

Feds Indict 10 Over Fake 5-Hour Energy Scheme

By **Bill Donahue**

Law360, New York (June 18, 2015, 7:01 PM ET) -- Federal prosecutors in California unsealed indictments Thursday against 10 people accused of producing and selling millions of counterfeit bottles of 5-Hour Energy — charges that the drinkmaker's lawyers said were the first ever for counterfeit food.

According to prosecutors, the defendants initially relabeled legitimate shots of 5-Hour Energy destined for Mexico and then sold them illegally in the U.S. market. Later, when those ran out, they switched to fully counterfeit drinks, eventually producing and selling more than 4 million of them.

Attorneys for 5-Hour Energy parent company Living Essentials say it's the first criminal case filed over knock-off food or beverage products.

"We are very pleased that the U.S. attorney took action here with the ultimate deterrent, prison, where these individuals won't have much need for 5-hour Energy," said Geoffrey Potter, a partner with Patterson Belknap Webb & Tyler LLP and lead counsel for 5-Hour Energy.

"The putrid behavior of these individuals endangered the lives of tens of thousands of consumers," Potter said, noting that the scheme had been shut down years before the indictments came down.

All 10 defendants were scheduled to be arrested Thursday. The indictment was handed down under seal May 14. The U.S. Department of Justice didn't return a request for comment, and the defendants couldn't immediately be reached for comment.

The scheme allegedly centered around Baja Exporting LLC, a company owned by defendant Joseph Shayota that started out as a legitimate exporter of 5-Hour Energy to the Mexican market. The company's operators allegedly began replacing the Spanish labels with fake English labels in 2009, eventually selling more than 350,000 of them for significantly cheaper than authentic 5-Hour Energy.

When they ran out of bottles to relabel in 2011, Baja and the other defendants, which include several wholesalers and distributors who helped manufacture and sell the fake gear, simply started making their own, buying millions of blank bottles. The indictment is silent on what exactly went into those bottles.

The formal charges include conspiracy to traffic in counterfeit goods, conspiracy to commit criminal copyright infringement and conspiracy to introduce misbranded food into interstate commerce.

The case is 5-Hour Energy's first tango with trademark law. The company has been fighting various aspects of the current conspiracy in civil litigation for years, and has sued over similar-sounding rival products like "8-HR Energy," "6 Hour Power" and "6 Hour Energy Shot."

In the current criminal case, the company is represented by Patterson Belknap Webb & Tyler LLP.

The case is United States of America v. Joseph Shayota et al, case number 15-cr-00264, in the U.S. District Court for the Northern District of California.

--Editing by Chris Yates.

All Content © 2003-2016, Portfolio Media, Inc.