



The Supreme Court Denies Cert Challenging the Use of Third-Party Registrations and Website Printouts as Evidence of Actual Use

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By: Rachel J. Elsby

The TTAB sustained New Millennium's opposition, finding that consumers are likely to confuse the parties' marks. The TTAB also refused to cancel New Millennium's mark. Jack Wolfskin appealed. In 2015, the Federal Circuit affirmed the TTAB with respect to the refusal to cancel New Millennium's mark but reversed the TTAB with respect to New Millennium's opposition. Specifically, the Federal Circuit disagreed with the TTAB's finding that the "other marks in use" factor was neutral. Instead, the Federal Circuit concluded that this factor demonstrates that New Millennium's mark is relatively weak because numerous third-parties have registered and used paw print designs in connection with clothing. Thus, the Federal Circuit held that there is no likelihood of confusion.

New Millennium filed a petition challenging the Federal Circuit's holdings. First, it contended that third-party registrations do not constitute evidence of actual use under prior case law. Second, it stated that the Federal Circuit improperly relied on third-party website printouts. It claimed that without proper authentication, such printouts lacks probative value and cannot demonstrate actual use. The Supreme Court denied the cert petition without explanation, leaving the Federal Circuit's holdings intact.

New Millennium Sports, S.L.U., v. Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA, Case No. 15-660 (U.S. Supreme Court, Jan. 25, 2016).

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