

Juul Rival Warned That TM Suit Is Nothing To 'LOL' About

By **Tiffany Hu**

Law360 (February 14, 2020, 6:42 PM EST) -- A New Jersey federal judge has slammed an e-cigarette company for its "cavalier attitude" in a trademark lawsuit filed against it by Juul Labs, warning the accused infringer not to expect the court to tolerate "LOL" as a response to its orders.

In an opinion Thursday, U.S. District Judge Kevin McNulty said that certain communications from 4X Pods co-owners Gregory Grishayev and Michael Tolmach indicate a "dismissive and cavalier attitude" towards the potential liability in Juul's lawsuit against them.

Citing Skype messages produced during discovery that they "don't care" about the lawsuit and would "never" pay any judgment against them, the judge said he was imposing on 4X a requirement to submit quarterly financial reports to a magistrate.

"Defendants should not come away ... with the impression that the court is naïve, or that it will tolerate 'LOL' as an appropriate reaction to its orders and judgments," he wrote.

The warning comes as Judge McNulty refused on Thursday to grant Juul's bid to freeze all of 4X's assets in two bank accounts due to concerns that the competitor was "purposely dissipating" its assets to "family" accounts after being sued by Juul for trademark infringement.

In requesting the asset freeze, Juul said it was likely to prevail on its trademark claims and that it would be irreversibly harmed without one. But the judge found the request to freeze tens of millions to be "too broad" compared to the profits it sought to disgorge in its complaint, which seemed to range from \$400,000 to \$500,000, he said.

As for the infringement allegations, the judge said that Juul showed that it would likely succeed on its trademark and packaging trade dress claims, but that the record was still "undeveloped" as to its claims that 4X's use of hashtags infringed its "Juul" wordmark.

Stephen Lobbin of SML Avvocati PC, an attorney for 4X, told Law360 on Friday that he and his client consider Thursday's order a victory for "the little guys."

"Juul has come after us with everything they have in many different cases, and they've been largely unsuccessful because they're behaving like bullies and they're overpromising, overselling their positions, and the judges in several cases now have rightly rejected this," Lobbin said.

With regard to Judge McNulty's comments to the 4X co-owners, Lobbin said that the pair has been frustrated with the legal system in light of Juul's behavior. But by "presenting fair arguments countering Juul's tactics," they have been able to score victories in battles that could have "put [them] out of business," he said.

Counsel for Juul did not immediately respond to a request for comment Friday.

Juul launched its lawsuit in October 2018, claiming that 4X purposely designed its logo and packaging to look like its own, and sought an injunction against the allegedly infringing products, according to the opinion. The complaint is sealed in the federal docket.

4X is also among those involved in a separate lawsuit filed by Juul last March, accusing its competitors of infringing patents for its vaporizing device, cartridge and device charger. The following month, a New Jersey federal judge refused to grant Juul's bid for a preliminary injunction, prompting it to soon dismiss the case.

Juul is represented by Liza M. Walsh, Marc D. Haefner, Katelyn O'Reilly and William T. Walsh Jr. of Walsh Pizzi O'Reilly Falanga LLP, Michael J. Summersgill, Vinita Ferrera, James M. Lyons and Arthur W. Coviello of WilmerHale and Byron L. Pickard of Sterne Kessler Goldstein & Fox PLLC.

4X is represented by Stephen M. Lobbin of SML Avvocati PC and Mark A. Kriegel of Law Offices of Mark A. Kriegel LLC.

The case is Juul Labs Inc. v. 4X Pods et al., case number 2:18-cv-15444, in the U.S. District Court for the District of New Jersey.

--Editing by Jay Jackson Jr.

Correction: An earlier version of the story misstated counsel for Juul. The story has been corrected.