

## IP FLASH



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**STRATEGY** Pharmaceutical trademark owners must surmount two hurdles before they can use and register their trademarks in the US. First, brand owners must obtain approval of the US Patent and Trademark Office (USPTO) to obtain federal trademark registration. Second, brand owners must obtain approval from the Food and Drug Administration (FDA) to use the pharmaceutical name.

While both the USPTO and the FDA purport to accept only names that will not cause confusion between drug names, both agencies compare different universes of data in making these determinations, and apply somewhat different standards. For example, the USPTO will consider whether the proposed brand name is confusingly similar to marks that are already applied for and registered as trademarks. Often, pharmaceutical companies apply for several alternative brands for a single product launch, and the USPTO's search may therefore result in a refusal to register a mark based on a trademark that will never appear in the FDA database.

In contrast, the FDA looks at non-proprietary pharmaceutical names, established USP-NF monographs, generic names, and trademarks approved for use by the FDA but not yet applied for or registered. Approval from both agencies

is ultimately necessary before a brand can be considered available for use as a new pharmaceutical trademark. Following, are four strategies that can help make the drug name approval and registration process as painless as possible:

1. Start early — allow adequate time to search and clear a mark before using it in clinical trials, promoting it within the industry, or submitting it to the FDA.

2. Conduct a proper clearance — invest upfront in a trademark/FDA clearance search conducted by an attorney experienced with pharmaceutical marks.

3. Be original — avoid words that look or sound similar to existing brands, do not borrow from an existing brand or generic name, and do not use pharmaceutical stems as a prominent part of your drug name.

4. File for alternatives — the USPTO recognises the challenges of obtaining FDA drug name approval and, for that reason, considers the filing of alternative drug names to be a bona fide intent to use a mark in commerce as required to support an application.

By planning ahead, and selecting and clearing new marks with care, pharmaceutical trademark owners can help smooth the path to finding a mark that is appealing to not only consumers, but also the USPTO and the FDA. ■

### Clearing and Protecting Pharmaceutical Trademarks

## Two-way across the pond

**IPO FRENZY** After last year's successful IPOs from Swiss drugmaker Auris Medical, raising €45m (US\$61m), and Dutch drug developer Proqr Therapeutics, raising €76m (US\$98m) on NASDAQ, 2015 saw UK immuno-oncology play Adaptimmune filing its IPO also in New York, hauling in €175m (US\$191m). In addition, French Cellectis and Belgian Galapagos have tapped the US market with their secondary debuts on NASDAQ (€208m and €246m, respectively).

But it is not only the Atlantic's trade winds blowing European companies across the ocean. It now seems that the gulf stream is carrying along some US biotechs over to the bank of the Thames, as two companies have decided to list on London's AIM. In May, San Francisco-based Verseon succeeded in raking in €89m (£66m), and Puretech Health from Boston intends to follow in June with a €146m (£108m) IPO.

### Insightful UK investors

Verseon aims to discover medicines through bioinformatics. Founded in 2002, it has yet to have an asset enter clinical stage. Nevertheless, the float went smoothly also because it was helped along by biotech VIP Neil Woodford's recently set up Patient Capital Trust, which backed the fundraising. Puretech hopes to join a cluster of similar companies on the London Stock Exchange that also invest in a portfolio of early-stage science and tech startups and turn them into commercial businesses. Allied Minds (startups from the US), IP Group and Imperial Innovations (both UK startups) have a collective market capitalisation of more than €4bn (£3bn). Daphne Zohar, CEO of Puretech, stated: "We realised the UK was the best place for us because investors understand the model." Until now, Puretech has invested in 12 healthcare companies, all in the development phase. ■