

## J&J Should Get \$18M For 'Horrorific' Counterfeits, Judge Says

By Ryan Davis

*Law360 (August 2, 2022, 6:14 PM EDT)* -- Calling the case "an extreme outlier in the anticounterfeiting case law" with a "horrorific" human cost, a Florida magistrate judge on Monday recommended awarding a Johnson & Johnson unit a default trademark judgment totaling \$18 million against companies that sold counterfeit surgical products.

U.S. Magistrate Judge Anthony Porcelli said in his report and recommendation that J&J's Ethicon unit should receive the maximum award of statutory damages from M/S Medserve of India and Pure Care Traders F.Z.E. of the United Arab Emirates, due to the "potential physical harm and loss of life" from their fake products. Neither company responded to the lawsuit.



Geoffrey Potter

The judge said that the evidence demonstrates that the two companies sold counterfeit versions of Ethicon's Surgicel hemostats, a product used to control bleeding during surgery that is designed to be left in the body to dissolve harmlessly. The thousands of counterfeit products sold by the defendants are both unsanitary and do not dissolve, the judge said.

"These non-functional, bacterially contaminated counterfeits have been implanted in hundreds, possibly thousands, of patients' bodies in the United States," Judge Porcelli wrote. "Because the counterfeits fail to dissolve after surgery, an untold number of patients are walking around today with these contaminated counterfeits still inside of them."

He concluded that "the human cost of the Medserve defendants' and the Pure Care defendants' counterfeiting operation remains horrorific," and that "the dire impact of these counterfeits on public health, and the counterfeiters' wanton disregard for human health and safety, make this case an extreme outlier in the anticounterfeiting case law."

Judge Porcelli recommended that U.S. District Judge Virginia M. Hernandez Covington enter judgments of \$12 million against Medserve and \$6 million against Pure Care, and impose a permanent injunction barring both from selling products that use any of Ethicon's trademarks.

Ethicon filed suit in 2019 against numerous companies involved in the counterfeiting operation, and the court has previously entered judgment against all the others, with only Medserve and Pure Care remaining.

The case began when Ethicon received complaints from the University of Kentucky Medical Center about defective Surgicel products, which it then tested and found to be counterfeit.

Judge Porcelli said that less is known about Pure Care, which successfully evaded Ethicon's attempts to investigate its operation, though the evidence is clear that it sold nearly 1,000 counterfeit Surgicel devices.

However, he said that Medserve sits "at the very top of the counterfeiting ring." Ethicon secured a seizure order for Medserve from an Indian court, and found that its counterfeiting operation, which sold at least 4,000 fake Surgicel products, was run out of the Delhi apartment of a man named Pritamdas Arora, the judge wrote.

When the seizure order was executed, "Ethicon caught Medserve's owner, Arora, in the act of manufacturing the counterfeits under filthy conditions on the floor of his apartment," using his bare hands, making them contaminated with bacteria, according to the opinion.

"Arora engaged in this behavior knowing he was harming and putting at risk scores of patients," Judge Porcelli said. "Arora stopped manufacturing and selling these dangerous counterfeits only because Ethicon, with this court's assistance, stopped him."

Doing so took "extraordinary efforts," the judge said, including investigations to track down the origin of the products and locate Arora's apartment in Delhi, and coordinating with Indian courts on the seizure order. The judge also noted that a company pleaded guilty in 2011 to selling counterfeit surgical mesh sold by Medserve.

"Arora is a recidivist counterfeit manufacturer," the judge said. "It does not appear that he will stop putting patients' lives at risk so long as he finds it profitable to quickly assemble and sell fake, low-quality, non-sterile surgical devices. Now that he has finally been caught, the need for deterrence could not be higher."

Counsel for Ethicon declined to comment. No counsel is listed for Medserve or Pure Care in court records, and neither responded to or participated in the litigation.

Advanced Inventory Management Inc., which does business as eSutures.com and sold some of the counterfeit products, settled with J&J for \$6 million last year.

J&J is represented by Geoffrey Potter, Timothy Waters, Joshua Stein and Jacqueline Brandon of Patterson Belknap Webb & Tyler LLP and Alice Huneycutt of Stearns Weaver Miller Weissler Alhadeff & Sitterson PA.

MedServe and Pure Care never responded to the complaint and no attorneys are listed for them in the court docket.

The case is Johnson & Johnson et al. v. XS Supply, LLC et al., case number 8:19-cv-01673, in the U.S. District Court for the Middle District of Florida.

--Editing by Alex Hubbard.

All Content © 2003-2022, Portfolio Media, Inc.