

13-352 B&B HARDWARE, INC. V. HARGIS INDUSTRIES, INC.

DECISION BELOW: 716 F.3d 1020

LOWER COURT CASE NUMBER: 10-3137, 11-1247

QUESTION PRESENTED:

Under the Trademark Act of 1946 (Lanham Act), a person generally may neither use nor register a mark that would be "likely to cause confusion" with an existing mark. If a person uses a mark that "is likely to cause confusion" with an existing registered mark, the owner of the registered mark may sue in federal court for trademark infringement. 15 U.S.C. § 1114(1). If a person seeks to register a mark that is "likely ... to cause confusion" with an existing registered mark, the owner of the existing registered mark may oppose the registration of the new mark before the Trademark Trial and Appeal Board (TTAB). 15 U.S.C. § 1052(d); *see id.* §§ 1063, 1067 (a).

In this case, petitioner B&B Hardware, Inc. (B&B), manufactures sealing fasteners and owns the registered mark "SEALTIGHT." Respondent Hargis also manufactures sealing fasteners; it used and sought to register the mark "SEALTITE." The TTAB held that Hargis's mark created a likelihood of confusion with B&B's mark.

The questions presented are as follows:

1. Whether the TTAB's finding of a likelihood of confusion precludes Hargis from relitigating that issue in infringement litigation, in which likelihood of confusion is an element.
2. Whether, if issue preclusion does not apply, the district court was obliged to defer to the TTAB's finding of a likelihood of confusion absent strong evidence to rebut it.

CERT. GRANTED 7/1/2014