ISSUE 2 · OCTOBER TO NOVEMBER 2026

US Trademark Briefing

Four precedents with the marks as filed, and one page on answering a Section 2(d) refusal

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Each decision is a precedent of the Trademark Trial and Appeal Board. The mark images are the drawings on file at the USPTO; each panel links to the decision.

TTAB · 14 NOV 2025, PRECEDENT 27 JAN 2026 · OPPOSITION — **Applicant won**

Same meaning, different words: DANKE survives MERCI

August Storck KG v. Florend Indústria e Comércio de Chocolates LTDA, Opposition No. 91277224

APPLIED FOR



Serial No. 90605879, stylised, brown and beige claimed; translation "thank you"; chocolate, chocolate bars (Class 30)

opposed by the owner of

OPPOSER'S REGISTRATION

MERCI

Reg. No. 2318584, typed; chocolate and chocolates

WHAT HAPPENED

A Brazilian company applied for DANKE, stylised, for chocolate; the German owner of MERCI opposed. The Board applied the doctrine of foreign equivalents to both words: US buyers would understand MERCI and DANKE to mean "thank you". Identical goods and a moderately strong MERCI were not enough. The record, including the opposer's own "thank you" slogans, showed that "thank you" is a common message for chocolate, so the shared meaning was weak, and the two words look and sound nothing alike. The opposer's claim to US rights in DANKE HEIßT MERCI also failed: use in Germany and on German websites, and Amazon pages dated after the applicant's filing date, did not prove earlier US use. Opposition dismissed.

BEFORE YOU FILE

Search the English meaning of a foreign word, but when that meaning is common in the trade, look and sound can carry the case. US common law rights need use in the US, such as sales to US buyers; home-market use and websites with no proven US sales did not do it here.

Decision (USPTO PDF)

TTAB · 14 OCTOBER 2025 · EX PARTE APPEAL — **USPTO won**

A bare consent agreement did not beat a 2(d) refusal

In re Ye Mystic Krewe of Gasparilla, Serial No. 90522364

APPLIED FOR

GASPARILLA

Serial No. 90522364, standard characters, Supplemental Register; cups and glasses (Class 21) and clothing (Class 25) refused

refused over

CITED REGISTRATION

GASPARILLA TREASURES

Reg. No. 4606073, standard characters, GASPARILLA disclaimed; beverage glassware, hats and shirts, among others

WHAT HAPPENED

GASPARILLA was refused for cups, glasses and clothing over GASPARILLA TREASURES for glassware, hats and shirts. The applicant made no argument on the marks or the goods and relied only on a one-page consent agreement with the registrant. The Board gave it some weight, but not enough. A consent is more persuasive when it "shows the work": this one did not say why confusion was unlikely, did not separate trade channels or limit fields of use, did not deal with how the marks would be shown, and offered only a general promise to cooperate. Identical goods, the same buyers and highly similar marks outweighed it. Attached to the appeal brief, which is improper, the consent was treated as a request for remand. Refusal affirmed.

BEFORE YOU FILE

When the owner of a cited US registration agrees to consent, draft a real coexistence agreement: why confusion is unlikely, separate channels or fields of use, how each mark will be shown, and what happens if confusion arises. The May 2026 TMEP cites this case (§ 1207.01(d)(viii)).

Decision (USPTO PDF)

Also in this issue. Page 2: foreign priority beats a later US user; a specimen fails in reexamination. Page 3: answering a Section 2(d) refusal.

Priority from abroad, and use that was not use

Two more precedents of the Board: one for applicants filing from outside the United States, one for anyone filing a statement of use.

TTAB · 24 NOVEMBER 2025 · OPPOSITION

Applicant won

An EU filing date beat a US user, even for a BVI company

CandyVerse, LLC v. Zeeth Ltd., Opposition No. 91289595

APPLIED FOR

CANDYVERSE

Serial No. 97432801, standard characters, filed 27 May 2022 by a British Virgin Islands company; Section 44(d) priority from an EU application of 2 December 2021; sweets, slush drinks, food retail

opposed by a US user of

OPPOSER'S MARKS



CANDYVERSE, word and logo, used from 4 March 2022 (as claimed); applications filed 26 January 2024

WHAT HAPPENED

Zeeth filed in the US for CANDYVERSE and claimed priority under Section 44(d) from its EU application, filed within the six months before. A Texas company that says it began using CANDYVERSE in March 2022 opposed. Confusion was admitted, so the only question was who came first. Zeeth accepted that the British Virgin Islands has no relevant treaty with the US; the opposer argued that it therefore could not claim priority. Deciding the point for the first time, the Board held that Section 44(b) is also met when the applicant's home law gives US nationals the same right, and BVI law gives anyone six months' priority from a first filing in a Paris Convention country or a WTO member, such as the EU. In the Board's words, reciprocity "does not require that all specifics of the statutes or procedures of the countries be identical". Zeeth's December 2021 date came first; opposition dismissed, subject to the application going on to registration.

BEFORE YOU FILE

File in the US within six months of the first foreign filing and claim 44(d) priority: that date can defeat a US business that started later. For a client organised in a place with no treaty with the US, be ready to show that its home law gives US nationals a matching priority right.

Decision (USPTO PDF)

TTAB · 29 APRIL 2026 · REEXAMINATION APPEAL

USPTO won

A website tagline on the last day was not use

In re Everwise Credit Union, Reexamination No. 2023-100533R (Reg. No. 7068783)

REGISTERED

EVERWISE CREDIT UNION

Reg. No. 7068783, standard characters, CREDIT UNION disclaimed; banking, insurance and lending services; registered on an intent-to-use application

best of three uses shown

STATEMENT OF USE, 14 APRIL 2023

"Why TCU? Because we are an Everwise Credit Union™"

a page of the credit union's TCU website

WHAT HAPPENED

Teachers Credit Union applied, on intent to use, for EVERWISE CREDIT UNION. After five extensions it filed its statement of use on the last possible day with a page of its TCU website, where the new name appeared only in a tagline and twice in the body text. The examining attorney accepted the specimen and the mark registered. A third party then petitioned for reexamination. The Board held that the body-text uses would not be seen as a mark, and that the tagline was token use made to hold the name: the name change took effect only on 26 June 2023, and it produced no signs, cards, cheques or brochures under the mark from before the deadline. The earlier acceptance of the specimen "does not control the ultimate question of use". TSDR shows the registration cancelled on 28 July 2026.

BEFORE YOU FILE

File a statement of use only when the client is really using the mark in its ordinary business. If use has not started by the last deadline, a new intent-to-use application is safer than a token specimen. Keep dated proof of real use: a registration can be reopened years later.

Decision (USPTO PDF)

Also decided

1. **Fuente Marketing Ltd. v. Vaporous Technologies, LLC** (Fed. Cir., 8 April 2026): a vape maker's design of two crossing lines with a circle above would be seen as a stick figure, not the letter X, so Fuente's X marks for cigars did not block it. Trade channels and buyers are judged by the wording of the application and registrations, not by actual sales, unless a binding agreement limits them. PDF
2. **Philip Morris USA Inc. v. IP Services International Inc. and Sycuan Tribal Development Corporation** (TTAB, 18 September 2026): tribal sovereign immunity cannot be asserted in inter partes proceedings before the Board, so assigning challenged registrations to a tribal corporation did not end the cancellation, which goes on. PDF

Answering a Section 2(d) refusal, on one page

A refusal over an earlier mark: what the statute says, the deadlines, what to check first, and the usual ways to answer. Fees are USPTO official fees for electronic filing.

The words of the statute. Section 2(d) refuses a mark that "Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive" (15 U.S.C. § 1052(d)). Any doubt goes to the registrant (TMEP § 1207.01(d)(i)).

The clock

1. **Office action** — Answer within 3 months of the issue date, or 6 months for a Madrid (66(a)) application (37 C.F.R. § 2.62(a)).
2. **Extension** — One 3-month extension, US$125, for Section 1 and 44 applications only. Ask before the deadline.
3. **Final action** — Request reconsideration, appeal, or both, in the same period. Reconsideration does not stop the appeal clock (37 C.F.R. § 2.63(b)(3)).
4. **Appeal** — Notice of appeal US$225 per class; brief within 60 days, US$200 per class (37 C.F.R. §§ 2.6, 2.142).
5. **Deadline missed** — The application is abandoned. Petition to revive within 2 months of the notice, with the response, if the delay was unintentional: US$250, plus US$125 for a Section 1 or 44 case (37 C.F.R. § 2.66).

First, read the cited mark on TSDR

Lapsing

Cited registration in its grace period for Section 8, 71 or renewal: answer anyway. Before a final refusal the examiner suspends to see if the owner files (TMEP § 716.02(e)).

Not in use

Petition to cancel (US$600 per class), or for expungement (3 to 10 years after registration) or reexamination (within 5 years); tell the examiner, who can suspend (TMEP § 716.02(a), (j)).

Only an application

An application with an earlier effective filing date (44(d) priority counts) is cited: yours waits until it registers or is abandoned (TMEP § 716.02(c)). Argue no confusion meanwhile.

Same group

Common control of applicant and registrant can end the refusal; so can an assignment of the cited registration to the applicant (TMEP § 1201.07).

! Do not argue in the response that the registrant is not using its mark. That is a collateral attack on the registration, which the examiner will not hear; it belongs in a cancellation (TMEP § 1207.01(d)(iv); Gasparilla applied the rule to a challenge to the registrant's ownership).

Then argue, with evidence

The marks

Compare look, sound, meaning and overall impression. The same meaning can lose to different look and sound when that meaning is common in the trade (DANKE).

The goods

Delete or narrow the overlapping items; you can narrow, never broaden. Goods are judged as written in the application and registration, not as actually sold.

A crowded field

Many active third-party registrations for similar goods can show a word is weak in meaning; only proof of their use in the US shows weakness in the market (TMEP § 1207.01(d)(iii)).

Consent

The factors include: both parties agree, separate channels, limited fields of use, steps against confusion, and time in use without confusion (TMEP § 1207.01(d)(viii)).

Put everything in before appeal. "The record should be complete prior to the filing of an appeal" (37 C.F.R. § 2.142(d)). Evidence found later needs a request to suspend the appeal and remand, as in Gasparilla.

Madrid applications. Six months to answer and no extension. The response must come from a US-licensed attorney, as for any applicant domiciled outside the United States or its territories (37 C.F.R. § 2.11(a)).

About this briefing. Written from the decisions themselves (public records of the USPTO and the courts); mark images are the drawings on file at the USPTO. Fees as shown in the USPTO fee schedule, checked 13 October 2026. General information for trademark professionals, not legal advice on any matter; reading it creates no attorney-client relationship. Attorney advertising. To receive no further issues, reply "stop".

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