



MEISSNER BOLTE

# International Case Round-Up

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March 23, 2026



PTMG Meets Munich  
Local Case Round-Up  
Spring 2026





**Germany** is a wonderful country located in Central Europe. It has such a rich history, amazing cultural contributions, impressive technological advances and a very strong economy.

**Bavaria**, located in southern Germany, is known for its stunning landscapes, charming villages, and rich traditions.

**Munich**, the capital of Bavaria, is a vibrant city famous for its historic architecture, the iconic Oktoberfest, and a thriving cultural scene. With its mix of modern innovation and deep-rooted history, Munich embodies the spirit of Bavaria perfectly.



# Absolute Grounds

# Absolute Grounds

## General Court, Judgement of July 23, 2025 in case T-432/24

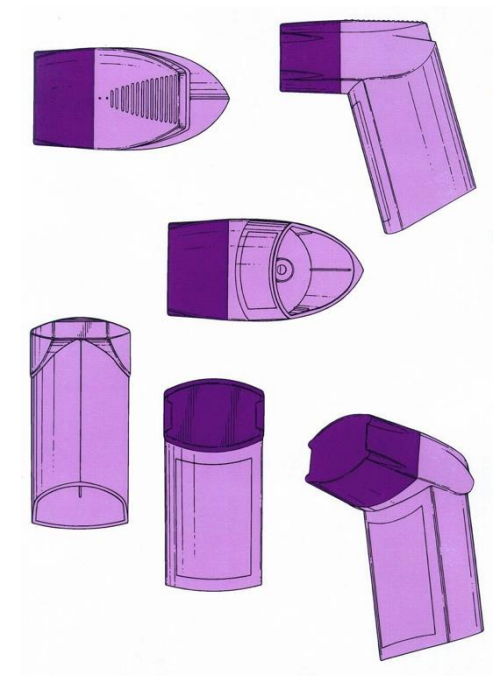
### Filed in 2001 with the following Description

- Lilac (Pantone ref: 2645C) and deep purple (Pantone ref: 2617C) in or applied to the three-dimensional shape in the proportions shown in the illustration.

### Registered in 2005 for

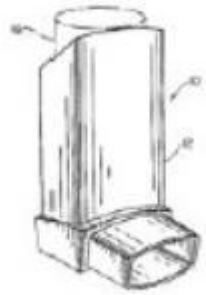
- Class 5: 'Pharmaceutical preparations and substances for the prevention, treatment and/or alleviation of respiratory ailments';
- Class 10: 'Inhalers, parts and components for all the aforesaid goods'.

### Declared invalid on July 23, 2025

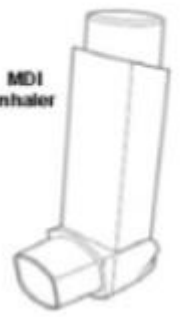


# Absolute Grounds

FIG. 1



MDI Inhaler



# Absolute Grounds

## Inherent distinctive character

- In 2001, the use of colours, including in the form of a combination of two colours, on inhalers used for the treatment of respiratory ailments was common practice on the relevant market.
- The variety of the existing colours put on inhalers was not likely to depart significantly from the norms and customs of the sector.

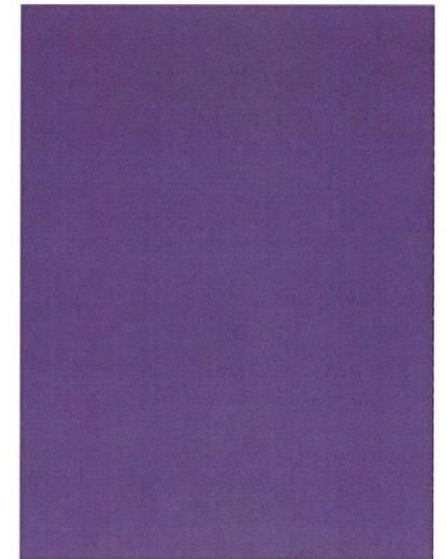
## Acquired distinctive character

- The evidence submitted relating to Spain and the UK was not sufficient to demonstrate that the contested mark had acquired distinctive character through use throughout the European Union for a significant part of the relevant public.

# Absolute Grounds

## **BPatG, Decision of March 11, 2025 in case 25 W (pat) 29/22**

- Color mark purple (Pantone ref: 2587C)
- Registered in 2015 for goods in classes 5 (prescription pharmaceutical preparations) and 10 (prescription powder inhalers)
- Declared invalid on May 19, 2025



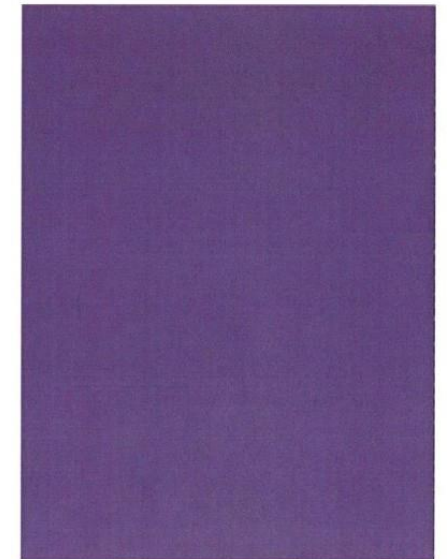
# Absolute Grounds

## Inherent distinctive character

- Different colors used on inhalers do not indicate the source of origin, but to serve ornamental purposes or encode the active ingredient

## Acquired distinctive character

- For proving acquired distinctiveness market surveys should include the relevant public. i.e. professional public and final consumers (patients).



# Absolute Grounds

## General Court, Judgement of January 29, 2025 in case T-1128/23

- EUTM Application No. 018690186 **Biorepair**

has been refused for

- **Class 3:** Dentifrice; non-medicated preparations and oral care products; breath freshening preparations; mouthwashes, not for medical purposes; tooth whitening preparations and tooth whitening preparations; dentifrice gel; Toothpaste in the form of chewing gum.
  - **Class 5:** Abrasive substances for dental use; antibacterial mouthwashes; medicated tooth bleaching substances; Chewing gum for medical purposes; nutritional supplements for rebalancing oral microbia; Toothpaste for medical use.
  - **Class 21:** Toothbrushes; wire of communication.
- The word element will be understood as 'biological repair'.

# Absolute Grounds

- The goods are all intended for the care, treatment and hygiene of the teeth and the oral cavity.
- One of the characteristics of those goods is that they may also be used to repair dental enamel or which, alternatively, may be applied as a result of dental action to repair dental enamel. In fact, nowadays there are toothpaste and also mouthwashes, etc. that help prevent the erosion of the dental surface, reinforcing teeth and even stimulating the regeneration and repair of enamel.
- A significant part of the public considers it important that the goods in question are not harmful to health and therefore have a natural origin.
- The expression 'BIOREPAIR' will immediately inform the relevant public that the goods for which registration is sought are of natural origin and serve to repair dental enamel.

# Absolute Grounds

## Decision of the First Board of Appeal of August 5, 2025 in case R 507/2023-1

- EUTM No. 6 295 877 **BIOREPAIR** has been cancelled

### Inherent distinctive character:

- The verbal element included in the sign at issue will be understood as 'biological repair'.
- The contested EUTM will be understood as describing a feature of the goods, namely that they are suitable or intended to repair dental damages ('REPAIR') in a biological or nature-related way or consisting of biologically grown or natural or eco-friendly ingredients ('BIO').

### Acquired distinctive character:

- Despite strong evidence of use in Italy and Germany, there is no evidence on amounts invested by the undertaking in promoting the mark or statements from chambers of commerce and industry or other trade and professional associations have been provided that could further point to enhanced distinctiveness in Ireland and Malta during the relevant periods.

# Absolute Grounds

## European Union Trademark Regulation

### Article 59

#### Absolute grounds for invalidity

1. An EU trademark shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings:
  - (a) where the EU trademark has been registered contrary to the provisions of Article 7

## Act on the Protection of Trade Marks and other Signs (Trade Mark Act – MarkenG)

### Section 50

#### Invalidity because of absolute grounds for refusal

- (1) The registration of a trademark shall be declared invalid and cancelled on application if it has been registered contrary to sections 3, 7 or 8.
- (2) If the trademark has been registered contrary to section 8 (2) no. 1, 2 or 3, the registration may only be cancelled if the application for invalidity is lodged **within ten years** since the date of registration.

# Absolute Grounds

## Success stories

### Decision of the First Board of Appeal of August 18, 2025 in case R 2184/2024-1 - SANYTOL remains valid

- 'SANYTOL' as a whole is not listed in dictionaries for any of the languages of the European Union.
- The relevant public will not break down the contested sign into 'SANYT' and 'OL'.
- The fact that 'SANIT.' may be used as an abbreviation for 'sanitary' or 'sanitation' and that the suffix 'OL' denotes 'alcohol' in accordance with the nomenclature of the International Union of Pure and Applied Chemistry cannot call into question the findings of the abovementioned judgement.
- 'SANYTOL', as a whole, does not convey a clear meaning that the relevant public would readily perceive as descriptive of the contested goods.

# Absolute Grounds

## Success stories

### **BPatG, Decision of August 8, 2025 in case 26 W (pat) 561/22 - German part of IR No. 1 565 181 Age Proteom can be registered**

- Age means “the number of years that a person has lived or a thing has existed”.
- Proteom (proteome = the entire set of proteins that is, or can be, expressed by a genome, cell, tissue, or organism at a certain time).
- The relevant public will largely fail to understand the meaning of the component “Proteom” and will instead consider it to be an artificial word.
- “Age Proteom” as a whole will remain a fanciful designation for this relevant public.
- No descriptive meaning is immediately apparent to the relevant public.

# Absolute Grounds

## Success stories

### **BPatG, Decision of February 6, 2025 in case 25 W (pat) 539/23 - German part of IR No. 1 620 581 OMNI POWER can be registered**

- Omni (Latin prefix) means “of all things; in all ways or places”
- Power means control, energy, ability
- The word combination “OMNI POWER” has the necessary minimum degree of distinctiveness and is not to be regarded as an immediately descriptive indication.
- Only after several steps of reasoning will the public attribute the meaning “all power” or “full power” to the sign. This is supported by the combination of words and the fact that the prefix “omni” is primarily used in combination with another word of Latin origin.

**What is the name of the famous fairytale-like castle in Bavaria?**



## Trademark Protection?

- Wordmark **Neuschwanstein**
- BGH: not distinctive for goods like musical instruments, clothing, beverages (BGH – I ZB 13/11)
- ECJ: no geographical indication, distinctive (ECJ – C-488/16 P)



# Relative Grounds

# Relative Grounds

## General Court, Judgement of January 8, 2025 in case T-189/24

- Likelihood of Confusion between



- The element 'omni' will be understood as meaning 'all' or 'of all things'
- Such an element does not convey a description of one of the characteristics of the goods in question. Consequently, that term cannot be considered to be devoid of distinctive character or to have weak distinctive character.
- There was a likelihood of confusion between the marks at issue for the relevant Germanspeaking public, displaying even a high level of attention in that regard, in the light of the normal distinctive character of the earlier mark, the identity and similarity of the goods at issue, the average visual similarity, the high phonetic similarity and the average conceptual similarity of those marks.

# Relative Grounds

## General Court, Judgement of July 3, 2024 in case T-530/23

- Likelihood of Confusion between



/ SANYTOL and



- Part of the public may perceive an allusion to hygiene (due to the initial part 'sanit' and 'sanyt'), but will not break down the words into an initial element, 'sanyt' or 'sanit', and into a second element, 'ol' or 'eb'.
- The relevant public will perceive the words 'sanytol' and 'saniteb' as an indivisible whole and will not understand that they are composed of two different elements.
- The Board of Appeal erred in considering that the relevant public would focus its attention on the ending 'ol' or 'eb' of the conflicting signs because it constitutes the most distinctive element of the signs at issue.

# Relative Grounds

## General Court, Judgement of April 17, 2024 in case T-288/23

- Likelihood of Confusion between

Healthies 

and

**Healthily**

- Hungarian: 'egészség' // Italian: 'salute' // Spanish: 'salud'
- The Board of Appeal was right in finding that the English word 'health' had no meaning for the Hungarian, Italian, and Spanish public and that it was therefore not descriptive of the goods and services at issue.
- There is a high degree of visual and phonetic similarity between the signs at issue, and it is not possible to carry out a conceptual comparison between those signs.

# Relative Grounds

## Decision of the Fourth Board of Appeal of October 22, 2025 in case R 642/2025-4

- Likelihood of Confusion between



- The verbal element 'MENSIL' will be perceived as meaningless, and distinctive to a normal degree to the relevant goods
- The component 'Pro' is distinctive to a weak degree and cannot prevail over the coinciding element/component 'mensil'.
- The signs further differ in the stylisation of the verbal element 'Promensil' and the additional verbal element 'MENOPAUSE' in the contested sign.
- However, these all play a secondary role in the overall impression of the contested sign, if any.
- There is a likelihood of confusion on the part of the relevant Polish public, even taking into account a higher level of attention.

# Relative Grounds

## Decision of the First Board of Appeal of December 18, 2025 in case R 2448/2024-1

- No Likelihood of Confusion between



and



- The element 'PHYTO' of both signs will be perceived as a prefix used to indicate a plant or vegetation.
- The element 'PHARM' will be perceived as abbreviation or prefix for 'pharmaceutical' or 'pharmacy'.
- The word element 'Inspired by nature. Powered by science.' indicates that the goods combine natural ingredients with scientific innovation for enhanced effectiveness.
- The word 'FERM' is likely to be understood as referring to fermentation.
- The expression 'targeted bio-transforming fermentation technology' describes a specialized fermentation process that alters or enhances biological materials for specific health or nutritional benefits.

# Relative Grounds

## Decision of the First Board of Appeal of May 15, 2025 in case R 1361/2024-1

- No Likelihood of Confusion between

NEOVIS

and

NeoVita

- The term 'NEOVIS' has no particular meaning in any of the languages of the European Union. However, as the word 'NEO' will be understood as 'NEW', the term will be naturally split in 'NEO' and 'VIS' = 'force' or 'energy'.
- The marks are visually similar below average and aurally similar to a low degree and conceptually dissimilar.
- The element NEO, as referring to something new is of weak distinctive character.
- Where the earlier trademark and the contested sign coincide in an element that has a weak distinctive character with regard to the goods and services at issue, the global assessment of the likelihood of confusion does not necessarily lead to a finding that such likelihood exists.



**What is the most famous beer festival in Munich?**



## Trademark Protection?

EUTM No. 018282231



# Evidence of Use

# Evidence of Use

## Decision of the Second Board of Appeal of January 30, 2024 in case R 768/2023-2

- **GALENPHARMA** genuinely used for anti-inflammatory drugs



# Evidence of Use

- Art. 18 (1) (a) EUTMR: Use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered constitutes use of an EU trademark.
- The lack of the element 'PHARMA' does not significantly alter the distinctive character of the contested trademark.
- The component 'PHARMA' is used in English as a reference to a pharmaceutical company and it is a generally known fact that the aforementioned English usage is also extensively used in the German-speaking area as a reference to a business activity in the pharmaceutical sector, i.e. the manufacture of medicines.
- The word component 'PHARMA' is used in the contested trademark as such a reference to the business field and is also recognized by the German-speaking public.

# Bad Faith

# Bad Faith

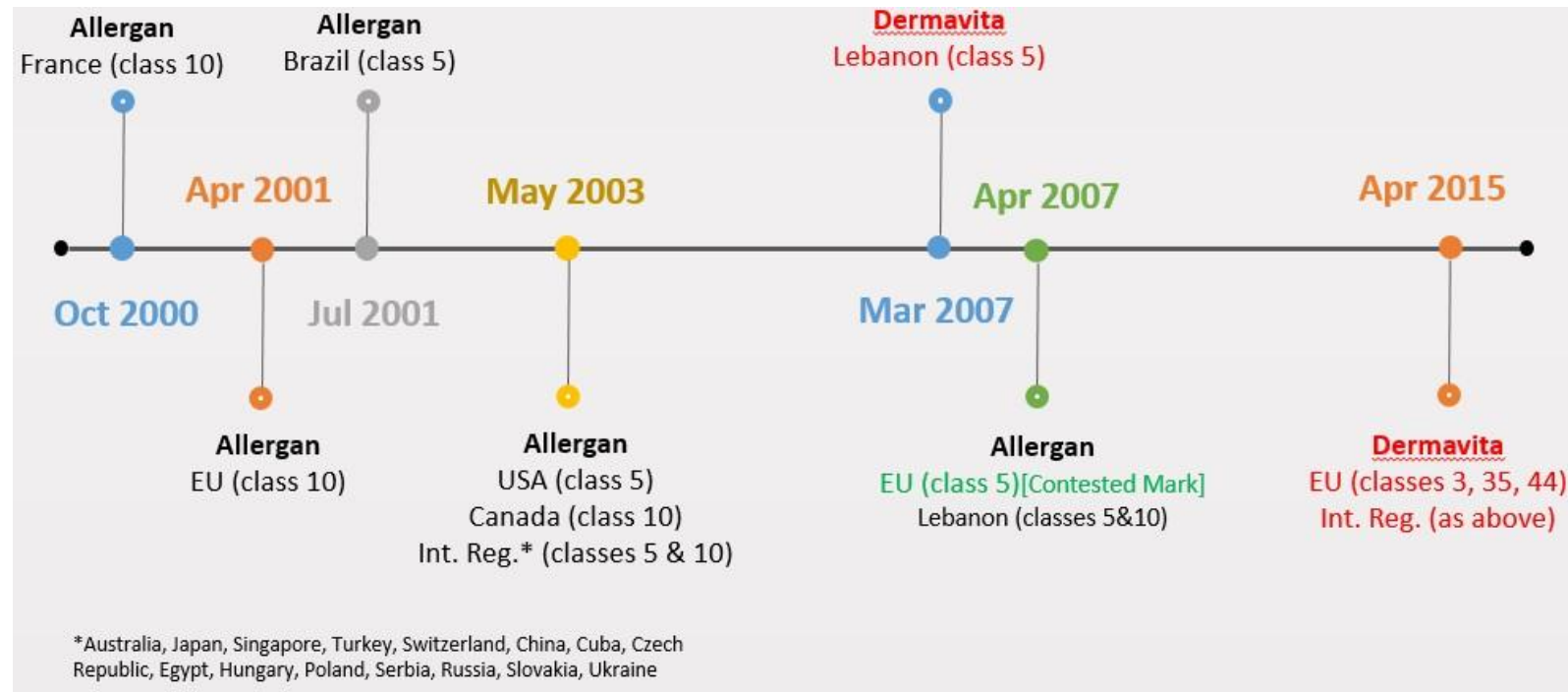
## General Court, Judgement of May 15, 2024 in case T-181/23

- Allergan registered **JUVÉDERM** as EUTM in 2008 for „pharmaceutical products administered by injection for use in moisturising skin and reducing wrinkles“.
- Dermavita filed an application for revocation based on non-use (General Court, Judgement of June 22, 2020 in case T-104/19)
- Then, Dermavita filed an application for declaration of invalidity based on bad faith
- Dermavita filed an EUTM application in 2015

# Bad Faith

- The intention of an applicant for a trademark is a subjective factor which must, however, be determined objectively by the competent administrative or judicial authorities.
- The following three factors can be particularly relevant when assessing whether the EUTM proprietor was acting in bad faith:
  - (i) the fact that at the time of application it knew or must have known that a third party is using an identical or similar sign for identical or similar goods or services capable of being confused with the sign for which registration is sought;
  - (ii) its intention to prevent that third party from continuing to use such a sign; and
  - (iii) the degree of legal protection enjoyed by the third party's sign and by the sign for which registration is sought

# Bad Faith



# Bad Faith

- In sum, it is not apparent that the EUTM proprietor filed its application for registration not with the aim of engaging fairly in competition, but with the intention of undermining the cancellation applicant's interests, in a manner inconsistent with honest practices, or with the intention of obtaining an exclusive right for purposes other than those falling within the functions of a trademark, in particular the essential function of indicating origin.
- In any event, prior use of the sign at issue by a third party is not a condition laid down by Article 59 EUTMR.
- Consequently, the question of whether the intervener had or ought to have had knowledge of such use is only one relevant factor among others to be taken into consideration and is not sufficient, on its own, to establish that there was bad faith on the part of the intervener.

**What is traditionally eaten during a  
'Weisswurstfrühstück' in Bavaria?**



# Trademark Protection?

## Nürnberger Bratwürste / Nürnberger Rostbratwürste



<b>Country/ies of origin</b>	<b>Type</b>		
Germany	Protected Geographical Indication (PGI)		
<b>Priority date</b>	<b>File number</b>	<b>Product type</b>	<b>Basis of protection</b>
12/03/2002	PGI-DE-0184	Agricultural product	EU register
<b>Status</b>	<b>Classification</b>		
Registered	16 - PREPARATIONS OF MEAT, OF FISH, OF CRUSTACEANS, MOLLUSCS OR OTHER AQUATIC INVERTEBRATES, OR OF INSECTS		



# US Case Law



# Novartis AG vs. Novadoz Pharmaceuticals LLC

## United States District Court, D. New Jersey, No. 25cv849 (EP) (JRA), 2025 WL 1937082 of July 25, 2025







- Preliminary injunction for alleged infringement of trade dress
- Entresto is an FDA-approved heart failure prescription medication that delivers a combination of two drugs: sacubitril and valsartan



- Generic version Novadoz contains the same active ingredients as Entresto, and is available in the same dosage forms and will deliver the same doses

# Novartis AG vs. Novadoz Pharmaceuticals LLC

- Dimensions, coloring, and markings will differ slightly

PARAMETERS	REFERENCE LISTED DRUG	PROPOSED DRUG PRODUCT
<b>Strengths</b>	24 mg/ 26 mg, 49 mg / 51 mg and 97 mg/ 103 mg	24 mg/ 26 mg, 49 mg / 51 mg and 97 mg/ 103 mg
<b>Configuration</b>		
24 mg/ 26 mg, 49 mg / 51 mg and 97 mg/ 103 mg	Bottle of 60's and 180's	Bottle of 60's and 180's
24 mg/ 26 mg		
49 mg/ 51 mg		
97 mg/ 103 mg		
<b>Dimensions</b>		
24 mg/ 26 mg	13.35 x 5.33	10.00 X 4.00 mm
49 mg/ 51 mg	13.25 x 5.30	13.00 X 5.10 mm
97 mg/ 103 mg	15.34 x 6.12	15.00 X 5.90 mm
<b>Active Ingredient</b>	Sacubitril and Valsartan	Sacubitril and Valsartan

# Novartis AG vs. Novadoz Pharmaceuticals LLC

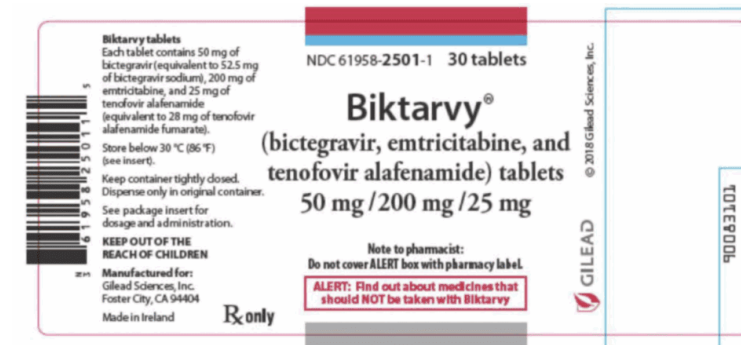
- To succeed on a trade dress infringement claim, Novartis must prove:
  - (1) the allegedly infringing design is nonfunctional;
  - (2) the design is inherently distinctive or has acquired secondary meaning; and
  - (3) consumers are likely to confuse the source of the plaintiff's product with that of the defendant's product.
  
- Different colors and sizes across different dosages is functional
- Secondary meaning requires that the consuming public come to associate the appearance of the drug with the manufacturer (11 non-exclusive factors, inter alia, extent of advertising and sales, length and exclusivity of use, customer surveys and testimony)
- Likelihood of confusion = showing that an appreciable number of ordinarily prudent consumers of the type of product in question are likely to be confused as to the source of the goods (10 factors, inter alia, degree of similarity, strength of owner's mark, price, actual confusion)
- Court reversed its prior ruling and denied a preliminary injunction

# Gilead Sciences, Inc. vs. Meritain Health et al.

## **United States District Court, D. Maryland, No. 1:24-cv-03566-JRR, 2025 WL 1745669 of June 24, 2025**

- Preliminary injunction based on trademark infringement and unfair competition.
- BIKTARVY is a daily HIV anti-viral treatment drug manufactured and distributed in the US and, among other countries, Turkey.
- Accused products have been manufactured, packaged and labeled for sale in Turkey, not approved by FDA.
- One patient in the US received the Turkish manufactured product.
- Gilead alleges importation and distribution to the US as trademark infringement.

# Gilead Sciences, Inc. vs. Meritain Health et al.



# Gilead Sciences, Inc. vs. Meritain Health et al.

- Exhaustion Doctrine: a trademark holder cannot control downstream distribution (resale) of its genuine products
- Exception: when an alleged infringer sells trademarked goods that are materially different than those sold by the trademark owner
- Same medical formulation, but
- Materially different:
  - foreign language packaging and labelling
  - international units of measure
  - deviation from FDA regulations

# Canadian Case Law



# Samsung Bioepis Co., Ltd. vs. Novartis AG

## Federal Court of Appeal, No. A-26-24 of November 28, 2025

- BEOVU is a drug used for treating neovascular age-related macular degeneration („AMD“)
- BYOOVIZ is a biosimilar drug, containing different active pharmaceutical ingredients („API“)



# Samsung Bioepis Co., Ltd. vs. Novartis AG

- Relevant consumer: prescribing doctors, dispensing pharmacists, administering physicians and end-user patients
- Madame Justice Palotta:

*"In my view, the likelihood of confusion is higher when considered from the patient's perspective; however, I find Novartis has met its burden of establishing a likelihood of confusion for all relevant consumers"*

- Relevant goods are identical
- Both, BEOVU and BYOOVIZ are coined words and inherent distinctive
- BEOVU and BYOOVIZ resemble each other to at least a moderate degree in appearance and ideas suggested and to a high degree in sound (important factor for oral communication between health care professionals and staff and in informing patients)

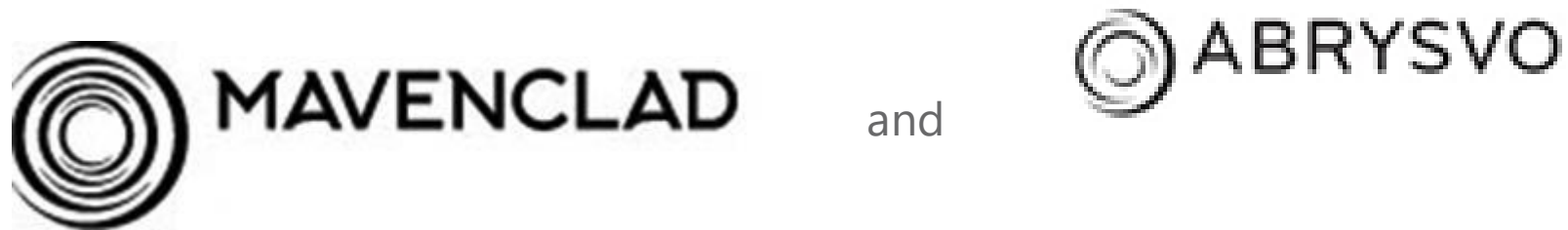
# Australian Case Law



# Merck KGaA vs. Pfizer Inc.

## Opposition decision of January 8, 2026

- No Likelihood of Confusion between



- The Opponent's submissions provide no reasonable basis for concluding that the words MAVENCLAD and ABRYSSVO are not essential features in their respective trademarks. They cannot be excluded from a visual or aural comparison between the trademarks in question.
- The words MAVENCLAD and ABRYSSVO would distinguish these trademarks to a great extent. They are entirely dissimilar both visually and aurally and would significantly affect the impression a consumer would carry away and retain from each trademark.

# Norwex Malta Limited vs. Vargas Marcas E Participacoes Ltda

## Opposition decision of January 16, 2026

- No Likelihood of Confusion between

**NORWEX**                      and                      **NOVEX HAIR CARE**

- The overall impression of the marks differ materially in both look and sound.
- The primary element will be pronounced 'NO-VEX' whereas the Opponent's Marks will be pronounced 'NOR-WEX'.
- Despite sharing several letters, the marks have distinct rhythms, syllable patterns, visual appearance and pronunciation of the two marks is quite different.
- Also, the Opponent's Marks consist solely of the coined word NORWEX, whereas the Applicant's mark comprises NOVEX together with the descriptive term HAIR CARE, which changes both its visual and aural impact.

# Special Thanks to

*Frank Meixner*



Oxygene IP

**SMART & BIGGAR**

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**Thank you for your attention**

