

## Case Summary

### Merck Eprova AG v. Gnosis SPA

2010 U.S. Dist. LEXIS 38867 (S.D.N.Y. April 20, 2010)

**Court Grants Plaintiff's Motion for Sanctions Due to Discovery Deficiencies**

On plaintiff's motion for sanctions due to discovery deficiencies, the Southern District of New York imposed a \$25,000 fine on a litigant whose failure to properly install a litigation hold and conduct appropriate searches for relevant email represented a diligence that fell "well below the minimum standard that a reasonably prudent person would use."

What began as a false labeling allegation under the Lanham Act became a discovery dispute when defendant Gnosis' initial production amounted to only 107 pages. Believing relevant documents and email had been withheld, the plaintiff identified several deficiencies and requested further discovery from the defendant. After two months and several additional requests, the defendant had produced an additional 6200 pages but had not disclosed the allegedly missing documents.

During an evidentiary hearing, the defendant admitted to several discovery abuses. The defendant had not installed a written litigation hold and, as a result, had not stopped the automatic deletion of all emails more than 15 days old. The company had performed only a cursory document search and argued that it had failed to produce the requested documents because of its poor understanding of the search tool provided in its email client.

Relying heavily on the analysis in *Pension Committee of University of Montreal Pension Plan v. Banc of America Securities*, the court found that the defendant's failure to issue a written litigation hold amounted to gross negligence. The court noted that the defendant's first search for relevant email had been insufficient and could have easily been improved to produce the wealth of documents that were later discovered. In addition, the defendant's decision to withhold documents it believed to be "insufficiently important" displayed "an unacceptable disrespect for the judicial process."

#### Decision

The court granted the plaintiff's motion for sanctions by awarding costs and imposing a \$25,000 fine on the defendant to prevent future discovery misconduct and to install a "modicum of respect for the judicial process."