

**21-1043 ABITRON AUSTRIA GMBH V. HETRONIC INTERNATIONAL, INC.**

DECISION BELOW: 10 F.4th 1016

LOWER COURT CASE NUMBER: 20-6057, 20-6100

QUESTION PRESENTED:

Petitioners—all foreign nationals—were subjected to a \$90 million damages award under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, for allegedly infringing respondent's U.S. trademarks. While trademark rights are distinctly territorial, the accused sales occurred almost entirely abroad. Of approximately \$90 million in sales, 97% were purely foreign: They were sales in foreign countries, by foreign sellers, to foreign customers, for use in foreign countries, that never reached the United States or confused U.S. consumers.

The Tenth Circuit nonetheless held that the Lanham Act applies extraterritorially to *all* of petitioners' foreign sales. Recognizing that the circuits have splintered in this area, the Tenth Circuit adopted an expansive view that other courts, including the Fourth Circuit, have concededly rejected. Under the Tenth Circuit's view, the Lanham Act applies extraterritorially whenever foreign defendants' foreign conduct allegedly diverts *foreign sales* from a *U.S. plaintiff*. Such an effect, the court held, sufficiently affects U.S. commerce because it prevents foreign revenue from flowing into the U.S. economy.

The question presented is:

Whether the court of appeals erred in applying the Lanham Act extraterritorially to petitioners' foreign sales, including purely foreign sales that never reached the United States or confused U.S. consumers.

CERT. GRANTED 11/4/2022