

## Abbott secures \$26m damages in TM clash

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### **A New York judge has awarded medical device company Abbott Laboratories more than \$26 million in damages in a trademark dispute over Abbott's FreeStyle diabetes test strips.**

In a memorandum and order handed down on December 28, Judge Carol Amon of the US District Court for the Eastern District of New York concluded that Abbott's actual damages of \$13 million should be doubled and that Abbott could also recover reasonable attorneys' fees and costs from medical product company H&H Wholesale Services.

In 2015, Abbott sued multiple defendants, including H&H and several distributors and pharmacies, over the sale of the international version of Abbott's FreeStyle diabetes test strips in the US.

The court said that, following "extensive discovery", it granted in part Abbott's motion for summary judgment as to liability, finding that H&H had wilfully infringed Abbott's trademarks.

While Abbott was preparing its motion for summary judgment in 2017, Abbott also filed a related action, alleging that H&H was selling international FreeStyle diabetes test strips repackaged into counterfeit US packaging.

"In that action, Abbott conducted a court-authorized search of H&H's premises, which resulted in the seizure of their email server. Review of the contents of that server revealed that the H&H defendants had engaged in a calculated pattern of discovery misconduct in this action that amounted to a fraud upon the court," said Amon.

Last week, Amon concluded that Abbott had satisfied its burden to prove \$13 million in actual damages and rejected H&H's bid to set-off its actual damages in the amount that Abbott has recovered from settling defendants in the same distribution chain.

However, the court rejected Abbott's request to triple the damages award and instead determined that doubling the award was appropriate.

"Although an enhanced damages award is just and appropriate here, imposition of treble damages would produce a \$26,491,380 enhancement (\$39,737,070 less \$13,245,690), yielding an award that more closely approximates an impermissible penalty," said Amon.

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