

Phone maker Kyocera nets \$2.5 million award

Faulty batteries sold to company

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Kyocera Wireless won \$2.5 million in net damages yesterday from a now-defunct maquiladora that provided the cell phone maker with unapproved battery cells that later had to be recalled when some overheated.

An eight-member jury in San Diego federal court awarded Kyocera \$9.6 million in damages caused by the recall, but also awarded former supplier Hecmma \$7.1 million in damages from Kyocera relating to unpaid invoices.

San Diego-based Kyocera had also alleged that Hecmma engaged in counterfeiting battery cells and trademark infringement. The jury did not uphold those allegations.

Kyocera had sought nearly \$20 million in actual damages from the recall and as much as \$435 million in punitive damages for loss of future business and harm to the company's reputation caused by the recall.

Hecmma, which operated in Juarez, Mexico, filed a countersuit, alleging that it had to go out of business in 2004 because Kyocera failed to pay \$7.4 million in invoices for battery cells.

The jury's unanimous decision, after a day and a half of deliberations, was seen by both sides as pretty much a draw.

"Sort of like kissing your sister," said Hecmma's lawyer, Mark C. Mazzarella.

Kyocera spokesman John Chier wasn't as earthy in his assessment.

"We respect the judgment of the jury, and we feel gratified and validated that they seemed to agree that we had been wronged in this case," Chier said.

Neither side indicated that it would appeal the decision.

The case stems from reports in 2004 to the U.S. Consumer Product

Safety Commission of battery packs in Kyocera phones overheating and, in a couple of cases, burning users.

Kyocera ended up recalling about 1 million phone batteries that had been partially assembled at the Hecmma plant in Juarez. Kyocera alleged that Hecmma took unapproved Chinese battery cells and packaged them to look like approved cells, thereby breaching its contract and engaging in counterfeiting and trademark infringement.

And, as a result of its problems with Hecmma, Kyocera said it lost a large contract it had with Verizon Wireless and suffered damage to its reputation.

Hecmma countered that Kyocera executives gave it unofficial approval in 2003 to use the battery cells in question and argued that it didn't really matter because all of the Chinese battery cells Kyocera was using at the time were second-rate.

Mazzarella said Hecmma's position was bolstered by the fact that in 2004, Kyocera switched to higher-quality Japanese and Korean battery cells.

Beyond the dispute over the battery cells, the case featured testimony about alleged kickbacks taken by a now-former Kyocera employee who was doing business with Hecmma on the side.

And one morning during the trial, former Hecmma partner Manuel Rivera testified against Hecmma owner Hector Fierro, only to admit later that day that he had lied while on the stand.

Jurors, who did not want their names published, seemed put out by what they saw as bad behavior by both sides.

One juror said he was taken aback by the greed exhibited by the companies.

"Everyone was trying to make a quick dollar, and it didn't turn out that way," he said.