

Abbott, Sinocare debate distinctiveness of three-dimensional trademark at UK trial

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By [Abhishek Kumar](#)

US medical device maker Abbott Diabetes told a London court that its three-dimensional trademark for the “FreeStyle Libre” glucose monitoring device is valid and infringed by Sinocare. In closing arguments, Sinocare said Abbott’s trademark was “hopelessly non-distinctive.” A UK judge reserved his judgment for a later date.

US medical device maker Abbott Diabetes told the UK High Court in London today that the three-dimensional trademark it uses in connection with the wearable glucose monitoring device “FreeStyle Libre” is both valid and infringed by Chinese rival Sinocare.

In a February 2024 lawsuit, Abbott alleged Sinocare infringed Abbott’s 3D trademark for “sensor-based glucose monitoring systems” by marketing the competing “iCan i3” glucose monitoring device. Abbott claimed that the two devices have an identical appearance, as both are circular in shape and made of white and opaque plastic material.

“[On the date of priority], there were no other medical devices in the market which used Abbott’s circular shape and sensory design and Sinocare harmed its reputation by using the shape and design to sell inferior goods,” Daniel Alexander, a lawyer for Abbott Diabetes said.

Alexander also argued the appearance of the FreeStyle Libre had acquired distinctiveness as an established player in the market.

“The ultimate question is whether at the relevant date the mark acquired a distinctive character,” Alexander said.

Countering Alexander’s argument on acquired distinctiveness, Benet Brandreth KC, lawyer for Sinocare, said that recognition and distinctiveness are not synonymous. According to Brandreth, the trademark claimed by Abbott is a “shape-mark” unentitled to protection because it is not distinctive.

Brandreth also said Abbott did not provide evidence that the shape of the iCan i3 had any impact on either company’s bottom line. He downplayed survey evidence from Abbott as ineffective and unreliable. He added that Abbott did not adduce any expert evidence to support the surveys, despite the opportunity to do so.

Brandreth emphasized that the trademark was “hopelessly” non-distinctive and argued that the shape of goods are not ordinarily understood by consumers to indicate their origin.

At the conclusion of the trial, Judge Richard Smith reserved his judgment for a future date.

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Areas of Interest: Intellectual Property

Industries: Health Care

Geographies: Europe, Northern Europe, United Kingdom

Topics:

Trademarks