

**Press release**

Düsseldorf, 7 April 2022

**NOVACOS ADVISES 3M IN LANDMARK PROCEEDINGS ON THE MEANING OF THE TERM "HYPOALLERGENIC" ALL THE WAY TO THE FEDERAL COURT OF JUSTICE**

***Düsseldorf.*** The term "hypoallergenic" is used today for a wide range of consumer products, from plasters to cosmetics to baby food. Now the highest court has ruled: The statement "hypoallergenic" does not mean that a product is completely free of allergenic ingredients. Rather, consumers correctly assume that only fewer of such substances are contained. The Düsseldorf Regional Court had already ruled this way with regard to wound care products from the company 3M, and the Higher Regional Court had confirmed this decision. A complaint of non-admission by the Wettbewerbszentrale has now been rejected by the Federal Court of Justice (BGH).

In mid-2020, the Wettbewerbszentrale took action against the well-known company 3M, which, among other things, manufactures wound care products in the form of a wide variety of plasters. 3M advertised its plaster products of the brands "Micropore", "Nexcare" and "Tegaderm" with the term "hypoallergenic" or indicated that these contained a "hypoallergenic, latex-free adhesive". The Central Office for Combating Unfair Competition Frankfurt am Main e. V. (Wettbewerbszentrale) objected to this as misleading, arguing that the target public assumes that the products labeled in this way offer particularly good tolerance and safety against sensitization. The consumer expects that the products do not contain any allergens or cause allergies. This complaint and the proceedings were particularly relevant because the term "hypoallergenic" is not only used equally by competitors in the field of plaster products, but also widely for other consumer products such as cosmetics, baby food or even pet food.

3M defended itself against the complaint primarily with the argument that consumers correctly understand the nowadays common designation "hypoallergenic" to mean that corresponding products are "less allergenic," which applies to the relevant 3M products. The average consumer knows that, due to the complexity of allergies, no one can promise that a product cannot trigger any allergies. This has now been confirmed by the courts. Both the competent Chamber of Commerce of the Düsseldorf Regional Court (in a ruling dated December 16, 2020) and the competent Senate of the Düsseldorf Higher Regional Court (in a ruling dated May 17, 2021) agreed that consumers understand the term in the sense of "less allergenic". In connection with the advertising statements "for sensitive, delicate skin" or "particularly skin-friendly" reproduced in the specific forms of infringement, there is a public

understanding with the content "less allergenic". It was undisputed in the proceedings that this applied to the relevant plaster products from 3M. For example, 3M does not use natural rubber and latex in the relevant plaster products, so that the products contain fewer allergenic substances than conventional plaster products.

In a decision dated February 10, 2022, the Federal Court of Justice (BGH) has now rejected the non-admission appeal of the Wettbewerbszentrale. The ruling of the Düsseldorf Regional Court is thus legally binding and the proceedings have been successfully concluded from 3M's point of view.

3M was advised in all instances of the proceedings by NOVACOS partner Christian Hübner, one of the founding partners of the law firm. For the representation before the BGH, NOVACOS and 3M consulted the BGH attorney Dr. Peter Rädler of the law firm Mennemeyer & Rädler in Karlsruhe.

### **About NOVACOS**

The boutique law firm NOVACOS focuses entirely on commercial law advice in the field of Life Sciences & Healthcare. The unit, which was established in 2016 as a spin-off from Clifford Chance, combines many years of legal experience in the healthcare sector with corresponding in-house experience, association activities and corporate law expertise. NOVACOS advises in particular national and global companies in the healthcare industry, such as pharmaceutical, biotech and medical device companies, on all facets of healthcare law. In addition, sector-specific contract drafting as well as advice on M&A transactions in the healthcare sector is a focus of the unit. The same applies to the area of compliance in the healthcare sector, which is a further focus of advice.

Further information at: [www.novacos-law.com](http://www.novacos-law.com)

### **To the consulting attorneys**

**Christian Hübner** is a founding partner of NOVACOS and specializes in providing comprehensive legal advice in the healthcare sector, in particular to pharmaceutical and medical device companies. He advises companies from the healthcare sector as well as investors on sector-specific regulatory, contract law, advertising law and distribution law issues, also in the context of national and cross-border M&A projects and cooperations. In addition to the areas of pharmaceutical law and drug advertising law, sector-specific contract drafting and transaction advice form the focal points of his work..

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