

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

LISA CHRISTIAN NETHERY

Plaintiff,

v.

HORIZON PHARMACEUTICALS, INC.,

Defendant.

Civil Action No. 1:22-cv-5005

Judge Harry D. Leinenweber  
Magistrate Judge Maria Valdez

**HORIZON THERAPEUTICS USA, INC'S  
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Horizon Therapeutics USA, Inc. (“Horizon”), incorrectly named as Horizon Pharmaceuticals, Inc.,<sup>1</sup> hereby moves to dismiss Plaintiff’s claims alleging a hearing impairment injury from her use of TEPEZZA® to treat her symptoms of Thyroid Eye Disease. Plaintiff asserts negligence and strict liability claims for failure to warn and design defect. All of Plaintiff’s claims fail as preempted by federal law. Plaintiff’s warning-based claims are preempted because she fails to allege facts that, if proven, would be sufficient to demonstrate that Horizon could have added desired warnings consistent with the “changes being effected” regulation, which is the only way that Horizon could have unilaterally changed the TEPEZZA® label after the FDA approved it. *See* 21 C.F.R. § 314.70(c)(6)(iii). Plaintiff’s design defect claims are preempted because any change to TEPEZZA®’s design to conform with state tort law obligations as advocated by Plaintiff would conflict with federal law, which precludes any change in formulation absent prior FDA approval.

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<sup>1</sup> Horizon Therapeutics USA, Inc. does not waive defenses relating to insufficiency of process and insufficiency of service of process over the proper entity by filing this Motion.

As separate grounds for dismissal, Plaintiff fails to state plausible claims for design and warnings defects under North Carolina law, which applies to this case. North Carolina does not recognize claims for strict products liability. The Complaint moreover does not allege facts sufficient to render Plaintiff's negligent warnings and design claims plausible under the *Twombly-Iqbal* standard. Further grounds and support for this Motion are set forth in the attached Memorandum of Law.

Respectfully Submitted,

/s/Daniel W. McGrath

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*Counsel for Defendant Horizon Therapeutics USA, Inc.*

**CERTIFICATE OF SERVICE**

I certify that a copy of this Motion was filed via the Court's E-Filing System and sent electronically on October 25, 2022, which will send an electronic copy to e-filers.

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