

Counterfeit 5-Hour Energy Ringleader Sentenced To 7 Years

By **Shayna Posses**

Law360, New York (April 26, 2017, 7:44 PM EDT) -- A wholesale distribution company owner who pled guilty to orchestrating a scheme to sell counterfeit 5-Hour Energy drinks was sentenced on Wednesday to seven years in prison and ordered to pay more than half a million dollars in restitution to the drink's maker, according to the U.S. attorney's office in San Francisco.

Midwest Wholesale Distributors owner Walid Jamil received a seven-year prison sentence, along with three years of supervised release, after pleading guilty in October to conspiracy to traffic in counterfeit goods and conspiracy to commit criminal copyright infringement and introduce misbranded food into interstate commerce, the U.S. Attorney's Office for the Northern District of California confirmed.

In addition, Jamil was ordered to fork over roughly \$555,800 in criminal restitution to Living Essentials LLC, the maker of 5-Hour Energy. The company previously won \$20 million from Midwest, two other companies and several individual conspirators, including Jamil, in civil litigation over the scheme.

Geoffrey Potter, lead counsel for Living Essentials, said in a statement on Wednesday that he is gratified the court gave Jamil such a long prison sentence.

"I am gratified not only as 5-Hour Energy's lawyer, but also as a consumer and as a parent. All counterfeiting is theft, but counterfeiting something that we eat is an especially horrific crime," he said. "I want those in the future that might consider foisting these types of counterfeits on Americans to know that the penalty will be very harsh."

Potter's firm, Patterson Belknap Webb & Tyler LLP, said in a news release on Wednesday that this was the first ever U.S. criminal prosecution stemming from a food or beverage counterfeiting operation.

Prosecutors indicted almost a dozen people in the scheme in 2015, including Jamil and several relatives. According to prosecutors, the plot can be traced back to Baja Exporting LLC, which started out as a legitimate exporter of 5-Hour Energy to Mexico.

However, the operators allegedly began replacing the Spanish labels with fake English labels, eventually selling more than 350,000 of them for significantly cheaper than 5-Hour Energy meant for the U.S. market.

After the stock ran out in 2011, they switched to fully counterfeit drinks, according to the indictment. From May to October 2012, Midwest served as the principal wholesaler of the drinks, distributing more

than 4 million bottles of counterfeit 5-Hour Energy into interstate commerce, prosecutors said.

Potter led the investigation that resulted in the dismantling of the counterfeiting ring in 2012 and the ultimate arrest of the defendants, according to Patterson Belknap's news release.

Jamil entered his plea on Oct. 7, admitting to orchestrating a scheme with co-defendant and Baja owner Joseph Shayota to repackage and resell the 5-Hour Energy drinks.

Prosecutors say he then found people to make labels, boxes and liquid for the counterfeit drinks. He brought in Justin Shayota, his nephew, to run the day-to-day operations, which involved putting labels on bottles "filled with liquid made in a filthy facility," the government's April 19 sentencing memorandum said.

The government said that Jamil should concurrently serve 108 months for the trafficking charge and 60 months for the infringement and misbranded food charge, saying, "The defendant's conduct demonstrated a complete disregard of the intellectual property rights of Living Essentials, and endangered the company's reputation.

"More importantly, the defendant jeopardized the health of millions of consumers who purchased the counterfeit product," the sentencing memorandum said. "Further, when presented with an opportunity to help address the risk to public health, the defendant delayed Living Essentials from issuing a recall on the counterfeit lot numbers in an expedited manner by refusing to cooperate with the company."

Jamil has been involved in similar schemes involving Equal, Splenda, Truvia, Uncle Ben's rice and Pillsbury products, the memorandum said.

Jamil asked the court to follow the more lenient recommendations of the probation office, which would have led to 96 months in prison. He also asked the court to delay his sentencing until mid-July, citing a subsection of the sealed plea agreement.

Prosecutors objected, saying that section is inapplicable and that putting off his sentencing would unnecessarily impact the court's schedule for the sentencing of his co-conspirators.

Potter told Law360 on Wednesday that next up for sentencing are Joseph Shayota and his wife, Adriana Shayota. After a trial, they were convicted by a jury in November of conspiracy to traffic in counterfeit goods, conspiracy to commit criminal copyright infringement and conspiracy to introduce misbranded food into interstate commerce.

The attorney said he expects them to receive an even longer sentence because they didn't admit responsibility.

A representative for the U.S. attorney's office declined to comment on Wednesday. A representative for Jamil didn't immediately return a request for comment.

The case is being prosecuted by Assistant U.S. Attorneys Matthew A. Parrella, Susan Knight and Joseph E. Springsteen.

Jamil is represented by James T. Reilly of Summit Defense.

The case is USA v. Shayota et al., case number 5:15-cr-00264, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dani Kass, Emily Field and Bill Donahue. Editing by Stephen Berg.

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