

4th Circ. Won't Undo Block Of Gilead-Branded Drug Imports

By Adam Lidgett

Law360 (August 13, 2026, 7:25 PM EDT) -- The Fourth Circuit on Thursday refused to undo a lower court's order in a trademark suit that blocked a vendor, used by health plans to cut medication costs, from importing Gilead-branded medications into the U.S.

In a published opinion, a three-judge panel affirmed a preliminary injunction against various defendants in Gilead's suit alleging they were part of a scheme to import drugs into the U.S. that were meant for sale abroad.

The resale of "genuine" goods is allowed under federal trademark law even without the trademark owner's consent, but the drugs at issue in this case didn't meet the distinction of being "genuine," the panel said. The differences were significant, according to the panel, including having different labeling.

"These differences are plainly material," the panel said. "The omitted warnings, prescribing information, [U.S. Food and Drug Administration]-related disclosures, and identifying information are precisely the sort of product characteristics consumers would likely consider relevant when assessing Gilead-branded products. If slight differences in packaging and labeling suffice in the ordinary gray-market case, they certainly suffice where the product is a prescription medication accompanied by different safety information and regulatory disclosures."

Because of those material differences, the panel said there's a likelihood that customers would be confused under the Lanham Act, meaning Gilead would likely succeed on the merits of its case.

The suit arose when a Maryland HIV patient received a bottle of Gilead's Biktarvy treatment that was meant for sale in Turkey, according to court records.

Gilead then initiated an investigation and uncovered what it said was a scheme involving numerous parties, starting with a company called Rx Valet, which is an alternative funding program, or a company that self-funded health plans use to import brand name drugs meant for sale outside the U.S., according to court documents.

The HIV patient's employer used Rx Valet as an AFP, which then told the patient's doctor to send the prescription to Rx Valet's affiliate Advanced Pharmacy, another defendant, the suit said. Advanced



Geoffrey Potter



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Tara Norris

Pharmacy then forwarded the prescription to referral service Affordable Rx, yet another defendant, according to the suit.

The suit also named Gregory Santulli, CEO of Rx Valet and president of Advanced Pharmacy, as a defendant.

Gilead also alleged that Meritain Health Inc. — a CVS Health and Aetna unit — and ProAct Inc. helped facilitate the alleged scheme. Meritain, a third-party plan administrator, provides pharmacy benefit manager services through its own affiliate for about half the plans it looks after, while the other half are serviced by ProAct, according to court documents.

"Patient safety is Gilead's highest priority," a Gilead spokesperson said in a statement to Law360 Thursday. "This ruling helps protect patients by keeping medicines outside FDA oversight and quality safeguards out of the U.S. supply chain. It also reduces opportunities for counterfeiters to exploit confusion around 'foreign imports' and introduce unsafe products into the market. We will continue partnering with regulators, law enforcement, and healthcare stakeholders to help safeguard the integrity of the U.S. medicine supply and protect patients."

CVS Health said in a statement that "Meritain has long maintained a policy that it does not support programs for non-FDA-approved medications sourced from outside the United States and does not contract with companies to facilitate the importation of non-FDA-approved medications sourced from outside the United States."

"Despite this policy, Meritain was named as a defendant in a lawsuit filed by Gilead concerning international drug sourcing," the statement said. "Meritain strongly disputes the allegations and is vigorously defending itself against the complaint."

Representatives for the other parties did not immediately respond to requests for comment.

U.S. Circuit Judges G. Steven Agee, Pamela Harris and Barbara Milano Keenan sat on the panel for the Fourth Circuit.

Gilead is represented by Geoffrey Potter, Timothy A. Waters and Tara J. Norris of Patterson Belknap Webb & Tyler LLP and Steven M. Klepper of Kramon & Graham PA.

Meritain Health is represented by Jonathan W. Garlough and Ellen Matheson of Foley & Lardner LLP.

ProAct is represented by William N. Sinclair, Todd W. Hesel, Christopher Mincher and Ilona Shparaga of Silverman Thompson.

Rx Valet, Advanced Pharmacy, Aqua Enterprise and Santulli are represented by Michael P. Beltran of Beltran Litigation PA and Rachel Atkin Hedley, Michael E. Blumenfeld and Jennifer W. Winkler of Nelson Mullins Riley & Scarborough LLP.

The cases are Gilead Sciences Inc. v. Meritain Health Inc., case number 25-1828, Gilead Sciences Inc. v. ProAct Inc., case number 25-1829, Gilead Sciences Inc. v. RX Valet LLC, case number 25-1849, and Gilead Sciences Inc. v. Gregory Santulli, case number 25-1850, all in the U.S. Court of Appeals for the Fourth Circuit.

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