitacor Plus, Epican Forte, Lysin C Drink Mix and VitaCell in South Africa contrary to the provisions of the Medicines and Related Substances Act 101 of 1965;

- 6.2 prevent the First, Second, Third, Fourth and Fifth Respondents from conducting unauthorised clinical trials in South Africa.
- 6.3 prevent the First, Second, Third, Fourth, Fifth, Sixth and Seventh Respondents from publishing false or misleading advertisements concerning the products Vitacor Plus, Epican Forte, Lysin C Drink Mix and VitaCell.
- The Eighth and Ninth Respondents are ordered within four weeks to present a report under oath to this honourable court <u>alternatively</u> to the Applicants as to what they have done to give effect to the orders set out in paragraph 6, what further steps they will take in this regard, and when they will take such further steps.
- The Applicants shall have a period of four weeks after service on them of the said report to deliver their commentary under oath on such report.
- The Respondents shall have a further period of two weeks after service upon them of the Applicants' commentary to deliver their reply under oath to such commentary.
- The Applicants shall be entitled, if so advised, to enrol the matter for hearing thereafter for a determination of whether there has been

compliance with paragraph 6 above and for such consequential relief as they may seek.

The First to Ninth Respondents, and any such other Respondents as may oppose this application, are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved.

12 Further or alternative relief

TAKE NOTICE FURTHER that the accompanying affidavits of Nathan Geffen and Marius Nico Otto, and the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed William Kerfoot, Legal Resources Centre, Greenmarket Place, 54 Shortmarket Street, Cape Town as their attorney and that address as the address at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required

(a) to notify Applicants' attorney in writing on or before 14th

December 2005;

(b) and within fifteen days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on THURSDAY the 5TH JANUARY 2006 at 10h00 or so soon thereafter as counsel may be heard.

Kindly enroll the matter for hearing accordingly.

DATED AT CAPE TOWN THIS 25TH DAY OF NOVEMBER 2005

W R KERFOOT

Applicants' Attorney Legal Resources Centre Greenmarket Place

54 Shortmarket Street

CAPE TOWN

TO

The Registrar

High Court

CAPE TOWN

AND TO

Matthias Rath

15th Floor, The Terraces

Bree Street CAPE TOWN

AND TO

Dr Rath Health Foundation Africa

15th Floor, The Terraces

Bree Street CAPE TOWN

AND TO

Sam Mhlongo

c/o: Department of Family Medicine Dr George Mukhuri Hospital, MEDUNSA

Molotlegi Street **PRETORIA**

AND TO

David Rasnick

15th Floor, The Terraces

Bree Street CAPE TOWN

AND TO

Alexandra Niedwiecki

15th Floor, The Terraces

Bree Street CAPE TOWN

AND TO

Anthony BrinK 15th Floor, The Terraces

Bree Street CAPE TOWN

AND TO

Treatment Information Group

15th Floor, The Terraces

Bree Street CAPE TOWN

AND TO

Government of the Republic of South Africa

Dr Mantombazana Edmie Tshabalala-Msimang

Minister of Health c/o: The State Attorney

22 Long Street CAPE TOWN

AND TO

Director-General of the Department of Health

c/o: The State Attorney

22 Long Street CAPE TOWN

AND TO

Chairperson

Medicines Control Council (MCC)

c/o: 226 Vermeulen Street

Hallmark Building

PRETORIA

AND TO : Registrar of Medicines

226 Vermeulen Street

Hallmark Building

PRETORIA

AND TO : Member of the Executive Council For Health Western Cape

Province

c/o: The State Attorney

22 Long Street CAPE TOWN

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