

J&J secures injunction against medical device counterfeiter

December 7th 2021



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Johnson & Johnson's (J&J) subsidiary Ethicon has obtained a permanent injunction against counterfeiters selling fake versions of Surgicel, an absorbable haemostat used to control bleeding during surgery.

Magistrate Judge Anthony Porcelli of the US District Court for the Middle District of Florida, Tampa Division, ordered the permanent injunction on Wednesday, 1 December, after both parties filed a motion agreeing to a permanent injunction and to settle the case.

In its second amended complaint filed in early October 2019, Ethicon claims that a number of companies were producing counterfeits of Surgicel and selling the fake products to hospitals and clinics through grey-market distributors.

"While the counterfeiters have carefully and faithfully reproduced the authentic packaging, along with accurate depictions of Ethicon's trademark, the product contained within is dramatically different,"

said that complaint adding that the counterfeits are non-sterile and bacterially contaminated, and that use of the counterfeits during surgery could cause serious injury or death.

Ethicon discovered the counterfeit devices in May 2019, after a University of Kentucky Medical Center neurosurgeon noticed that a unit of Surgicel in his operating room performed differently than expected.

The surgeon complained to Ethicon and tech company tested the device, confirming that the packaging and product were counterfeit and that the counterfeit Surgicel device was “critically defective and dangerous”.

According to the complaint, Ethicon traced the fake products back to Lion Heart Surgical Supply and XS Supply.



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Geoffrey Potter, Counsel for Ethicon.

Soon after, Ethicon sued Lion Heart, XS Supply and three other companies and their directors, accusing the companies of trademark infringement, trademark dilution, false descriptions and false designations of origin, and unjust enrichment and unfair competition.

“Whether because they are intentionally selling non-authentic product or because they are wilfully blind to the obvious risk that they are trafficking in counterfeits, these grey-market distributors turn an illicit profit by putting patients’ lives at risk,” said the suit.

Earlier this year, Ethicon obtained a permanent injunction against XS Supply, prohibiting the company from selling any Ethicon products. Now, Lion Heart is prohibited from selling any J&J products.

In addition to the civil suit, a Lion Heart manager was criminally prosecuted for her role in Lion Heart’s purchase and sale of the counterfeit devices. She pled guilty and was sentenced to six months’ imprisonment in March 2021.

Ethicon’s permanent injunction against Lion Heart is its third permanent injunction in 2021 against grey-market suppliers that have sold counterfeit Ethicon medical devices.

In addition to obtaining injunctions against XS Supply and Lion Heart, in February 2021, Ethicon obtained an injunction against Advanced Inventory Management, which was doing business as eSutures.com.