

# Dermatologist claims laser tattoo removal tool is fraud, brings class action vs Mass.-based maker

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A Rockford area dermatology practice is suing a Massachusetts corporation, alleging the company sold a laser tattoo removal tool to the clinic and hundreds of other clinics, yet knew the product did not eliminate or remove tattoos.

Hartsough Dermatology, owned by dermatologist Nicole Hartsough, of Loves Park, filed a class action lawsuit June 26 in federal court in Chicago against precision surgical device manufacturer Cynosure Inc., of Westford, Mass., alleging negligent misrepresentation, fraud by omission and breach of contract, among other counts.

According to the lawsuit, Hartsough Dermatology purchased a PicoSure Picosecond Aesthetic Workstation from Cynosure in November 2013, based on information from Cynosure marketing materials, its website and sales representatives stating the workstation would remove and eliminate tattoos. The lawsuit claims more than 200 workstations have been sold to additional clinics in the U.S., including more than 50 sold to doctors and others in Illinois, since the product received approval from the Food and Drug Administration in 2012.

The complaint states Cynosure marketing materials represented the PicoSure as “the world’s first and only picosecond laser for tattoo removal,” and “even dark, stubborn blue and green inks, as well as previously-treated, recalcitrant tattoos can be removed or eliminated by using the PicoSure product.” The lawsuit includes a before-and-after photo from a Cynosure brochure that shows the complete elimination of a tattoo from a patient.

Hartsough Dermatology maintains the clinic purchased the laser removal tool and administered treatment as directed to numerous patients, but no tattoos were removed or eliminated.

Hartsough’s complaint says the doctor “had numerous questions and eventual concerns about the efficacy and safety of the product,” and posed those to Cynosure “on numerous occasions ... over the telephone, in emails and in person.” But the company only continued to make “numerous false representations ... regarding the PicoSure product’s ability to remove tattoos,” the complaint asserts.

Under the terms of its contract with Cynosure, Hartsough Dermatology was not able to

return the product for a refund.

After receiving numerous complaints from Hartsough, Cynosure installed a software upgrade to the product, which Hartsough Dermatology claims did not solve the problem, but instead caused burns to some patients.

“The fact that Cynosure created and installed this ‘software update’ is an admission by Cynosure that the PicoSure product did not eliminate or remove tattoos,” the complaint states.

The complaint continues, saying a second software upgrade was promised by Cynosure, which to date has not occurred.

The lawsuit states Cynosure negligently and intentionally misrepresented the PicoSure product, committed fraud by omission and failed to warn consumers of its products.

“Defendant’s misrepresentations were such that reasonable consumers considered them in deciding whether to purchase Defendant’s PicoSure product,” the lawsuit states. “At all relevant times, Plaintiff and the Class relied on these statements in purchasing the PicoSure product. Had Plaintiff and the Class known of the PicoSure product’s inability to remove or eliminate tattoos, they would not have purchased the PicoSure product, would have returned their PicoSure product for a refund, would have paid substantially less for it, or would have purchased a similarly functioning product for substantially less.”

Hartsough Dermatology has requested a jury trial and has asked the court to award damages for itself and the class, plus attorney fees and costs, as well as an order requiring Cynosure to stop the “unfair practices” described in the lawsuit. The complaint does not specify the damage award sought, but does indicate the dispute involves an amount greater than \$5 million.

Hartsough Dermatology is represented by attorneys Devon C. Bruce, Joseph A. Power Jr. and Jonathan M. Thomas, of Power, Rogers & Smith in Chicago, and Marc Gravino, John Holevas and Joel Huotari, of WilliamsMcCarthy LLP, of Rockford.

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