

Abbott Inks \$8M Deal With Healthcare Fraudster In TM Suit

By **Hannah Albarazi**

Law360 (November 15, 2024, 4:44 PM EST) -- A New York federal judge on Thursday green-lit a trademark infringement settlement in which Abbott Laboratories will receive \$8 million from a Florida businessman who recently pled guilty to healthcare fraud for his role in a sprawling gray market scheme to profit off of Abbott's line of diabetic test strips meant to be sold internationally.

U.S. District Judge Carol Bagley Amon signed off on Abbott Laboratories' consent agreement with defendant Howard Neil Frank and two diabetic test strip wholesale businesses that he owned, Wholesale Diabetic Supplies Inc. and HMF Distributing Inc., ending the litigation against Frank and his companies just months before he heads to prison.



Geoffrey Potter

The \$8 million settlement with the Frank defendants is among the latest developments in sprawling trademark infringement litigation initiated by Abbott in 2015, accusing dozens of distributors and pharmacies of selling Abbott's FreeStyle brand of blood glucose test strips — a brand marketed to be sold only in other countries — in the U.S.

In 2019, Judge Amon issued a permanent injunction barring dozens of pharmacies and distributors from importing, distributing, marketing or selling international versions of Abbott's diabetes test strips in the U.S.

Meanwhile, the U.S. Food and Drug Administration had launched its own criminal investigation into the gray market scheme.

In a 2021 indictment, the U.S. Department of Justice accused Florida resident Frank, along with a number of other business owners, of engaging in a conspiracy to unlawfully enrich themselves — via fraudulent billing for misbranded diabetic test strips not intended for U.S. sale — resulting in inflated reimbursements from healthcare benefit programs.

In May, Frank pleaded guilty to conspiracy to commit healthcare fraud for his role in the diversion scheme.

The U.S. Attorney's Office for the Southern District of Florida said the scheme involved Frank and other defendants unlawfully obtaining the international diabetic test strips and selling them to licensed retail pharmacies in the U.S. — sometimes owned by the defendants — which then sold the test strips to

patients. The pharmacies then submitted claims for reimbursement through private and government health benefit plans.

A Florida federal judge sentenced Frank in August to just over one year in prison, beginning in February 2025, followed by two years of supervised release. The court has also barred him from owning or working for a healthcare business that submits claims to insurers without first obtaining court approval.

Abbott's civil litigation over the scheme began to wind down earlier this year.

In April, Abbott settled its claims against defendants Adelpia Supply USA, E-Pharm Wholesalers, Amexpo, Drugplace Inc., HMF Distributing and Z Worldwide, and in August, a federal magistrate judge recommended that \$54 million in default judgments be entered against 85 companies and individuals that never responded to Abbott's claims.

In early November, Abbott resolved its litigation against Michigan-based diabetes test-strip wholesaler H&H Wholesale Services Inc. with a \$33.4 million settlement. That settlement came after the Second Circuit affirmed a default judgment against H&H, its president, Howard Goldman, and his wife, Lori Goldman, as a sanction for discovery misconduct.

Representatives and counsel for the parties did not immediately respond to requests for comment Friday.

Counsel information for the Frank defendants in the civil case could not immediately be determined.

Abbott Laboratories is represented by Geoffrey Potter of Patterson Belknap Webb & Tyler LLP.

The case is Abbott Laboratories et al. v. Adelpia Supply USA et al., case number 1:15-cv-05826, in the U.S. District Court for the Eastern District of New York.

--Editing by Vaqas Asghar.