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Patterson Belknap Scores for Abbott in Diabetes Test Strip Imports

By Jenna Greene
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When Abbott Laboratories found the domestic market for its diabetes test strips flooded with cheaper gray market imports from Europe, it tapped lawyers from Patterson Belknap Webb & Tyler to shut down the scheme.

On Friday, the team won a preliminary injunction against multiple distributors barring them from reimporting and selling Abbott's FreeStyle diabetes test strips.

The actual test strips, which are used by people with diabetes to monitor their blood-sugar levels, are identical world-wide, but the packaging is not.

Chief U.S. District Judge Carol Bagley Amon of the Eastern District of New York found the difference mattered. "Consumers are likely to find it relevant that their test strips' packaging contains unexplained and unfamiliar symbols, atypical warnings, international units of measurement and different languages," she wrote in granting the Nov. 6 preliminary injunction. "Most glaringly, consumers would certainly find it relevant that their insert instructs them to test from four sites on their bodies that the FDA specifically rejected as insufficiently reliable."

Amon also found that the gray market imports are likely to harm Abbott's goodwill and reputation, as well as its ability to control its reputation.

About 95 percent of the people who use the strips have insurance. Their co-pay was the same whether they got the pricier domestic strips or cheaper imported ones.

What it did affect was how pharmacies were reimbursed from insurance companies, and how the insurance companies got rebates from Abbott. "The wholesalers are essentially circumventing the U.S. insurance reimbursement system, causing Abbott to wrongfully

pay out millions of dollars in rebates to insurance companies," according to Patterson Belknap.

Claims against the wholesalers included trademark infringement and trademark dilution, importation of goods bearing infringing marks, fraud and fraudulent inducement, aiding and abetting fraud, RICO violations and unfair competition.

Patterson Belknap partner Geoffrey Potter, who led the Abbott team, said the company got the injunction it wanted to protect U.S. consumers from non-FDA compliant packaging.

"This is a concern for everyone who sells medical devices worldwide," he said.

Other firm lawyers on the team included partner Aron Fischer and associates R. James Madigan, III, Jeremy Weinberg, Matthew Funk and Kristen Richer.

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