

BLOOMBERG LAW

Abbott Awarded \$26 Million in Diabetes Strip Sale Suit

By Mary Anne Pazanowski | December 29, 2022

A wholesale diabetic products distributor and its principals must pay Abbott Laboratories more than \$26 million in a dispute over unlawful US sales of test strips intended for international distribution, a federal court in New York said.

Abbott and related companies sued H&H Wholesale Services Inc. and Howard and Lori Goldman for willful trademark infringement, alleging that the defendants purchased international test strips, repackaged them using counterfeit US packaging, then distributed them for sale in the US. The US District Court for the Eastern District of New York granted Abbott's motion for liability against H&H and Howard Goldman in September 2019 and said it would allow the claim against Lori Goldman to go to a jury.

But Judge Carol Bagley Amon [entered](#) a default judgment for Abbott against the H&H defendants in March 2020, after it came to light that they had lied to the court during discovery and purposefully failed to turn over relevant documents to the device maker. In an opinion filed Wednesday, she [held](#) that Abbott proved actual damages of more than \$13 million, based on the difference between the US wholesale price and the international wholesale price for each box sold.

- Abbott established a reasonable basis for using the “substitution” theory to calculate its damages, as its evidence supported an inference that Abbott would have sold a box of US test strips for every international test strip box sold by H&H
- The H&H defendants, due to their misconduct, weren't entitled to a reduction in the damages to account for settlements Abbott reached with other defendants
- The Lanham Act permits enhancing a trademark infringement award by up to three times the actual damages, but trebling the damages in this case would amount to an impermissible penalty or disfavored “lottery-level windfall”; Amon instead awarded Abbott double damages, reasonable attorneys' fees and costs, and prejudgment interest

Patterson Belknap Webb & Tyler LLP represents Abbott. Janey Law Firm PC; Kerr, Russell and Weber PLC; Bachner & Associates PC; and Robert C. Gottlieb Associates PLLC represent H&H and the Goldmans.

The case is [Abbott Labs. v. H&H Wholesale Servs., Inc.](#), E.D.N.Y., No. 15-cv-5826, 12/28/22 .



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