

## 5-Hour Energy Wins \$20M In Counterfeiting Suit

By **Emily Field**

*Law360, New York (March 31, 2016, 10:49 PM ET)* -- A New York federal judge on Thursday awarded the makers of 5-Hour Energy drink a \$20 million judgment in their suit against a bevy of companies whom they accused of engaging in a massive scheme to manufacture and sell millions of counterfeit bottles of their energy supplement.

U.S. District Judge Kiyo A. Matsumoto granted in part 5-Hour Energy owner Innovation Ventures LLC's motion for summary judgment on its claims that the companies — a mix of distributors and manufacturers — took part in the counterfeiting scam and violated copyright law, according to the opinion. The judge hit three companies — Advanced Nutraceutical Manufacturing LLC, Nutrition Private Label Inc. and Midwest Wholesale Distributors Inc. — with a total of \$20 million in statutory damages for infringing on Innovation Ventures' trademark, according to the ruling.

"We are highly gratified by the Court's comprehensive 94-page opinion granting us damages on summary judgment of more than \$20 million against those that manufactured counterfeit 5-Hour Energy, plus attorneys' fees and the costs of our investigators," Geoffrey Potter of Patterson Belknap Webb & Tyler, counsel for Innovation Ventures, said in a statement.

In June, federal prosecutors indicted 10 people on charges of making and selling the energy supplement, charges that the drink maker's lawyers said were the first ever for counterfeit food.

Among those arrested were Midwest owners and principals Walid Jamil, Raid Jamil and Justin Shayota and Juan Romero Guitierrez, owner of Advanced Nutraceutical Manufacturing and Nutrition Privat, according to the indictment.

The scheme started with Baja Exporting LLC, a company owned by Joseph Shayota that started out as a legitimate exporter of 5-Hour Energy to the Mexican market, according to the opinion. Innovation Ventures has settled its claims with Baja, according to the opinion.

The company began replacing the Spanish labels with fake English labels in 2009, eventually selling more than hundreds of thousands of them for significantly cheaper than authentic 5-Hour Energy, according to the order.

In 2011, when Baja became unable to sell its Spanish-labeled bottles in the United States, Walid Jamil agreed to swap the Spanish labels with English labels, the judge said.

By 2012, Romero Gutierrez, Shayota and the Jamils had turned to making fake 5-Hour Energy and were producing 75,000 bottles of counterfeit drinks per day, according to the judge.

In fall of that year, Innovation Ventures became aware of the counterfeits on the market and its private investigators ultimately seized about 2,670,00 counterfeit bottles over the course of the litigation, according to the judge.

The judge found that the companies had willfully infringed the 5 Hour Energy trademark and showed a reckless disregard for public health by putting the fakes on the market, according to the order.

“Additionally, a maximum statutory award is justified by the Midwest defendants’ bad faith attempts to conceal their counterfeiting after it was discovered,” the judge said. “It is undisputed that upon learning of this lawsuit, the Midwest defendants shipped all of the counterfeit bottles they had on hand to a storage warehouse in Detroit.”

“They then continued making counterfeit product,” the judge said.

The 5-Hour Energy Makers first filed suit against dozens of companies over the counterfeit bottles in 2012 in California and New York, according to order. The cases were eventually consolidated in New York in 2014.

Innovation Ventures has settled their claims against most of the more than 70 companies in the litigation, according to the order.

The judge denied the company’s motion for summary judgment against another distributor, Elegant Trading, saying that it hadn’t established that it willingly or knowingly infringed the trademark.

Representatives for the Jamils, Shayota and Romero Guitterez didn’t immediately return requests for comment on Thursday.

Romero Guitterez is represented by Stephen M. Lobbin of One LLP.

The Jamils and Shatoya are represented by Brian M. Akkashian, Anthony R. Paesano and Richard Apkarian Jr. of Paesano Akkashian PC and Danielle Marie Defilippis of Norris McLaughlin & Marcus PA.

Innovation Ventures is represented by Geoffrey Potter, Jeremy Alexander Weinberg, Christos George Yatrakis, Alexander Michaels, Jane Metcalf, Thomas Philip Kurland, Jonah Moses Knobler and Michelle Waller Cohen  
Of Patterson Belknap Webb & Tyler LLP.

The case is Innovation Ventures, LLC et al. v. Ultimate One Distributing Corp. et al., case number 1:12-cv-05354, in the U.S. District Court for the Eastern District of New York.

— Editing by Ben Guilfooy.

---