

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.
)	
Plaintiff,)	
)	JUDGE
v.)	
)	
252,640 COUNTERFEIT 3M BRANDED)	
MODEL 1860-S RESPIRATORS/MASKS –)	
SOLD TO THE CLEVELAND CLINIC BY)	
Q2 SOLUTIONS, and)	
)	
94,000 COUNTERFEIT 3M BRANDED)	
MODEL 1860 RESPIRATORS/MASKS –)	
SOLD TO THE CLEVELAND CLINIC BY)	
Q2 SOLUTIONS,)	
)	
Defendants.)	

COMPLAINT IN FORFEITURE

NOW COMES plaintiff, the United States of America, by its attorneys, Bridget M. Brennan, Acting United States Attorney for the Northern District of Ohio, and James L. Morford, Assistant U.S. Attorney, and files this Complaint in Forfeiture, respectfully alleging on information and belief as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

JURISDICTION AND INTRODUCTION

1. This Court has subject matter jurisdiction over an action commenced by the United States under 28 U.S.C. Section 1345, and over an action for forfeiture under 28 U.S.C.

Section 1355(a). This Court also has jurisdiction over this particular action under 18 U.S.C. Section 2323(a) (civil forfeiture authority – counterfeit goods).

2. This Court has *in rem* jurisdiction over the defendant properties pursuant to: (i) 28 U.S.C. Section 1355(b)(1)(A) because acts giving rise to the forfeiture occurred in this district; and, (ii) 28 U.S.C. Section 1355(b)(1)(B), incorporating 28 U.S.C. Section 1395, because the action accrued in this district. This Court will have control over the defendant properties through service of arrest warrant(s) *in rem*, which will be executed upon the defendant properties. *See*, Supplemental Rules G(3)(b) and G(3)(c).

3. On March 11, 2021, the Cleveland Clinic voluntarily abandoned the defendant properties, which it had purchased from Q2 Solutions. On the same date, the defendant properties were seized by the U.S. Department of Homeland Security / Homeland Security Investigations at the Cleveland Clinic main campus located in Cleveland, Ohio. The defendant properties are now in the custody of the federal government.

4. Venue is proper in this district pursuant to: (i) 28 U.S.C. Section 1355(b)(1)(A) because acts giving rise to the forfeiture occurred in this district; and, (ii) 28 U.S.C. Section 1395 because the action accrued in this district.

5. By letter dated June 2, 2021, Q2 Solutions submitted an administrative claim of ownership to the defendant properties.

6. The defendant properties are subject to forfeiture to the United States under 18 U.S.C. Section 2323(a), which provides for the forfeiture of counterfeit property that is made or trafficked and/or used in violation of 18 U.S.C. Section 2320.

DESCRIPTION OF THE DEFENDANT PROPERTIES

7. The following properties are the defendant properties in the instant case:

a.) 252,640 counterfeit 3M branded, model 1860-S [small] respirators/masks – sold to the Cleveland Clinic by Q2 Solutions.

b.) 94,000 counterfeit 3M branded, model 1860 respirators/masks – sold to the Cleveland Clinic by Q2 Solutions.

8. In total, the Cleveland Clinic purchased approximately 400,320 counterfeit 3M branded, model 1860/1860-S respirators/masks from Q2 Solutions. Before learning that these respirators/masks were counterfeit, the Cleveland Clinic issued approximately 53,680 of the respirators/masks to healthcare workers for their use.

9. Some of the counterfeit 3M branded respirators/masks – issued for use by the Cleveland Clinic as set forth in paragraph 8 - were used by healthcare workers on several high-risk COVID-19 wards at the Cleveland Clinic.

10. The Cleveland Clinic paid Q2 Solutions approximately \$1,791,432.00 for the approximately 400,320 counterfeit 3M branded respirators/masks. To date, the Cleveland Clinic has not been repaid by Q2 Solutions for any part of this \$1,791,432.00. Despite this fact, Q2 Solutions now asserts “both an ownership and a possessory interest in the Goods”, as set forth in its administrative claim.

FORFEITURE

I. *Background.*

11. In December, 2020, Homeland Security Investigations (HSI) Philadelphia received information from 3M that a hospital located in Seaford, Delaware, had purchased counterfeit products from a company known as Q2 Solutions.

12. The Delaware based hospital purchased 35,000 surgical grade N-95 masks for over \$165,000.00 from Q2 Solutions. The hospital contacted 3M after their employees noticed a strange odor coming from the masks. 3M subsequently determined the masks were counterfeit.

13. HSI Philadelphia Special Agents initiated an investigation, which included the activities of Q2 Solutions. Q2 Solutions operates multiple retail websites used for the sale of PPE and the investigation indicates that Q2 Solutions may have sold counterfeit PPE to at least 20 medical facilities.

14. On June 28, 2021, a Complaint of Forfeiture was filed in the District of Connecticut (Case No. 3:21-CV-884) against “535 Boxes of Counterfeit 3M 1860 and 1860S Face Masks.” As in the instant case, the Claimant in that case is Q2 Solutions, LLC. Particularly, paragraph 7 (page 2) of the complaint filed in the District of Connecticut alleges as follows:

On November 19, 2020, TidalHealth, a healthcare provider in the Baltimore, Maryland area, purchased approximately 35,160 of what they believed to be 3M 1860 respirators from Q2, for \$164,502.00. TidalHealth had purchased the 3M N-95 respirators from Q2 for use by Nanticoke Memorial Hospital, an entity operated by TidalHealth. On December 9, 2020, after wiring the payment to Q2 and receiving the masks, TidalHealth sent photographs of the masks to 3M to confirm their authenticity as some of the employees of the hospital had voiced concerns about the look, smell, and fit of the masks. 3M examined a sample of the masks that TidalHealth had purchased from Q2 and determined that while these masks bore the 3M logo, the masks were counterfeit, based upon the lot number and construction of the masks.

II. *The Instant Case.*

15. On November 13, 2020, Q2 Solutions e-mailed the Cleveland Clinic. The e-mail represented that Q2 Solutions had 3M branded masks for sale.

16. The Cleveland Clinic made a request for proof of authenticity of the 3M masks. Q2 Solutions sent a video along with photographs representing a warehouse full of 3M branded N-95 masks.

17. The first Cleveland Clinic order was for 100,080 1860-S N-95 masks. The total purchase price was \$440,352.00.

18. On November 16, 2020, Q2 Solutions e-mailed the Cleveland Clinic. The e-mail stated that delivery would be made on November 20, 2020.

19. On November 20, 2020, Q2 Solutions sent an e-mail notifying the Cleveland Clinic that the masks were delivered. Q2 Solutions also asked if the Cleveland Clinic wanted to order additional 3M masks. The second Cleveland Clinic order was for 100,080 1860-S N-95 masks. The total purchase price was \$450,360.00.

20. On November 30, 2020, the third Cleveland Clinic order was for 100,080 1860 N-95 masks. The total purchase price was \$450,360.00.

21. On December 7, 2020, the fourth Cleveland Clinic order was for 100,080 1860-S N-95 masks. The total purchase price was \$450,360.00.

22. During the first week of January, 2021 – during a routine fit testing process for Cleveland Clinic caregivers – it was discovered that some of the purported 3M masks were not fitting well. Additionally, the nurses doing the fit testing noticed that the purported 3M masks appeared to be “smaller in size”.

23. On or about January 21, 2021, the Cleveland Clinic learned that it may be in possession of counterfeit N-95 masks bearing the 3M logo. All Cleveland Clinic locations were searched, and all unused masks were sequestered.

24. On January 22, 2021, 3M contacted the Cleveland Clinic. The Cleveland Clinic representative indicated that in November, 2020, they had purchased approximately 400,000 1860/1860-S respirators from Q2 Solutions, and a significant amount of the product had already

been used by healthcare workers. The 3M representative requested pictures of the products and any other documentation the Cleveland Clinic had from Q2 Solutions.

25. At 4:30 p.m. on January 22, 2021, a Cleveland Clinic representative e-mailed pictures to 3M of the 1860 product.

26. At 5:10 p.m. and 5:54 p.m. on January 22, 2021, a Cleveland Clinic representative e-mailed pictures to 3M of the 1860-S product.

27. On January 23, 2021, a Cleveland Clinic representative sent additional pictures to 3M. Also, a Cleveland Clinic representative shipped sample product of both the 1860 masks and the 1860-S masks to 3M.

28. 3M experts reviewed the pictures sent by the Cleveland Clinic and concluded that the pictures contained obvious tells of counterfeit product, including:

- a.) compromised lot codes (B20020 and B20522).
- b.) product printing that did not conform to known characteristics of authentic product.
- c.) product packaging that did not conform to known characteristics of authentic product.

29. Experts at 3M also examined the physical samples and, based on the physical samples, confirmed that the product was counterfeit.

30. Authentic 3M N-95 Model 1860 and 1860-S respirators are NIOSH [National Institute for Occupational Safety and Health] approved N-95 respirators and are FDA [Food and Drug Administration] cleared for use as surgical masks.

31. Additionally, authentic 3M N-95 Model 1860 and 1860-S respirators/surgical masks:

- a.) meet CDC [Centers for Disease Control and Prevention] guidelines for Mycobacterium tuberculosis exposure control.

- b.) 99% bacterial filtration efficiency according to the American Society for Testing Materials F2101.
- c.) as a disposable particulate respirator, are intended to help reduce wearer exposure to certain airborne particles including those generated by electrocautery, laser surgery, and other powered medical instruments.
- d.) as a surgical mask, are designed to be fluid resistant to splash and spatter of blood and other infectious materials.
- e.) help provide respiratory protection against certain airborne biological particles.
- f.) are disposable.
- g.) as a respirator, contain no components made from natural rubber latex.
- h.) are specifically designed to seal to the wearer's face – as fit and seal are critical to respirator performance.

32. Conversely, counterfeit respirators are not tested and approved like authentic 3M respirators. Instead, counterfeit respirators are made by unknown fraudsters, using unknown processes and materials, with unknown or nonexistent quality controls.

33. On March 11, 2021, the Cleveland Clinic voluntarily abandoned the defendant properties. On the same date, the defendant properties were seized by the U.S. Department of Homeland Security / Homeland Security Investigations at the Cleveland Clinic main campus located in Cleveland, Ohio.

CONCLUSION


34. By reason of the foregoing, the defendant properties [namely, 252,640 counterfeit 3M branded, model 1860-S respirators/masks; and, 94,000 counterfeit 3M branded, model 1860 respirators/masks] are subject to forfeiture to the United States under 18 U.S.C. Section 2323(a), which provides for the forfeiture of counterfeit property that is made or trafficked and/or used in violation of 18 U.S.C. Section 2320.

WHEREFORE, plaintiff, the United States of America, requests that the Court enter judgment condemning the defendant properties and forfeiting them to the United States, and providing that the defendant properties be delivered into the custody of the United States for disposition according to law, and for such other relief as this Court may deem proper.

Respectfully submitted,

Bridget M. Brennan
Acting United States Attorney, N.D. Ohio

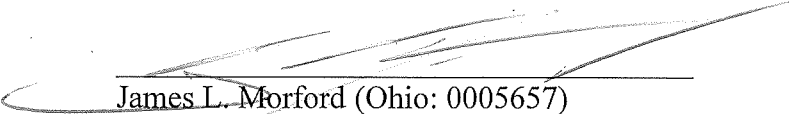
By:


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VERIFICATION

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

I, James L. Morford, under penalty of perjury, depose and say that I am an Assistant United States Attorney for the Northern District of Ohio, and the attorney for the plaintiff in the within entitled action. The foregoing Complaint in Forfeiture is based upon information officially provided to me and, to my knowledge and belief, is true and correct.


James L. Morford (Ohio: 0005657)
Assistant United States Attorney, N.D. Ohio

Sworn to and subscribed in my presence this 25th day of August, 2021.


Notary Public Anna J. Dudas
Notary Public, State of Ohio
My Commission Expires 12/5/2021