

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

KATRINA MCCARTY,)
JULIA BATTEL and)
REBEKAH GEE,)
Plaintiffs)
)
v.)
)
WAL-MART STORES, INC.)
Defendant)
)

COMPLAINT

The Plaintiffs are three Massachusetts women who sought to fill valid prescriptions for emergency contraceptive medication at Wal-Mart pharmacies in Quincy and Lynn, and were told in each case that the prescriptions could not be filled because it is Wal-Mart policy not to stock emergency contraceptive medication. The plaintiffs allege that this policy violates Massachusetts Board of Registration in Pharmacy regulation 247 C.M.R. § 6.02(4) and the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 2(a). The Plaintiffs seek an injunction requiring Wal-Mart to comply with the Board of Registration in Pharmacy regulation by stocking emergency contraception in all Wal-Mart pharmacies in Massachusetts.

Parties

1. Plaintiff Katrina McCarty (“Ms. McCarty”) resides in Somerville, Middlesex County, Massachusetts.
2. Plaintiff Julia Battel (“Ms. Battel”) resides in Jamaica Plain, Suffolk County, Massachusetts.
3. Plaintiff Rebekah Gee (“Dr. Gee”) resides in Boston, Suffolk County, Massachusetts.
4. Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) is a corporation organized under the laws of Delaware and operates approximately 48 retail stores in the Commonwealth of Massachusetts, consisting of 41 “Discount Stores,” 3 “Supercenters” and 4 “Sam’s Club” stores. The plaintiffs are informed, and believe, that there are pharmacies in all stores Wal-Mart operates in Massachusetts.

COUNT 1
Violation of G.L. c. 93A

5. Plaintiffs incorporate Paragraphs 1 through 4 here.
6. Wal-Mart is engaged in trade or commerce in the Commonwealth of Massachusetts, and was at the time of all events described in this Complaint.
7. On December 14, 2005, Plaintiff Katrina McCarty attempted to fill a validly issued prescription for Plan B, an emergency contraceptive medication, at the Wal-Mart pharmacy located at 301 Falls Boulevard, Quincy, Norfolk County, Massachusetts.
8. The pharmacist on duty told Ms. McCarty that Wal-Mart does not stock Plan B, and that he could not fill the prescription. The pharmacist also stated that Plan B is the only readily available emergency contraceptive medication.
9. On December 17, 2005, Plaintiff Julia Battel attempted to fill a validly issued prescription for Plan B at the Wal-Mart pharmacy located at 301 Falls Boulevard, Quincy, Norfolk County, Massachusetts.
10. The pharmacist on duty told Ms. Battel that Wal-Mart does not stock Plan B, and that she could not fill the prescription. Ms. Battel asked whether Wal-Mart stocked any generic forms or substitutes for Plan B. The pharmacist said that there were no generic forms or substitutes for Plan B.
11. On December 20, 2005, Plaintiff Rebekah Gee attempted to fill a validly issued prescription for Plan B at the Wal-Mart pharmacy located at 780 Lynnway, Lynn, Essex County, Massachusetts.
12. The pharmacist on duty told Dr. Gee that Wal-Mart has a policy against stocking Plan B, and that she could not fill the prescription.
13. The Plaintiffs' experiences demonstrate that Wal-Mart stores in Massachusetts are following the Defendant's publicly announced national corporate policy of refusing to stock emergency contraceptive medication.
14. In 1999 and 2000, Wal-Mart spokespeople referred to this policy as a "bottom-line business decision" based on "potential slow sales" of emergency contraception and "low demand from women." As recently as 2003, a Wal-Mart spokeswoman stated that the "demand just isn't there." As of 2005, Wal-Mart stopped offering any explanation for its policy, stating that it "can't go into that publicly."
15. Wal-Mart's refusal to stock emergency contraceptive medication violates Massachusetts Board of Pharmacy Regulation 247 C.M.R. § 6.02(4), which requires all pharmacies in the commonwealth to "maintain on the premises at all times a sufficient variety and supply of medicinal chemicals and preparations

which are necessary to compound and dispense commonly prescribed medications in accordance with the usual needs of the community.”

16. Massachusetts pharmacies must stock emergency contraceptive medication in order to meet the usual needs of the community. Plan B, a product of Duramed Research, Inc., is the only commonly prescribed emergency contraceptive medication now on the market.

17. Wal-Mart’s refusal to stock emergency contraceptive medication, in violation of 247 C.M.R. § 6.02(4), violates the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 2(a), which prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

18. Wal-Mart’s refusal to stock emergency contraceptive medication, in violation of 247 C.M.R. § 6.02(4), also violates c. 93A, § 2(a) because regulations promulgated by the Massachusetts Attorney General under c. 93A, § 2(c) provide that any act or practice violates Chapter 93A, § 2 if:

It fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection

940 C.M.R. § 3.16(3).

19. The Plaintiffs were injured by Wal-Mart’s refusal to fill their prescriptions for Plan B, as they were delayed and hindered in obtaining validly prescribed medication.

20. On December 16, 2005 Katrina McCarty, through her attorney, sent the Defendant via certified mail, return receipt requested, postage prepaid, a written demand for relief pursuant to G.L. c. 93A, § 9, identifying the claimant and reasonably describing the unfair acts or practices relied upon and the injuries suffered. A copy of Ms. McCarty’s demand letter is incorporated as Exhibit A to this Complaint.

21. On December 19, 2005 Julia Battel, through her attorney, sent the Defendant via certified mail, return receipt requested, postage prepaid, a written demand for relief pursuant to G.L. c. 93A, § 9, identifying the claimant and reasonably describing the unfair acts or practices relied upon and the injuries suffered. A copy of Ms. Battel’s demand letter is incorporated as Exhibit B to this Complaint.

22. On December 20, 2005 Rebekah Gee, through her attorney, sent the Defendant via certified mail, return receipt requested, postage prepaid, a written demand for relief pursuant to G.L. c. 93A, § 9, identifying the claimant and reasonably describing the unfair acts or practices relied upon and the injuries suffered. A copy of Dr. Gee’s demand letter is incorporated as Exhibit C to this Complaint.

23. Counsel for Wal-Mart requested and received an extension of time to January 25, 2006 to respond to the Plaintiffs' demand letters.

24. On January 25, 2006, Plaintiffs' counsel received three letters from Wal-Mart's counsel in response to the plaintiffs' demand letters. Wal-Mart's letters in response are incorporated as Exhibits D, E and F to this Complaint. The reply letters, which are the same in content, refuse to make a reasonable offer of relief to Plaintiffs. This refusal to grant relief was made in bad faith with knowledge or reason to know the acts of Defendant violated G.L. c. 93A, §2.

WHEREFORE, the Plaintiffs request that this Court:

- a) enter judgment for the Plaintiffs against Wal-Mart for violation of M.G.L. c. 93A, § 2(a);
- b) grant a preliminary injunction and a permanent injunction pursuant to M.G.L. ch 93A, § 9, requiring Wal-Mart to comply with 247 C.M.R. § 6.02(4) by stocking emergency contraceptive medication at all Wal-Mart pharmacies in Massachusetts;
- c) award statutory damages of \$25.00 to each of the three Plaintiffs;
- d) award costs and attorney fees to Plaintiffs; and
- e) award other relief the Court finds appropriate.

Counsel for Plaintiffs

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Dated: February 1, 2006