



3033 Wilson Blvd.  
Suite 700  
Arlington, VA 22201

## News Release

For Immediate Release

For More Information, Contact:  
Tim Kolly 540-361-8881 | tkolly@comcast.net

### **Belmora Seeks High Court Review in “FLANAX” Trademark Battle with German Big Pharma, Bayer AG**

*Territorial Principle of U.S. Trademark Law and Statute of Limitations At Issue*

**Washington—(August 9, 2021)**—Belmora LLC, a small Virginia-based pharmaceutical company, has petitioned the U.S. Supreme Court to review two far-reaching legal issues in its long-running trademark-related litigation with Bayer AG subsidiaries. The litigation concerns Belmora’s Flanax, an FDA-approved, over-the-counter pain-reliever product containing naproxen sodium—the same active ingredient as in Bayer’s Aleve.

Belmora’s Flanax is a well-recognized and popular analgesic product in Hispanic-American communities. It is sold at over 15,000 retail outlets in more than 40 States. Unlike Aleve, Belmora’s Flanax Pain Reliever Tablets have unique bilingual packaging and labeling for the benefit of Spanish-speaking consumers. See [flanaxusa.com](http://flanaxusa.com).

Since the mid-1970s, Flanax has been sold in Mexico at a high strength not approved for over-the-counter use in the United States. In 2005, Belmora obtained a U.S. trademark registration for the FLANAX name. Seven months later, Bayer Consumer Care AG, a Swiss subsidiary of its German parent, Bayer AG, acquired the Mexican FLANAX trademark from Hoffmann-La Roche. Neither Bayer AG nor any of its subsidiaries has ever registered or used, or attempted to register or use, the FLANAX name in the United States.

In 2007, Bayer Consumer Care AG began pursuing actions under the Lanham Act (the federal trademark statute), which if successful, would prevent Belmora from competing against Bayer’s Aleve for Hispanic consumers in the United States. Bayer already has persuaded the U.S. Patent and Trademark Office to cancel Belmora’s registration for the FLANAX trademark. In addition, Bayer alleges in federal court litigation that Belmora has engaged in unfair competition by using the FLANAX name in the United States—even though Bayer’s Mexican Flanax cannot be legally sold here

The litigation has been appealed to the U.S. Court of Appeals for the Fourth Circuit twice. Now Belmora has filed a petition urging the Supreme Court to address two important legal issues over which the Fourth Circuit and other federal courts of appeals disagree. The first issue is whether a foreign company can allege economic harm to its *foreign* trademark as the basis for pursuing Lanham Act unfair competition and trademark cancellation claims against the owner of the same mark in the United States. The second question concerns the legal standard for determining whether Lanham Act unfair competition claims are timely. The Fourth Circuit court of appeals has ruled against Belmora on both of these questions.

“The Fourth Circuit decisions stand long-established trademark law principles on their head,” said Belmora president and founder Jamie Belcastro. “Instead of protecting American businesses from baseless and transparent trademark attacks by foreign entities, the Fourth Circuit decision would now facilitate them.” Belcastro explained that Belmora’s Flanax marketing program focuses on communities with at least a 10% Hispanic population. “If the Fourth Circuit decisions are allowed to stand, they will deprive Hispanic-Americans of a popular, effective, affordable, and language-accessible product,” Belcastro said.

Belmora’s Supreme Court counsel, Lawrence S. Ebner of Capital Appellate Advocacy LLC in Washington, DC, is available for interview or comment through the contact information above. For the full text of the petition, click [here](#).