

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2183

BELMORA LLC,

Plaintiff – Appellee,

v.

BAYER CONSUMER CARE AG, a Swiss Corporation; BAYER HEALTHCARE LLC,
a Delaware Limited Liability Company,

Defendants – Consolidated Plaintiffs – Appellants,

v.

BELMORA LLC, a Virginia Limited Liability Company; JAMIE BELCASTRO, an
individual,

Consolidated Defendants – Appellees,

and

DOES, 1 – 10, inclusive,

Consolidated Defendants.

UNITED STATES OF AMERICA

Amicus Supporting Appellant.

No. 18-2232

BELMORA LLC,

Plaintiff – Appellant,

v.

BAYER CONSUMER CARE AG, a Swiss Corporation; BAYER HEALTHCARE LLC,
a Delaware Limited Liability Company,

Defendants – Consolidated Plaintiffs – Appellees,

v.

BELMORA LLC, a Virginia Limited Liability Company; JAMIE BELCASTRO, an
individual,

Consolidated Defendants – Appellants,

and

DOES, 1 – 10, inclusive,

Consolidated Defendants.

Appeals from the United States District Court for the Eastern District of Virginia, at
Alexandria. Claude M. Hilton, Senior District Judge. (1:14-cv-00847-CMH-JFA)

Argued: October 26, 2020

Decided: February 2, 2021

Before AGEE, FLOYD, and THACKER, Circuit Judges.

Affirmed in part, vacated in part, and remanded with instructions by published opinion.
Judge Floyd wrote the opinion, in which Judge Agee and Judge Thacker joined.

ARGUED: Jessica Andrea Ekhoﬀ, PATTISHALL, MCAULIFFE, NEWBURY, HILLIARD & GERALDSON LLP, Chicago, Illinois, for Appellants/Cross-Appellees. Lewis Yelin, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Amicus United States of America. Joel Geoffrey MacMull, MANDELBAUM SALSBERG, PC, New York, New York; Ronald David Coleman, DHILLON LAW GROUP, New York, New York, for Appellees/Cross-Appellants. **ON BRIEF:** Phillip Barengolts, Bradley L. Cohn, PATTISHALL, MCAULIFFE, NEWBURY, HILLIARD & GERALDSON LLP, Chicago, Illinois; Robert J. Shaughnessy, WILLIAMS & CONNOLLY LLP, Washington, D.C., for Appellants/Cross-Appellees. Craig C. Reilly, LAW OFFICES OF CRAIG C. REILLY, Alexandria, Virginia, for Appellees/Cross-Appellants. Joseph H. Hunt, Assistant Attorney General, Mark R. Freeman, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Thomas S. Krause, Solicitor, Christina J. Hieber, Associate Solicitor, Mary Beth Walker, Associate Solicitor, Benjamin T. Hickman, Associate Solicitor, UNITED STATES PATENT AND TRADEMARK OFFICE, Alexandria, Virginia; G. Zachary Terwilliger, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Amicus United States of America.

FLOYD, Circuit Judge:

This appeal arises out of an action brought by Bayer Consumer Care AG (Bayer) alleging that Belmora LLC (Belmora) engaged in unfair competition in violation of § 43(a) of the Lanham Act. The district court held that Bayer’s § 43(a) claims were time-barred. Because the Lanham Act does not include a limitations period for § 43(a) claims, the district court borrowed the statute of limitations from the most analogous state law, declining to apply the equitable doctrine of laches to those claims.

For the reasons set forth below, we conclude that laches, rather than a statute of limitations, is the appropriate defense to Bayer’s § 43(a) claims. We also conclude that the district court failed to consider whether Bayer’s related state-law claims were subject to tolling. Accordingly, we vacate the district court’s judgment on Bayer’s § 43(a) and related state-law claims and remand for further proceedings consistent with this opinion. We affirm the district court’s judgment in all other respects.

I.

A.

Since the 1970s, Bayer’s Mexican affiliate has sold naproxen sodium pain relievers under the trademark “FLANAX” in Mexico and other parts of Latin America. Bayer, a Swiss entity, owns a Mexican registration for the FLANAX mark.¹ Bayer neither owns an

¹ Bayer’s Mexican affiliate, which is not a party to this case, distributes FLANAX in that country through a licensing agreement with Bayer.

American registration for the mark nor sells pain relievers under the FLANAX name in the United States. Rather, Bayer's American sister company, Bayer Healthcare LLC (BHC), sells naproxen sodium pain relievers in the United States under the "ALEVE" name.²

Bayer's FLANAX is a top-selling pain reliever in Mexico. The drug is therefore well known among consumers in the United States who have spent time in Mexico and other parts of Latin America.

Given the familiarity with FLANAX among a large subset of consumers in the United States, Belmora saw an opportunity to sell naproxen sodium pain relievers under the FLANAX name to American consumers. To that end, Belmora began selling naproxen sodium pain relievers under the FLANAX name in the United States in 2004.

Belmora's early marketing materials targeted Hispanic American consumers familiar with FLANAX. Belmora's founder, Jamie Belcastro, described the company's business model as "provid[ing] a user-friendly menu of . . . drug products for common ailments to U.S. residents of Hispanic background." J.A. 85. Belmora also associated its FLANAX pain relievers with Bayer's FLANAX sold in Mexico. For example, a telemarketer script identified Belmora as "the direct producers of FLANAX" in the United States and described its product as "a very well-known medical product in the Latino

² BHC is also a party to this case. Bayer and BHC are separate entities asserting slightly different claims. But because any distinction between the two entities is irrelevant to our analysis in this opinion, we refer to Bayer and BHC collectively as "Bayer," unless otherwise noted.

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