

3M Continues TM Fight Against COVID-19 Mask Price-Gouging

By **Lauren Berg**

Law360 (April 13, 2020, 10:47 PM EDT) -- 3M accused a second company in a California federal lawsuit Friday of infringing its 3M-branded N95 masks by reselling the protective equipment at drastically increased prices, another battle in the company's trademark fight directly stemming from the deadly coronavirus pandemic.

3M Co. claims Utah-based Rx2Live LLC tried to sell millions of the masks to Community Medical Centers Inc. in Fresno, California, at a "grossly inflated" price that was about four to five times greater than the list price, according to the complaint.

The company doesn't claim Rx2Live was trying to sell counterfeit versions of 3M's masks, but was instead falsely asserting that it was a distributor of 3M products — making CMC believe the mask prices were authorized by 3M, according to the lawsuit.

"Not only does such price-gouging further strain the limited resources available to combat COVID-19, but such conduct justifiably has caused public outrage which threatens imminent and irreparable harm to 3M's brand as [Rx2Live] and similar pandemic profiteers promote an improper association between 3M's marks and exploitative pricing behavior," 3M said.

3M claims that the illegal price-gouging, combined with the unauthorized use of its name, violated federal and California trademark law.

To be clear, the lawsuit only involves accusations about the "3M" trademark. The acronym N95 is merely a technical designator used by multiple companies, not a trademark.

But 3M is the largest American producer of the mask, and has become closely linked to the product as the COVID-19 crisis has grown. Earlier this month, the company had a public clash with President Donald Trump after he threatened to use federal law to force the company to produce more. Trump and 3M reached an import/export deal a few days later.

In its complaint Friday, 3M said Rx2Live employee Virginia Cooper reached out to CMC on March 27 to advertise personal protective equipment available through the company, including purported 3M-brand N95 respirators. According to the complaint, she told the company that it had to buy a minimum order of 10 million masks, priced at \$52 million for surgical masks and \$49.5 million for standard masks — compared to 3M's prices of \$12.7 million and \$10.2 million to \$13.1 million, respectively.

“3M does not — and will not — tolerate individuals or entities deceptively trading off the fame and goodwill of the 3M brand and marks for their personal gain,” the company said. “This is particularly true against those who seek to exploit the surge in demand for 3M-brand products during the COVID-19 global pandemic.”

This isn't the only battlefield in 3M's trademark fight resulting from the coronavirus pandemic.

Also on Friday, the company launched a suit against Performance Supply LLC, claiming the New Jersey company offered to sell millions of 3M-brand masks to New York City at a "grossly inflated" cost of more than 500% the actual price.

A representative for 3M did not immediately respond to requests for comment Monday and Rx2Live could not be immediately reached for comment.

3M is represented by Carmine R. Zarlenga, Dale Giali and Keri E. Borders of Mayer Brown LLP.

Counsel information for Rx2Live was not immediately available.

The case is 3M Company v. Rx2Live LLC, case number 1:20-cv-00523, in the U.S. District Court for the Eastern District of California.

--Additional reporting by Alyssa Aquino, Mike LaSusa and Bill Donahue. Editing by Bruce Goldman.