



Pattishall Client Awarded \$4.5 Million in Trademark Infringement and Telemarketing Fraud Suit

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Janet Marvel and Jared Solovay of Pattishall, McAuliffe in Chicago, today obtained a judgment for \$4.5 million from the U.S. District Court of the Northern District of Illinois on behalf of their client Medline Industries, Inc. in *Medline Industries, Inc. v. Strategic Commercial Solutions, Inc., et al.*, 07 CV 2783.

Defendants Strategic Commercial Solutions and Mohammed Abukhalid were found to have violated the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, as well as committed trademark infringement by using Medline's name in connection with a fraudulent telemarketing scheme operated under the name Medline Savings. The telemarketers specifically targeted elderly victims, selling them "pharmaceutical discount packages" which, if the victims received them at all, proved to be worthless. The telemarketers sometimes lied and pretended to be calling from the victims' banks in order to obtain their bank account information. Defendant Strategic Commercial Solutions assisted the fraud by offering "customer service" among other things. According to victim statements, the customer service largely consisted of refusing or evading providing refunds to dissatisfied customers.

Locating the telemarketers responsible for the fraud proved to be an almost year long saga, as the lawyers uncovered evidence that the telemarketers had engaged in identity theft, entered into contracts using dummy corporations with no locations or assets, and moved funds from bank to bank, collecting much of it in untraceable cash.



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One defendant, Strategic Commercial Solutions, sought to avoid liability by (1) arguing that it was located in Canada, without doing any substantial business in Illinois, and therefore was not subject to jurisdiction, and (2) that its actions in facilitating the telemarketing fraud could not constitute trademark infringement. In denying their motion to dismiss, the Court held that Strategic's failure to identify another state in which there was personal jurisdiction subjected it to jurisdiction in any state. As to the 12(b)(6) claim, the Court made the important ruling that Strategic, by offering customer service for an infringer, could itself be liable for direct infringement by using the mark in telephone conversations with the infringer's customers, and in forwarding information to payment processors and shipment fulfillment companies. The Court also ruled that Medline, as a person "adversely affected" by violation of the Telemarketing Fraud Act, had standing to bring an action and that Medline's damages to reputation and loss of goodwill could constitute "actual damages" under the Act.