

Supreme Court Leans Toward Truck Driver Who Was Fired Over Failed Drug Test

By ADAM LIPTAK

WASHINGTON — The Supreme Court heard arguments on Tuesday over whether a truck driver fired for failing a drug test after using a “wellness product,” which was falsely advertised to be free of THC, may sue the manufacturer under a federal racketeering law.

A majority of the justices seemed ready to side with the driver, Douglas Horn, on the narrow question before them: whether he could satisfy the law’s requirement that he had been injured in his “business or property.” But that is not the only hurdle Mr. Horn must clear to win under the law, the Racketeer Influenced and Corrupt Organizations Act, or RICO.

“There’s a whole lot more to RICO than simply damages,” Justice Sonia Sotomayor said, indicating that any victory Mr. Horn might win would be provisional. If the court rules for him, it will return his case to the lower courts for further proceedings.

The case, *Medical Marijuana Inc. v. Horn*, No. 23-365, started after Mr. Horn came across an article in *High Times*, a magazine that covers the business and culture of marijuana, concerning a “wellness product” called Dixie X. It was said to be rich in CBD, a component of hemp that does not produce the high associated with marijuana, but to contain “0 percent THC,” the psychoactive in-

redient in cannabis.

Knowing he faced random drug tests as a commercial truck driver, Mr. Horn said he conducted additional research, watching YouTube videos, visiting the manufacturer’s website and calling the company’s toll-free phone number. All confirmed that the product contained no THC.

After using Dixie X, Mr. Horn failed a drug test and was fired. Suspecting that the product was to blame, he bought another bottle and had it tested. The testing company found that it contained THC and refused to mail it back to Mr. Horn, fearing penalties under federal drug laws.

Mr. Horn sued under RICO, a law that was initially aimed at organized crime and allows an award of triple damages to plaintiffs who can show, among many other things, that the defendants’ racketeering activity injured them in their “business or property.” That phrase, the Supreme Court has said, excludes suits for personal injuries.

Mr. Horn said three defendants — Medical Marijuana Inc., Dixie Holdings and Red Dice Holdings — had engaged in a pattern of racketeering carried on through an enterprise that included mail and wire fraud.

A federal trial judge dismissed the suit, saying that Mr. Horn’s injury was personal. The U.S. Court of Appeals for the Second Circuit disagreed, saying that “the phrase ‘business or property’ focuses on

the nature of the harm, not the source of the harm.”

Lisa S. Blatt, a lawyer for the defendants, said on Tuesday that Mr. Horn’s injury was “unwanted ingestion of THC,” which she said was a personal injury.

Justice Ketanji Brown Jackson disagreed. “He’s not claiming that he got ill because of the product,” she said of Mr. Horn. “He’s not saying he was personally injured. He didn’t even know that he had ingested THC until the testing and the firing.”

Justice Elena Kagan said the defendants were fighting on the wrong battleground. “If you’re harmed when you lose a job,” she said, “then you’ve been injured in your business.”

The better argument, though not one before the court, Justice Kagan said, was that the defendants had not caused Mr. Horn’s injury directly enough to satisfy the requirement of “proximate causation.”

Justice Clarence Thomas put the point this way: “Medical Mari-

juana did not fire you.”

Easha Anand, a lawyer for Mr. Horn, conceded that proving causation was a “heavy burden.”

But Justice Samuel A. Alito Jr. sounded doubtful.

“Wouldn’t you argue that a company that advertises its product as being completely free of THC, not just that it has only such an infinitesimal amount that it’s not going to get people high, but it is completely free of THC, is appealing to a category of potential customers who, for some reason,

want to make sure that they don’t ingest even a tiny, tiny amount of THC?” he asked.

“And when someone who purchases the product then suffers the consequences of having a very small amount of THC in that person’s system, that is an entirely foreseeable result?”

Ms. Anand, having raised the prospect of losing on a different ground in order to win on the one before the court, retreated. “We think we’re going to meet the proximate cause test,” she said.

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Employer: forget contract steps, delays for placing letters in file, reach consensus quick, fire the employee quickly, summarize Jeff Bezos 1997 letter to increase AMAZON "decision velocity"

"...recognize true misalignment issues early and escalate them immediately. Sometimes teams have different objectives and fundamentally different views. They are not aligned. No amount of discussion, no number of meetings will resolve that deep misalignment. Without escalation, the default dispute resolution mechanism for this scenario is exhaustion. Whoever has more stamina carries the decision."

Multiparty delays, groupthink to get to consensus
Continued drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers’ drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not “employers” for purposes of this part.

Controlled substances mean those substances identified in §40.85 of this title.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its

Sales of Counterfeit Ozempic Are on the Rise

Thousands of websites are offering the weight-loss drug, and fake versions, illegally.

By DANI BLUM

Experts have grown increasingly concerned about fake versions of Ozempic and popular weight loss drugs. These copycats can look deceptively real, and may contain dangerous substances or entirely different drugs altogether.

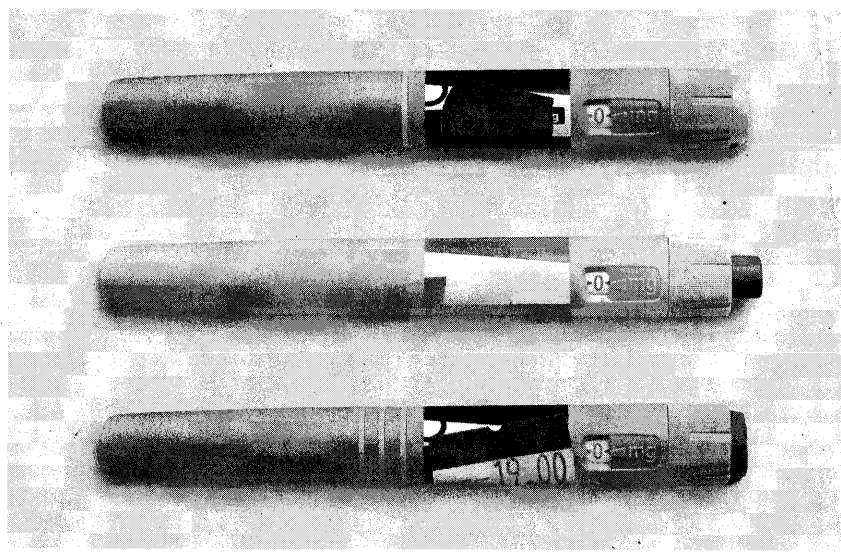
In June, the World Health Organization warned that fake batches of Ozempic were found in the United States, Britain and Brazil. Also in June, Eli Lilly issued a letter expressing concern that counterfeit versions of its own drugs, Mounjaro and Zepbound, were being sold online, through social media and at medical spas.

Those who study the counterfeit drug market say these findings are alarming, but not all that surprising. The drugs are expensive, often hard to find and highly sought-after.

“Such high demand and short supply and such a desperate population — that’s a recipe for disaster,” said George Karavetsos, a former director of the Food and Drug Administration’s Office of Criminal Investigations.

As a result, a counterfeit market has emerged, with phony drugs sold online at low prices without a prescription or any contact with a doctor. Some websites have storefronts to sell what they claim is semaglutide, the substance in Ozempic, which customers can add straight into an online shopping cart. The National Association of Boards of Pharmacy said it had identified thousands of websites illegally selling drugs like Ozempic, including fake versions. Patients often have no way to verify what’s in these products.

Shabir Imber Safdar, the executive director of the Partnership for Safe Medicines, said he worried about both the rise of fake drugs and also the popularity of compounded semaglutide and tirzepatide, the substance in Mounjaro. These customized



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versions of drugs are made at compounding pharmacies and under best practices, contain ingredients that come from facilities registered with the FDA. But regulators have warned about adverse events linked to compounded semaglutide, and stressed that compounded medications are subject to less oversight than traditionally approved medications.

Counterfeit drugs, on the other hand, are often sold from unregulated and unlicensed online vendors. There is little data on the prevalence of counterfeit Ozempic, but doctors and researchers have said they are highly concerned about the risks to patients.

That’s because products masquerading as Ozempic may contain impure semaglutide, dangerously high doses or other drugs, said Timothy Mackey, a professor at the Uni-

‘Such high demand and short supply and such a desperate population — that’s a recipe for disaster.’

Lawsuit July 2024 vision loss, bowel blockage

versity of California, San Diego, who studies counterfeit medications. Often, online vendors will pass off research-grade chemicals — which are not safe for humans — as semaglutide meant for consumers, he said.

Criminals also commonly paste fraudulent Ozempic labels onto insulin pens, said Mr. Safdar. After fake Ozempic in Austria landed people in the hospital last fall, health officials said they suspected it was actually insulin. Reuters reported in January that three people in the United States developed hypoglycemia, or dangerously low blood sugar, after taking suspected counterfeit Ozempic.

In the course of researching counterfeit Ozempic, Dr. Mackey and his colleagues tried to buy fake products from online sources. Some orders never showed up, and

some vendors claimed they needed an extra thousand dollars to get the drug through customs.

“It’s getting kind of crazy out there,” he said.

Any counterfeit medication can be dangerous, but fake Ozempic poses a particularly high risk because it is injected. It’s extremely tricky to manufacture sterile injectable drugs, Mr. Safdar said.

One of the biggest risks, he said, comes from consumers being willing to buy these drugs online, without supervision from a doctor.

Dr. Melanie Jay, the director of NYU Langone’s Comprehensive Program on Obesity, stressed that people seeking out drugs like Ozempic should always see a licensed medical provider for comprehensive care. Doctors need to frequently check in with patients taking these medications to monitor their progress and manage potentially serious side effects, she said.

It is possible for fake Ozempic to end up in traditional health care settings. In June 2023, Ozempic maker Novo Nordisk said that a counterfeit pen purchased at a U.S. pharmacy actually contained insulin. And in December, the FDA said it had seized thousands of units of fraudulent products in the legitimate drug supply chain.

But it is rare for a counterfeit drug to make it that far undetected, Mr. Safdar said. It’s much more likely for people to unknowingly take fake Ozempic if they’re seeking the drug from an unlicensed online vendor or a medical spa, he said. Consumers should also watch out for products sold at a cash price far below the list price of drugs like Ozempic.

Counterfeit medications can have subtle irregularities, like spelling mistakes on the carton, so you should always examine a drug’s packaging. Falsified products may also have flimsy labels that do not stick well to the pen, the W.H.O. said.

Novo Nordisk has resources online for people to ensure their drugs are authentic, and Eli Lilly has tools to help people identify genuine products.