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## Premature clandestine marketing of generics by pharmaceutical sales representatives vis à vis physicians

Thomas Musmann (Rospatt Osten Pross) · Friday, June 10th, 2011

by Max v. Rospatt

In a recent decision the Landgericht Duesseldorf (4a O 277/10 – Pramipexol) issued a preliminary injunction against a generic company before the generic was listed in one of the usual publications (Rote Liste, Lauer Taxe etc.).

Plaintiff asserted infringing marketing activities solely based on information obtained from an independent market research organization according to which the generic drug had been offered to a physician by a pharmaceutical sales representative at a certain date. The information did neither name the physician, nor the representative, nor the place where the incident occurred. Defendant objected to this evidence because of possible manipulations, confusions and communication errors.

The Court found that plaintiff's assertion was conclusive and that Defendant's objection was irrelevant because it did not assert any concrete circumstances which countered the likelihood that the market research organization's information was correct. In particular the Court relied on Defendant's failure to specify how and when the marketing activities had been organized and carried out in general and with respect to the drug at issue.

The Court issued a PI against the generics company.

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