

Complaint filed against Allergan

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Klein-Becker USA has turned up the heat on Botox-maker Allergan Inc., accusing the pharmaceutical giant of "strong-arm" advertising tactics meant to derail marketing of the Utah company's anti-stretch mark cream. The complaint asks U.S. District Judge Dee Benson to issue an injunction against the Irvine,

Calif.-based Allergan, which Klein-Becker contends is threatening publishers who run the Salt Lake City company's ads for its StriVectin-SD ointment.

Klein-Becker had initially sued Allergan in June, a pre-preemptive courtroom strike that came after Allergan itself threatened to sue in California over StriVectin-SD display ads entitled "Better Than Botox?" That complaint asked for a declaratory judgment; the newly amended suit seeks an injunction against Allergan aimed at freeing publishers to run StriVectin-SD ads.

"We filed the original action saying their threat to sue us lacks merit. We wanted to work it out," Klein-Becker attorney James Magleby said Thursday. "They never got back to us. Instead, they did an end-run, going to the publishers themselves and basically got them to refuse to run the ad" or risk legal action by Allergan and loss of the Botox-maker's own lucrative advertising.

Magleby says significant investigation remains to be done into the allegations, but Klein-Becker already has sufficient cause to seek the injunction.

"One of the publishers actually told us, 'We're being strong-armed, we can't run your ad,' " the lawyer said. " That is not only unfair, but illegal."

Allergan spokeswoman Christine Cassiano said late Thursday that her company had yet to be served with the new complaint, though she was aware of a news release Klein-Becker issued earlier in the day on the matter.

"Not knowing the specifics of their complaint, we cannot comment at

this time," Cassiano said.

No hearings on the injunction demand were immediately scheduled.

The suit, which also names Allergan's advertising company, Mediacom, still could be settled short of trial, Magleby said. If it is not settled, though, damages sought by Klein-Becker could conceivably be "in the millions" of dollars, the attorney said.

Klein-Becker acknowledges that StriVectin-SD, priced at \$135 for a 6-ounce tube, has not been shown to eliminate the deep furrows targeted by Botox injections. However, the company's ads do contend the cream's active ingredient does significantly reduce "fine lines and wrinkles that can add 10-15 years to your appearance [the type of fine lines and wrinkles Botox treatment leaves behind]."

Allergan has taken issue with the challenge to Botox's effectiveness, while Klein-Becker has countered that Allergan skirts its own run-ins with the Food and Drug Administration over advertising claims made for Botox.

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