

Attorneys React to Supreme Court's TTAB Preclusion Ruling

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James H. Donoian

On Tuesday, the U.S. Supreme Court ruled that federal court decisions on “likelihood of confusion” can be precluded by earlier findings on the same issue from the Trademark Trial and Appeal Board. Here, attorneys tell Law360 why the decision in *B&B Hardware Inc. v. Hargis Industries Inc.* is significant.

James H. Donoian, McCarter & English LLP

“This requires practitioners to reconsider what had been accepted strategy when deciding between TTAB and court proceedings. Brand owners can no longer rely on the opportunity to take a first bite with a TTAB proceeding without relinquishing possible judicial review. The consequences of unfavorable TTAB decisions are grave. The rule that the elements of issue preclusion must be met risks that a district court will simply find that the usages adjudicated by the TTAB are the same as those before it. Clients must now seriously consider filing lawsuits rather than risk adverse TTAB decisions and the cost and uncertainty of resulting appeals.”