Pet Medication Wholesalers Sue to Unwind Rival PetIQ Merger

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* Two pet medicine wholesalers sued to unwind merger of rival and vet clinic owner
* Complaint cites buying power of vertically integrated new competitor

By Eleanor Tyler

(Bloomberg Law) -- Pet medicine wholesalers Med Vets Inc. and Bay Medical Solutions Inc. sued in California federal court to block the completed merger of rival VIP Petcare Holdings Inc. into PetIQ, Inc., alleging that the merger will damage an important distribution channel for over-the-counter (OTC) veterinary medications.

PetIQ completed the $220 million merger in January, with VIP becoming a wholly owned subsidiary of PetIQ. The lawsuit alleges that the acquisition of VIP, "a principal secondary wholesaler and owner/operator of almost 3,000 veterinary clinics and 76,000 mobile clinics," gives wholesale distributor PetIQ the motive and means to try to muscle out rival pet medication wholesalers.

PetIQ estimated in its Jan. 8 announcement of the deal that the combination of its existing business with VIP's products and services businesses would "expand PetIQ's addressable market by nearly 285%, from $8.6 billion to over $29 billion." The companies in March announced a deal with Wal-Mart to open veterinary clinics in stores, part of plans to further expand by more than 1,000 clinics in retail outlets by 2023.

The complaint, filed April 4 in the U.S. District Court for the Northern District of California, alleges that the merged company "has become the dominant supplier of restricted OTC pet parasiticides to retailers through the secondary distribution system," and complains particularly about distribution and pricing for Boehringer Ingelheim's Frontline Plus flea and tick control product.

Squeezing a Channel?

The complaint says that there are three main distribution channels for the medications that pet owners give their animals regularly, like persistent flea and tick control medications and heartworm prevention.

The plaintiffs, two wholesalers under common ownership, contend that most all pet medication manufacturers formally restrict their sales to veterinarians only. Despite that, they allege, almost 40 percent of medications wind up being sold through "secondary distribution" to consumers outside vet offices - big box stores, pharmacies, online, and through other retailers.

Manufacturers, the complaint alleges, have a motive to keep prices high by limiting distribution. The merger of wholesaler PetIQ and integrated wholesaler/veterinary provider VIP will give them a dominant distributor with the buying power to introduce more pricing discipline, the complaint says.

"The manufacturers already know that they have limited scope to force restrictions on distribution," Jonathan Rubin, lead counsel for the plaintiffs with MoginRubin LLP, told Bloomberg Law. "They shouldn't be allowed to get around those limitations by anointing a preferred distributor, created through an unlawful merger, to do indirectly what they know they can't do directly."

The defendants didn't respond to a request for comment.

The plaintiffs allege a number of claims. First, they contend that the PetIQ-VIP merger was anticompetitive and should be legally unwound. Second, they contend that the defendants broke antitrust laws by getting preferential pricing from manufacturers for drugs they later sold through the secondary distribution system. Third, they contend that the merger constitutes attempted monopolization of the secondary pet drugs market.

The case is Med Vets Inc. v. VIP Petcare Holdings Inc., N.D. Cal., 18-cv-02054, 4/4/18.

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