

3M Wins Restraining Order In Price-Gouging Case

By **Bill Donahue**

Law360 (April 24, 2020, 2:22 PM EDT) -- A Manhattan federal judge on Friday granted 3M Company a restraining order against a New Jersey company that's accused of violating federal trademark law by reselling N95 masks at drastically increased prices amid the COVID-19 pandemic.

U.S. District Judge Loretta A. Preska also ordered Performance Supply LLC to explain by April 30 why she should not issue a longer-term injunction against the company. And she ordered the company to appear in court on May 4.

The order came in one of several closely watched trademark cases filed by 3M — the country's largest producer of N95 masks — that aim to fight price-gouging during the pandemic.

The lawsuits don't claim the defendants are selling fake masks, but rather that they are using the 3M trademark and other misleading tactics to dupe buyers into thinking their sky-high prices are somehow authorized by 3M.

In the case filed against Performance Supply, 3M says the company used a misleading letter in an effort to sell millions of masks to New York City at a more than 500% markup.

Friday's order came hours after 3M filed an emergency motion for a temporary restraining order, which warned Judge Preska that the price-gouging was causing permanent damage to the company's reputation.

"Defendant's exploitation of a global health disaster to confuse and deceive government officials into believing that defendant is an authorized representative of 3M's products — and offering those products for sale at inflated prices — threatens immediate and irreparable harm to 3M's brand and to those desperately in need of [masks], including healthcare workers working on the front lines of COVID-19," 3M wrote in the motion.

Friday's order granted that emergency motion, barring Performance Supply from a variety of allegedly misleading behavior. It also ordered briefing and a hearing on a longer-term preliminary injunction.

"We are pleased that the United States District Court for the Southern District of New York has granted temporary relief and hope it will become permanent," 3M wrote in a statement Friday. "3M will continue to take direct legal action where appropriate, while supporting federal and state government authorities as they work to prevent price gouging."

A representative for Performance Supply could not immediately be located for comment on Friday, and no attorney has yet made an appearance in the case.

3M has filed two other such lawsuits against other companies, one in California and one in Florida. The company has not yet sought such restraining orders in those cases.

3M is represented by A. John P. Mancini, Carmine R. Zarlenga and Jonathan Webster Thomas of Mayer Brown LLP.

Counsel information for Performance Supply was not immediately available.

The case is 3M Company v. Performance Supply LLC, case number 1:20-cv-02949, in the U.S. District Court for the Southern District of New York.

--Editing by Jack Karp.