

# WALDER WYSS ACHIEVES LANDMARK DECISION FOR MERCK IN A DISPUTE AGAINST MSD

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**Walder Wyss'** IP team successfully represented the pharmaceutical company [Merck](#) in appeal proceedings before the Swiss Federal Supreme Court against its US competitor MSD.

## The case

Following World War I, Merck's US subsidiary, which was founded in 1890, became an independent business. Since then, there have been two international businesses that use "Merck" in their company name. In a dispute elsewhere referred to as the "trial of the century", Merck and MSD argue whether or not MSD is entitled to use "Merck" as a part of .com addresses of various websites and social media sites. The Commercial Court of the Canton of Zurich, being the court of first instance, denied that the use of "Merck" in these addresses (e.g. merck.com) and on the websites accessible at these addresses constituted use in Switzerland. On appeal by Merck, this decision was overturned by the Swiss Federal Supreme Court. For the first time, the Federal Supreme Court dealt with the question of principle as to when the use of a sign on a global .com presence is considered to be use in Switzerland. The Federal Supreme Court concurred with Merck that the websites at dispute had a commercial effect in Switzerland and that, therefore, there was use in Switzerland. The case was remitted to the Commercial Court of the Canton of Zurich.

## The team

**Walder Wyss represents Merck in the Swiss proceedings with a team led by [Roger Staub](#) (Partner, IP) and included, in the Swiss Federal Supreme Court proceedings, [Manuel Bigler](#) (Associate, IP) and Marija Petrovic (Associate, IP).**