

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UPMC, UPMC HEATH PLAN INC., and
PRODIGO SOLUTIONS LLC,

Plaintiffs,

v.

HIGHMARK INC., WEST PENN
ALLEGHENY HEALTH SYSTEM INC.,
PROTOCO PPI LLC, PROTOCO SUPPLY
CHAIN SERVICES LLC, and HMPG
PHARMACY LLC,

Defendants.

Civil Action No. 2:12-cv-00692-JFC

Electronically Filed

**DEFENDANTS HIGHMARK INC., PROTOCO PPI LLC, PROTOCO SUPPLY CHAIN
SERVICES LLC, AND HMPG PHARMACY LLC’S RENEWED MOTION TO DISMISS**

Defendants Highmark, Inc., Protoco PPI LLC, Protoco Supply Chain Services LLC, and HMPG Pharmacy LLC (collectively, “Highmark defendants” for the purposes of this motion and the accompanying memorandum in support) move pursuant to Federal Rule of Civil Procedure 12(b)(6) for an order dismissing the First Amended Complaint (“the Complaint”) of UPMC, UPMC Health Plan, Inc., and Prodigio Solutions LLC (collectively, “plaintiffs”). As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. All of plaintiffs’ antitrust claims (Counts I-VII) fail because UPMC’s judicially noticeable admissions disprove vital allegations in the Complaint; plaintiffs’ allegations are internally inconsistent; and the pleaded facts, taken as a whole, render plaintiffs’ antitrust claims profoundly implausible.

2. The monopolization counts (Counts I-IV) fail because Highmark’s alleged conduct is either pro-competitive or non-exclusionary as a matter of law.

3. UPMC lacks antitrust standing to bring Counts I-V and Count VII, while UPMC Health Care lacks antitrust standing or cannot show antitrust injury for the purpose of all antitrust counts (Counts I-VII).

4. Finally, plaintiffs base their monopolization claims on contracts into which UPMC and Highmark entered with full knowledge in 1996 and 2002, thus time-barring plaintiffs' monopolization counts under the applicable four-year statute of limitations. Plaintiffs' antitrust-conspiracy claims also flounder under the statute of limitations because the Complaint alleges that all challenged features of the supposed Highmark-WPAHS conspiracy have been in place since 1998.

5. The Complaint's remaining claims for intentional interference with existing and prospective business relations; trademark infringement; and unfair competition and false designation of origin also fail to state a claim. With respect to their intentional-interference claims, plaintiffs fail to allege that the supposed interference actually resulted in a contractual breach; nor do they aver that a prospective contract would have resulted but for Highmark's alleged conduct. Plaintiffs' Lanham Act claims fail on account of the Complaint's failure plausibly to allege a likelihood of confusion.

WHEREFORE, Highmark defendants respectfully request that the Court grant their Renewed Motion to Dismiss and dismiss the Complaint in its entirety. A proposed order is attached.

Dated: October 11, 2012

Respectfully submitted,

/s/ Margaret M. Zwisler

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Attorneys for Defendants Highmark Inc., ProtoCo
PPI LLC, ProtoCo Supply Chain Services LLC, and
HMPG Pharmacy LLC

CERTIFICATE OF SERVICE

The undersigned certifies that, on October 11, 2012, a true and correct copy of the forgoing DEFENDANTS HIGHMARK, INC., PROTOCO PPI LLC, PROTOCO SUPPLY CHAIN SERVICES, LLC, AND HMPG PHARMACY LLC'S RENEWED MOTION TO DISMISS was served on all counsel of record by the Court's electronic filing system (CM/ECF).

/s/ Margaret M. Zwisler
Margaret M. Zwisler (*pro hac vice*)