

Supplement Maker Can't Prove Consent Judgment Violated

By [Emma Cueto](#)

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Law360 (June 6, 2018, 6:14 PM EDT) -- A Pennsylvania federal judge has ruled that, despite a dietary supplement maker's allegations that a Florida-based pharmaceutical company had continued to sell a knock-off version of one of its products after a settlement agreement was finalized, there is insufficient evidence the Florida company violated a court order.

U.S. District Judge Mark A. Kearney ruled Tuesday that despite "confusing at best" testimony from Llorens Pharmaceutical International Division's founder, there was no hard proof that the company had backdated invoices to hide its efforts to unload its back stock of Lipoflavovit, which allegedly ripped off the branding of Clarion Brands LLC's Lipo-Flavonoid Plus, a dietary supplement designed to promote inner ear health.

"While it is possible one could draw an inference of backdating based on the series of invoice numbers, there is no evidence meeting the clear and convincing standard," Judge Kearney said in the order denying Clarion's motion to enforce the consent judgment.

He added that there was also evidence that these shipments, which were sent to the company's sales representatives, were not, as the Llorens claimed, samples that were never sold.

A consent order entered by the court as part of the settlement agreement between Clarion and Llorens in July 2015 blocked Llorens from selling Lipoflavovit or similar products for five years.

The judge also rejected the idea that Llorens violated the consent order when its president's son-in-law repackaged bottles of Lipoflavovit and sold the product under a different name through another company.

The settlement barred Llorens from selling supplements that specifically identified themselves as aiding inner ear health, and the repackaged Lipoflavovit only identified itself as dietary supplement and did not reference ear health in any way, the judge said.

"Clarion presumably approved the language of the consent judgment," Judge Kearney said. "It approved the modifier on dietary supplement product. We can only enforce the consent judgment as written."

Clarion first filed suit against Llorens in 2014, alleging that Lipoflavovit was deliberately named and packaged to be similar to Clarion's Lipo-Flavonoid Plus and confuse consumers. Clarion obtained a permanent injunction against the company and its owners, Jose Llorens and Thusnelda Ruiz, in 2015.

Jose Llorens testified at the all-day evidentiary hearing that he had ordered all of the company's remaining

stock of Lipoflavovit decommissioned, that he had not attempted to generate sales after the settlement agreement, and that he was not involved in his son-in-law's plan to resell the product. Judge Kearney said his testimony was confusing, but that there was no reason to find he lacked credibility.

An attorney for Llorens, Alejandro Brito of [Zarco Einhorn Salkowski & Brito](#), characterized the legal battle as "David vs. Goliath."

"We're very pleased that Judge Kearney found after carefully considering the evidence that was no violation of the order and that Llorens had not engaged in conduct that violated either the letter or the spirit of the order," he said.

Counsel for Clarion did not respond to a request for comment.

Llorens is represented by Alejandro Brito of [Zarco Einhorn Salkowski & Brito](#) and Frank Reino of [Fischer Zucker](#).

Clarion is represented by Hal K. Litchford and Charles N. Jolly of [Baker Donelson Bearman Caldwell & Berkowitz PC](#) and Megan S. Scheib and Harper S. Seldin of [Cozen O'Connor](#).

The case is Clarion Brands LLC v. Llorens Pharmaceutical International Division et al., case number [2:14-cv-06592](#), in the [U.S. District Court for the Eastern District of Pennsylvania](#).

--Editing by Marygrace Murphy.