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CONNOLLY, BOVE & LODGE
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHAS. PFIZER & CO., INC.,

Plaintiff,

v.

INTERNATIONAL DRUG TRADING, INC., SENECA LABORATORIES LIMITED, NORMAN S. COHEN and LEONARD FRANK WINEBERG,

Defendants.

Civil Action No. 24280

Patent No. 2,699,054

AFFIDAVIT OF
THOMAS S. LODGE

STATE OF DELAWARE)
) SS.:
COUNTY OF NEW CASTLE)

THOMAS S. LODGE being duly sworn deposes and says:

1. I am a member of the Bar of the State of Delaware and a partner in the firm of Connolly, Bove & Lodge, counsel for plaintiff, Chas. Pfizer & Co., Inc., and I am familiar with the facts and background of this case. The information given below is from my general knowledge of these proceedings, including the deposition of defendant Leonard Frank Wineberg (hereinafter "Wineberg") taken herein on October 24, 1963.

2. I make this affidavit in support of plaintiff's Motion for Preliminary Injunction filed contemporaneously herewith. The facts surrounding the operations of the two defendant corporations include the following:

3. International Drug Trading, Inc., (hereinafter "International") was incorporated in Michigan on January 25, 1963.

It is the American sales agent for the Canadian corporation Seneca Laboratories, Ltd. (hereinafter "Seneca"). The only business of International is the importation of tetracycline hydrochloride capsules purchased from Seneca and the sale of such capsules throughout the United States. Seneca buys bulk tetracycline hydrochloride from Italian manufacturers who are not licensees of plaintiff, and converts it to capsule dosage form in Canada.

4. Since its organization, International has imported into the United States over one million capsules of tetracycline hydrochloride and such capsules have been sold in violation of plaintiff's patent in suit. Seneca shipped these capsules to International by private automobile from its plant in Canada to the border at Detroit or Buffalo. In Detroit either defendant Norman S. Cohen (hereinafter "Cohen") or defendant Wineberg picked up the capsules at customs and took them to Cohen's home for storage or delivered them to International's American customers. The capsules stored in Cohen's home were likewise delivered to the American customers by private automobile. The individual defendants and Seneca were aware of plaintiff's patent in suit when International was incorporated, and knew it would be infringing the patent by selling Seneca's unlicensed tetracycline hydrochloride within the United States.

5. International owns no office, manufacturing facilities or warehouse for storage of its tetracycline products. Its office address is a professional telephone answering and secretarial service. Cohen is the corporation's only full-time, salaried employee, although Wineberg performs some spasmodic services for it. Neither corporate defendant has any research facilities for the development of tetracycline products.

6. Defendant Wineberg is president of Seneca and is also secretary-treasurer of International. The other two officers of International are defendant Cohen, president, and Sylvia Maria Goodman, vice-president. The latter is the wife of International's attorney. The same three officers are the sole shareholders of International. Wineberg holds 425 shares, Cohen holds 425, and Mrs. Goodman holds the remaining 150 shares outstanding. The shares in International were issued to the three officers for "contracts and certain pre-incorporation work" and not for cash.

7. International has practically no assets within this District or within the jurisdiction of any other United States District Court with which to respond to a judgment of this Court. Seneca and Wineberg are residents of Canada, and on information and belief neither of them has any assets in this country with which to respond to a judgment of this Court. Both Seneca and International have consistently refused to disclose any information on their financial condition to Dun and Bradstreet representatives.

8. From information available to plaintiff, Cohen's financial condition is very precarious. Such information disclosed he had his 1961 Plymouth automobile repossessed last year because of his failure to keep up the installment payments on it. Also, he tried to purchase an automobile in March, 1963, on time payments, but his application was turned down by Commercial Credit Corporation, a financing organization. He now has a 1963 Chevrolet automobile on which there is a chattel mortgage of over $3,000.

Thomas S. Lodge

Thomas S. Lodge

SWORN TO and subscribed before me, this 6th day of April, 1964.

Gertrude M. Mullen

Notary Public