

## Second Circuit Approves Sales Ban on 'Gray Market' Diabetes Test Strips

BY ZOE TILLMAN

A federal appeals court in New York on Thursday upheld an order blocking the sale of "gray market" versions of Abbott Laboratories' diabetes test strips.



Geoff Potter

Abbott is suing distributors and pharmacies over domestic sales of the international version of the company's Free-

style blood glucose strips. Last year, a federal judge in Brooklyn issued a preliminary injunction halting U.S. sales of the products.

Several defendants appealed to the U.S. Court of Appeals for the Second Circuit, which issued an order on Thursday upholding the lower court's decision.

"We find no abuse of discretion in the district court's thorough and well-reasoned order," the three-judge panel said in an order handed down less than a week after the judges heard arguments on Oct. 27.

Geoffrey Potter of Patterson Belknap Webb & Tyler, a lead attorney for Abbott, said in a statement that he was not surprised by the

Second Circuit's quick decision.

"The many differences between Freestyle brand test strips sold domestically and the gray-market international test strips are highly confusing. In fact, the differences are so profound that the defendants moved to

stay the civil case on Fifth Amendment grounds, arguing that they are likely to be criminally indicted for selling a misbranded medical device," Potter said. "Now more than 300 defendants are enjoined from selling gray-market Freestyle test strips."

Some of the defendants have settled with Abbott, while others are fighting the case.

John Shaeffer of Fox Rothschild argued for one group of defendants who appealed. He declined to comment. Martin Saperstein of Goodman & Saperstein, who also argued for defendants in the Second Circuit, was not immediately reached.

The defendants argued that U.S. District Judge Carol Bagley Amon



Abbott Laboratories global headquarters in Abbott Park, Illinois

was wrong to find that Abbott was likely to succeed on its trademark infringement claim and to find that there was a need for an early injunction. The Second Circuit's order stated, "We have considered all of the defendants-appellants' arguments on this appeal and we find in them no basis for reversal."

*Chief Judge Robert Katzmann and Judges Ralph Winter and Richard Wesley heard the case.*

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