

J&J unit primed for multi-million dollar damages over counterfeits

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Judge urges \$18m award in ‘horrific’ counterfeiting case | Counterfeits were ‘bacterially contaminated’ | Ethicon.



Geoffrey Potter

A Florida magistrate judge has recommended that J&J’s subsidiary Ethicon should be awarded \$18 million in statutory damages against companies that sold counterfeit surgical devices.

According to Judge Anthony Porcelli of the [US District Court for the Middle District of Florida](#)—who handed down a report and recommendation on Monday, August 1—the human cost of the counterfeiting operation was “horrific”.

“Significantly, the dire impact of these counterfeits on public health, and the counterfeiters’ wanton disregard for human health and safety, make this case an extreme outlier in the anti-counterfeiting case law,” said Porcelli.

The judge recommended that J&J’s unit be awarded \$12 million from India-based [Medserve](#) and \$6 million from [Pure Care FZE](#), an United Arab Emirates company.

Ethicon has, for more than 60 years, sold ‘Surgicel’ surgical products used to control bleeding, known as haemostats.

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

Ethicon traced the counterfeits back to XS Supply and LionHeart and, following seizures at their warehouses, then connected the counterfeit products to overseas supplier PureCare, which had bought the counterfeit products from Medserve.

In December last year, Ethicon—represented by [Geoffrey Potter](#) of Patterson Belknap Webb & Tyler—secured an injunction against both XS Supply and Lion Heart.

“The counterfeit Surgicel products that the Medserve defendants and the PureCare defendants trafficked do not exhibit the same qualities as the genuine products, largely because they are significantly less oxidised,” said Porcelli.

The judge added that these counterfeits are “unlikely to effectively control bleeding and would be considered critical failures by Ethicon’s manufacturing standards” and are bacterially contaminated.

Porcelli recommended that Ethicon’s motion for default judgment against the Medserve and Pure Care defendants be granted, as well as finding that Ethicon should be granted injunctive relief against the two defendants.