



C L A R E L O C K E

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By Email

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David McCraw  
Vice President and Deputy General Counsel  
The New York Times Company

Re: *The New York Times's* False Reporting on OxyContin's Market "Dominance"

Dear David:

There is no scientific basis for *The New York Times's* claim that OxyContin ever "dominated" the prescription opioid market—a false claim which only recently came to our attention after it was repeated in coverage by *The New York Times*. Nonetheless, as you have seen in the correspondence between David Goldin and Jan Hoffman, Hilary Stout, and Carolyn Ryan, *The New York Times* refuses to correct that very claim, which originated in *The Times's* March 3, 2022 article about the settlement agreement related to OxyContin.<sup>1</sup> While it is not the only issue with that article (and others), our narrow request is that *The New York Times* correct or adjust its coverage to remove the unsupportable statements that OxyContin "initially dominated the market" and stood out because of its "market dominance."

According to our records, the original article did not even include these false statements—they were added after the article was initially published. Nevertheless, in trying to defend those statements, *The Times* has both refused to acknowledge the context in which the statements were made—plainly about the entire prescription opioid market and not just extended-release oxycodone—and used empirically dubious and irrelevant data to defend the statements. Neither stand up to basic scrutiny.

*First*, the statements are clearly made in the context of the prescription opioid market generally, not the specific market for extended-release prescription oxycodone. The article references

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<sup>1</sup> The claim most recently appeared in a May 27, 2023 *Dealbook* article. See <https://www.nytimes.com/2023/05/27/business/dealbook/unused-paid-time-off.html>.



the “national opioid litigation” and that “cases have been filed against dozens of companies” right before its claim about OxyContin’s market dominance—both of which are associated with prescription opioids generally, not just extended-release prescription oxycodone.

Dodging this plain context, *The Times* has argued that this passage refers to a “sui generis pain market” of one—OxyContin—and not the prescription opioid market generally. *The Times* is of course welcome to edit the article to make this point by removing the references to the national opioid litigation or the many other lawsuits filed against other prescription opioid manufacturers. But until it does so, the plain meaning remains and readers have and will continue to understand the article to be discussing the prescription opioid market generally, not some subset of the market, and therefore be misled to believe the false statement that OxyContin “dominated” the entire prescription opioid market (at least “initially”).

*Second*, it is within that clear context—discussing the prescription opioid market generally—that the statement that OxyContin ever “dominated” the market (either initially or ever) fails on its face. OxyContin pills has never been more than 4% of the total prescription opioid market—*ever*.<sup>2</sup> And when compared with the other prescription opioid manufacturers—including and specifically those other companies involved in current or recent opioid litigation and which have always comprised the vast majority of the overall prescription opioid market—OxyContin is far from dominant.

In trying to defend its inaccurate reporting, *The Times* has referred to a mish mash of unsourced data points, including one statistic from a 2009 article by Dr. Art Van Zee. But that statistic—Van Zee’s 68% metric (cited by Ms. Hoffman)—is a mirage. In trying to drum up his own claim that OxyContin dominated the prescription opioid market in the early 2000s, Van Zee cited to another 2006 article by Leonard Paulozzi for the false statement that “[b]y 2002, OxyContin accounted for 68% of oxycodone sales.” But that Paulozzi article *does not cite to any source* for its false claim that “OxyContin, introduced in 1996, accounted for 68% of oxycodone sales by 2002.”<sup>3</sup> So Ms. Hoffman and *The Times* are using a statistic with no actual basis in science or fact to support its claim that OxyContin was ever the “dominant” prescription opioid on the market.

Undeterred, Ms. Hoffman next claims that even a 20% share of the market (still an inaccurate data point as OxyContin never exceeded 16% of the prescription opioid market even by MME) supports the “dominance” claim. But there is no question that 20% of market share is far from “dominant.” Nor is Ms. Hoffman’s argument that distributions in “20 counties in Kentucky, West Virginia and Virginia” of OxyContin supports the “dominance” claim any more availing. There is, again, no question that such a small sample size—less than 2% of counties nationwide—can possibly support the claim that OxyContin “dominated” the nationwide prescription opioid market, either “initially” or ever. *The Times*’s claims simply do not hold water.

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<sup>2</sup> Or 16% (in 2001) if measured by milligrams of morphine equivalent (MME). Proof of the data related to OxyContin’s market share (by pill and MME) has already been provided to *The Times*.

<sup>3</sup> See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586142/>.



This should not be controversial. *The New York Times* published an article that refers to the nationwide opioid litigation generally (and therefore prescription opioids generally) and then inaccurately described OxyContin's limited market share in that space as "dominant" when the data clearly shows otherwise. We have requested only that *The Times* make clear to its readers the true facts about OxyContin's market share in that broader context—or make clear to readers what context it is actually referring to. *The Times* has refused both paths, instead relying on actually-unsourced materials or irrelevant metrics that for the most part do not even support the erroneous claims. If *The Times* will not make these obvious and limited adjustments to its reporting, we request that at a bare minimum, it not accept the say so of one of its reporters and, as already requested, arrange an independent review of the article and the basis for these false and misleading statements.

*The New York Times* may hang its hat on the many legal defenses at its disposal to refuse to make any corrections. We remain hopeful, however, that its standards have not fallen so far that it will only make corrections to avoid legal exposure and not to simply get things right—or to compound inaccuracies with false and misleading defenses of those inaccuracies.

We are available to discuss the issues raised in this letter at your convenience. This is not a full statement of the Sackler family's rights and remedies, all of which are expressly reserved.

Very truly yours,

Thomas A. Clare, P.C.

Dustin A. Pusch

Enclosures