

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINING DIVISION

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In re Application of: Glaxo Group Limited :
Serial No.: 88-406770 : Trademark Law Office:
Filed: April 29, 2019 : 103
Mark: Shape Only : Examining Attorney:
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W. Wendy Jun

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

DECLARATION OF ANDREW THOMAS

I, Andrew Thomas, hereby declare as follows:

1. I submit this declaration based on personal knowledge and my review of business records in support of the Application of GlaxoSmithKline (“GSK”) to register the above-referenced trademark (the “Application”).

2. I am **Vice President – Respiratory Marketing** of GSK. From Oct 2019 through current, I am responsible for all marketing related activities for the GSK Ellipta portfolio of brands. As such, I have overseen the business and healthcare professional promotional activities related to the ELLIPTA portfolio of products for asthma and/or chronic obstructive pulmonary disease (“COPD”), including the GSK respiratory brands BREO ELLIPTA, ANORO ELLIPTA, ARNUITY ELLIPTA, INCRUSE ELLIPTA and TRELEGY ELLIPTA (the “ELLIPTA Portfolio Products”). I am, therefore, intimately familiar with GSK’s marketing of the ELLIPTA inhaler in the United States.

3. The shape of the ELLIPTA inhaler has become distinctive of the goods through the applicant GSK's exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

4. GSK offers five prescription pharmaceutical products in the ELLIPTA inhaler: *fluticasone furoate and vilanterol* (BREQ ELLIPTA), *umeclidinium and vilanterol* (ANORO ELLIPTA), *umeclidinium* (INCRUSE ELLIPTA), *fluticasone furoate* (ARNUIITY ELLIPTA) and *fluticasone furoate, umeclidinium and vilanterol* (TRELEGY ELLIPTA) (the "ELLIPTA Portfolio Products").

5. ELLIPTA Portfolio Products have enjoyed considerable commercial success. The total gross sales of ELLIPTA Portfolio Products sold in the United States from September 2014 through September 2019 are well in excess of \$10 billion dollars.

6. GSK has engaged in extensive advertising and promotion of ELLIPTA Portfolio Products in the United States. During the period from September 2014 through September 2019, GSK spent more than \$2.5 billion in advertising for ELLIPTA Portfolio Products (including in television, print, Internet, radio, and outdoor media) to prescribing physicians, pharmacists, and consumers in the United States.

7. GSK's advertising and promotion of ELLIPTA Portfolio Products has consistently featured the shape of the ELLIPTA inhaler. True and correct screenshots of GSK's websites associated with the ELLIPTA Portfolio Products are attached as **Exhibit A**.

I declare under penalty of perjury that the foregoing is true and correct. Executed
at Research Triangle Park, North Carolina this 8th day of February, 2020.

By: 

Andrew Thomas
Vice President – Respiratory Marketing
GlaxoSmithKline

Exhibit A

← → ↻ mybreo.com/copd/about-breo/how-to-use-breo-ellipta.html



INSTRUCTIONS FOR USING YOUR BREO ELLIPTA INHALER

This demonstration is intended to complement the Patient information for BREO ELLIPTA. For full instructions on how to use BREO ELLIPTA, and other important information, please see the complete [Prescribing Information](#) and [Patient Information](#) for BREO ELLIPTA. You can also ask your healthcare provider or pharmacist for more information.

**GET
SAVINGS*
ON BREO**

*Subject to eligibility. Restrictions apply.





ABOUT INCRUSE ELLIPTA

HOW TO USE INCRUSE ELLIPTA

Once-daily INCRUSE is a prescription medicine used long term to treat chronic obstructive pulmonary disease (COPD), including chronic bronchitis, emphysema, or both, for better breathing and fewer flare-ups. INCRUSE is not used to relieve sudden breathing problems and won't replace a rescue inhaler.

HOW TO USE INCRUSE ELLIPTA

Instructions for using your INCRUSE ELLIPTA inhaler


This demonstration video is intended to be used with the Patient Information for INCRUSE ELLIPTA. For full instructions on how to use INCRUSE, and other important information, please see the complete [Prescribing Information](#) and [Patient Information](#) for INCRUSE. You can also ask your healthcare provider or pharmacist for more information.



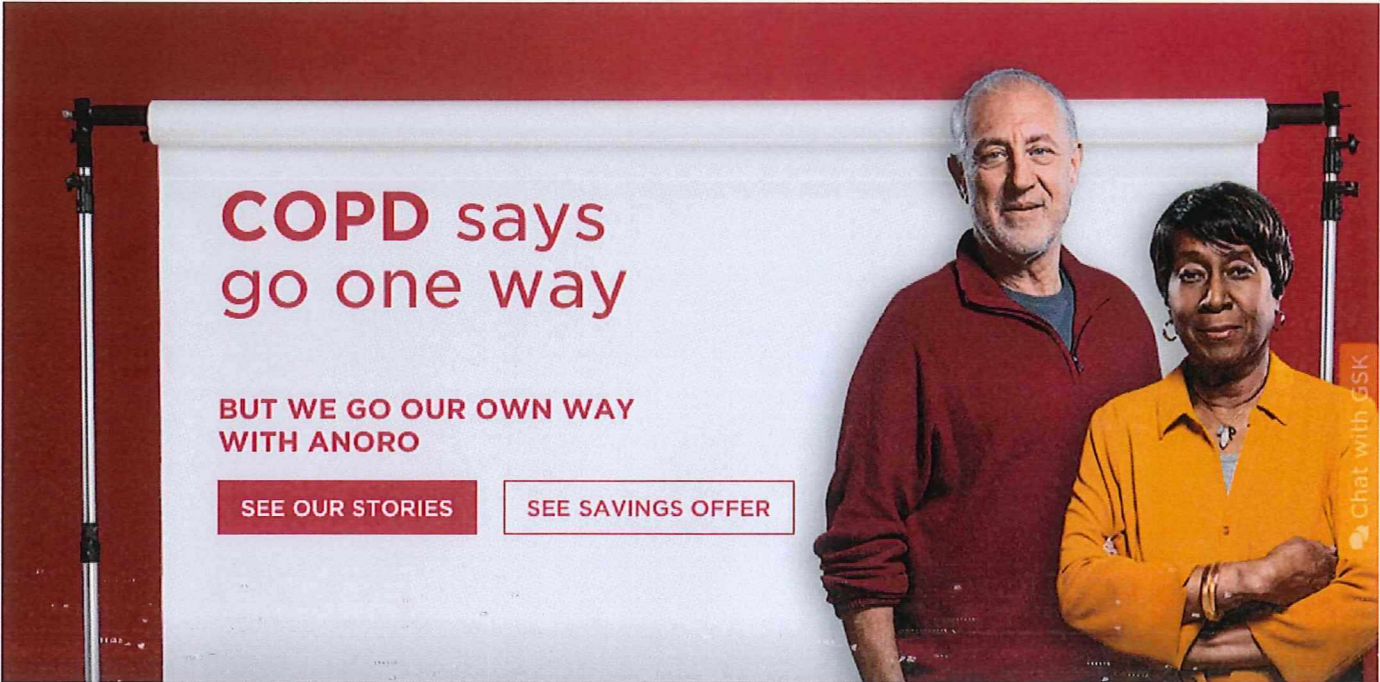
ANORO[®] ELLIPTA

(umeclidinium 62.5 mcg and vilanterol 25 mcg inhalation powder)

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**COPD says
go one way**

**BUT WE GO OUR OWN WAY
WITH ANORO**

[SEE OUR STORIES](#) [SEE SAVINGS OFFER](#)

Chat with GSK



Once-daily ANORO is a prescription medicine used long term to treat chronic obstructive pulmonary disease (COPD), including chronic bronchitis, emphysema, or both, for better breathing and to reduce the number of flare-ups. ANORO is not for asthma. ANORO is not used to relieve sudden symptoms of COPD and won't replace a rescue inhaler. Results may vary.

ARNUITY ELLIPTA
(fluticasone furoate inhalation powder)
50 mcg, 100 mcg, and 200 mcg

[Prescribing Information](#) | [Patient Information Leaflet](#) | [For U.S. Healthcare Professionals](#)

A A A



About ARNUITY ELLIPTA -

How ARNUITY ELLIPTA Works

> How to Use ARNUITY ELLIPTA

Risks & Side Effects

About Asthma +

Talk to Your Doctor About ARNUITY ELLIPTA

FAQs

LEARN MORE ABOUT ARNUITY ELLIPTA AND

BETTER BREATHING 24:7

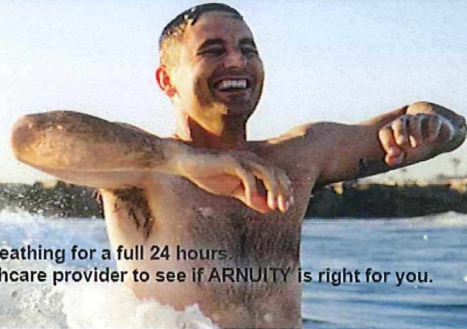
Learn More >

How to Use ARNUITY ELLIPTA

THIS IS BETTER BREATHING AT

10:30 AM

ARNUITY has been shown to improve breathing for a full 24 hours. Your results may vary. Talk to your healthcare provider to see if ARNUITY is right for you.



Instructions for using your ARNUITY ELLIPTA inhaler

This demonstration is intended to complement the Patient Information Leaflet for ARNUITY ELLIPTA. For full instructions on how to use ARNUITY ELLIPTA, and other important information, please see the complete [Prescribing Information](#) and [Patient Information Leaflet](#) for ARNUITY ELLIPTA. You can also ask your healthcare provider or pharmacist for more information.

Slide the cover down until you hear a "click."





Using TRELEGY

How to take a dose of 3-in-1 TRELEGY

TRELEGY offers the simplicity of once-daily dosing, with 3 separate long-acting COPD medicines in 1 easy-to-use inhaler. TRELEGY does not replace a rescue inhaler.

The demonstration video below is intended to complement the [Instructions for Use](#) at the end of the [Patient Information](#) for TRELEGY ELLIPTA. For full instructions on how to use TRELEGY, as well as other important information, please see the complete [Prescribing Information](#), including [Patient Information](#), for TRELEGY. You can also ask your healthcare provider or pharmacist for more information.

Slide the cover down until you hear a "click."

