

Supreme Court Holds TTAB Ruling May Preclude Re-litigation of Trademark Issues

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In [B&B Hardware, Inc. v. Hargis Ind. Inc.](#), No. 13–352 (Mar. 24, 2015) the Supreme Court held that a finding by the **Trademark Trial and Appeal Board** that a proposed trademark should not be registered because of a likelihood of confusion can preclude the losing party from subsequently litigating that same issue before a federal court. The Court held that the same elements that apply to determine the preclusive effect of a prior judicial finding can apply when the initial determination is made in the first instance by an agency rather than a judge or jury.

In this case, Hargis tried to register its trademark in the **United States Patent and Trademark Office**. B&B filed an opposition proceeding in the TTAB, which is an arm of the Patent and Trademark Office. The TTAB rejected the registration based upon a likelihood of confusion with B&B's trademark. Hargis did not appeal the decision.

At the same time, Hargis had sued B&B in federal court for trademark infringement under the Lanham Act. A likelihood of confusion is one of the issues to prove trademark infringement. Hargis argued that B&B was bound by the TTAB's finding on that issue under the doctrine of collateral estoppel. The Supreme Court agreed.

Importantly, the majority opinion expressly stated that the constitutional issues of whether application of collateral estoppel would deprive Hargis of its right to a jury trial or its right to have the issue determined by an Article III court were not before the Court. Justice Thomas, joined by Justice Scalia, dissented, in part because the Court's holding raised a question on these constitutional concerns. Thus, B&B Hardware may not have put to rest this issue.

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