



SIGN ON
SAN DIEGO

 PRINTTHIS

Internet pharmacy case on brink of bust



By [Greg Moran](#), UNION-TRIBUNE STAFF WRITER

Tuesday, January 26, 2010 at 12:02 a.m.

A federal judge is considering dismissing charges against seven defendants accused of racketeering and other crimes in a groundbreaking prosecution of an Internet pharmacy because of “serious questions” about how prosecutors handled some evidence.

In an unusual and bluntly worded order, Judge Irma Gonzalez has ordered prosecutors to explain why she should not dismiss the case at a hearing set for tomorrow. Gonzalez presided over a 3½-month trial last year that ended in a mistrial after a juror said she had been coerced into voting guilty.

The trial was the last portion of the sweeping indictment of 18 people — including doctors, pharmacists and marketers — connected to the Affpower Internet pharmacy. They were charged with racketeering, fraud and money laundering charges in connection with selling hundreds of thousands of pharmaceuticals over the Internet in a two-year period.

The business took in about \$126 million from 2004 to 2006, when it was shut down. It was the first time that racketeering charges had been filed in an Internet pharmacy case, authorities said. The indictment alleged that the Affpower defendants worked together to sell prescription drugs without medically valid prescriptions.

Most of the defendants have pleaded guilty, but seven are contesting the charges. As a second trial looms, a lawyer for one of the defendants is contending that prosecutors concealed information on computer disks and servers that should have been turned over to the defense before the first trial.

Moreover, the lawyer, Michael Gibson of Dallas, said in court papers that prosecutors misled Gonzalez about the servers.

Yet federal prosecutors vigorously pushed back against those claims and said Gibson is the one who is misleading Gonzalez about the evidence and erroneously accusing prosecutors of violating discovery rules — the requirement for prosecutors to turn over to defense information that is relevant and part of the case.

The Affpower business ran off computers that were in Cyprus. According to a court filing by Gibson, government investigators got the servers in 2007.

In the run-up to the trial, defense lawyers repeatedly asked to examine the servers but were rebuffed.

Gibson said the lead prosecutor, Special Assistant U.S. Attorney Corbin Weiss, told the judge that the servers had been “wiped clean” and there was no useful data on them any more.

At trial, Gonzalez allowed prosecutors to use computer evidence that was copied from an Affpower server before they were wiped, believing that the original servers could not be used.

Now, Gibson contends that is not the case.

After the first trial, a new prosecutor, Assistant U.S. Attorney Phil Halpern, got the case and agreed to let a defense expert examine the servers. That expert said that when he reviewed the disks, they were not “wiped clean.”

The expert wrote that “there is a possibility that a great deal of the data, if not all the data, still resides on these drives.”

On Jan. 12, Gibson filed a report with Gonzalez saying there was “a pattern of deceptions, parsing of words, misstatements” by the government that had tainted the case.

After the report was filed, and before the government responded, Gonzalez produced a two-page order saying the new information that data existed on the servers “raises serious questions about the reliability and authenticity of the evidence the government has used to prosecute this case.”

In advance of the hearing, Halpern fired off a lengthy response defending the government and saying the defense expert was wrong.

There is, he wrote, no useful data on the servers. The data that is there is fragmented and scattered, and can't be reconstructed in any useful way.

Weiss, when he said the disks had been “wiped,” was using the term broadly as a lay person would, Halpern said. For computer experts it is a term of art that means a nothing remains, not even fragments. Weiss was using it to mean there was nothing useful, he wrote.

Neither Halpern nor Gibson wanted to comment for this story. Gonzalez will hash the issue out tomorrow. She could dismiss the case, delay the trial now set for March 2 or take other steps.

Greg Moran: (619) 293-1236; greg.moran@uniontrib.com

Find this article at:

<http://www.signonsandiego.com/news/2010/jan/26/internet-pharmacy-case-brink-bust>

Check the box to include the list of links referenced in the article.

