

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DINO RIKOS, <i>et al.</i>	:	Case No. 1:11-cv-226
	:	
Plaintiffs,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
THE PROCTER & GAMBLE COMPANY,	:	
	:	
Defendant.	:	

ORDER COMPELLING DISCOVERY

Pursuant to S.D. Ohio Civ. R. 37.1 and at Defendant’s request, this case came on before the Court for an informal discovery dispute resolution conference on August 27, 2013 at 4:00 p.m.

I. BACKGROUND

According to the parties, Defendant served written discovery requests on Plaintiffs seeking their personal medical information and records relating to their digestive health. In their responses, Plaintiffs refused to provide the requested discovery, asserting the information is not only confidential but also irrelevant, as Plaintiffs allege they have not put their personal health at issue.

II. ANALYSIS

The Court agrees with Defendant that Plaintiffs placed their medical information at issue by claiming that Defendant’s product provides no digestive health benefit. (Doc. 1 at ¶ 6). In order to defend itself in this action, Defendant must investigate that claim,

including Plaintiffs' medical conditions prior to and after using Defendant's product. Courts in similar false advertising cases, including one involving Plaintiff Rikos, have found plaintiffs' medical information relevant and required its production.¹

Plaintiffs' medical information is relevant to assessing whether an alternative medical explanation exists for the product's alleged failure to provide digestive health benefits. *See Stanley*, 2011 U.S. Dist. LEXIS 132363, at *7. It is also relevant to whether Plaintiffs' injuries are "fairly traceable" to the challenged advertising, as Plaintiffs must prove a causal connection between the advertising and the injury. *See Linares*, 2013 U.S. Dist. LEXIS 102997, at *12. Finally, the information is relevant to questions regarding Plaintiffs' adequacy and typicality as class representatives, the predominance of individual issues, and the ascertainability of the putative classes. *See, e.g., In re Yasmin & Yaz Mktg.*, No. 3:09-cv-20001, 2012 U.S. Dist. LEXIS 33183, at *20-22 (S.D. Ill. Mar. 13, 2012) (considering plaintiff's medical records and history in resolving motion for certification where claims at issue were for alleged false advertising).

¹ *See In re Bayer Phillips Colon Health Probiotics Sales Practices Litig.*, No. 11-2793, slip op. at 1 (D.N.J. July 16, 2013) (ordering plaintiffs, including Dino Rikos, to produce "all of their medical records from 2007 to the present reflecting or relating to Plaintiffs' digestive system"); *Stanley v. Bayer Healthcare, LLC*, No. 11cv862, 2011 U.S. Dist. LEXIS 132363, at *8-9 (S.D. Cal. Nov. 16, 2011) ("Plaintiff is ordered to produce to Defendant all medical records from 2007 to the present reflecting or relating to gastrointestinal health, including consultation or treatment of problems related to the colon, digestive system or immune system, including symptoms such as constipation, diarrhea, gas, bloating or diverticulitis"); *Linares v. Costco Wholesale, Inc.*, No. 11-CV-02547, 2013 U.S. Dist. LEXIS 102997, at *9 (S.D. Cal. Mar. 7, 2013) ("Since Plaintiffs underlying theory for liability under the UCL and CLRA is that the product does not work [...] [Plaintiff] has put his medical conditional at issue [...] Defendant is therefore entitled to the requested medical records[...]").

III. CONCLUSION

Accordingly, based on the conference, the arguments of counsel, the requirements imposed by the Federal Rules of Civil Procedure, and a review of the case law, Plaintiffs are **ORDERED** to produce, on or before **9/30/13**, all information sought in the interrogatories and document requests at issue, insofar as it relates to Plaintiffs' digestive health and for the narrowed time period from shortly before use of Align to shortly after its use.

IT IS SO ORDERED.

Date: 8/30/13

s/ Timothy S. Black
Timothy S. Black
United States District Judge