

Trademark Trial and Appeal Board

60th
1958 Anniversary 2018



"We have our trials, but our work is appealing"



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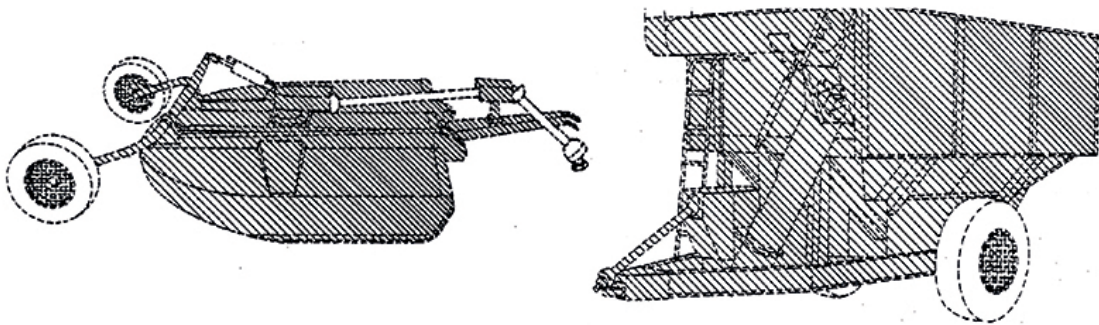


Trademark Trial and Appeal Board

"We have our trials, but our work is appealing"



In re John Deere & Co., 7 USPQ2d 1401 (TTAB 1988)



Marks: color scheme consisting of green machine body with yellow wheels
(body design illustrative and does not form part of mark)

Goods: Agricultural, lawn and garden machines and tractors, trailers, wagons and carts

Decision: Color when applied to goods in some definite arbitrary manner or design can function as a trademark if recognized in the trade and/or by purchasers as identifying and distinguishing source of product. The colors green and yellow applied to the body and wheels do not perform any utilitarian function.

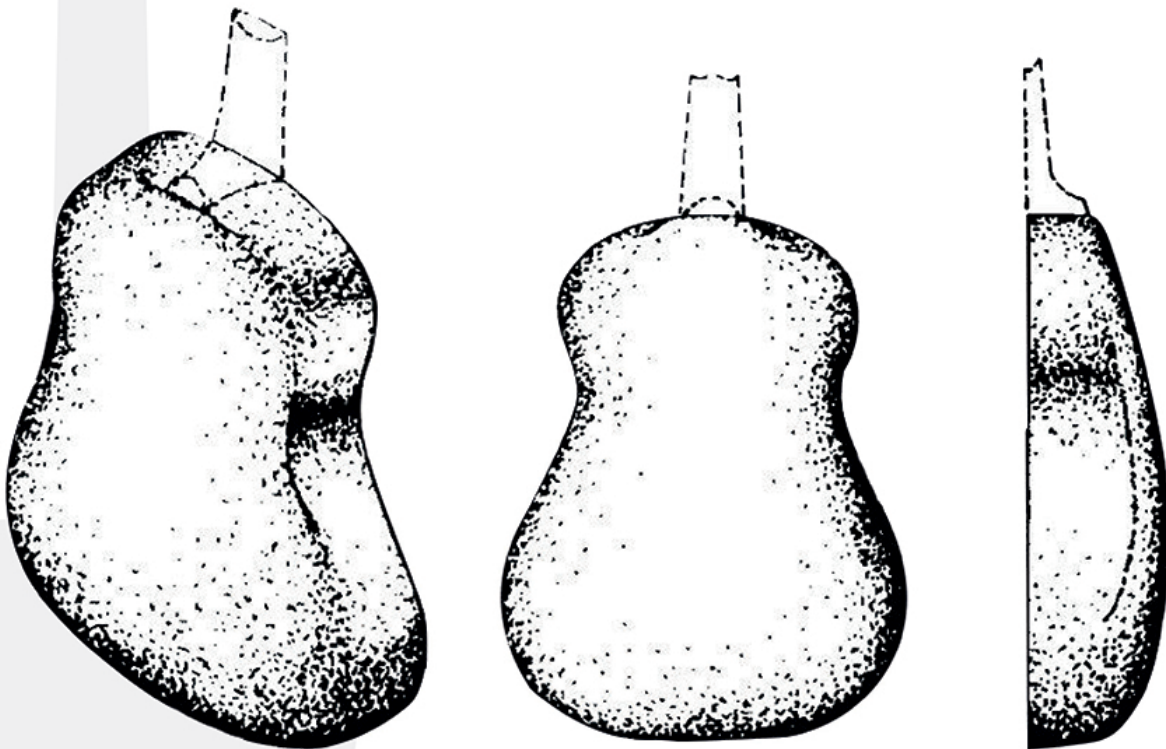
Registration as trademark permitted.

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In re Ovation Instruments, Inc. 201 USPQ 116 (TTAB 1978)



Decision: Round shaped bowl configuration not primarily functional or utilitarian.

Registration as trademark for guitars permitted.

UNITED STATES
PATENT AND TRADEMARK OFFICE

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Stardust, Inc. v. Birdsboro Knitting Mills, Inc., 119 USPQ 270 (TTAB 1958)

First Board Decision

Mark: Birdsboro Knitting Mills applied to registered STAR WEAR for hosiery, slips, pajamas. Stardust, owner of registered mark STARDUST for hosiery and slips, opposed the application.



The only question is whether purchasers are likely to assume that women's apparel bearing STAR WEAR and STARDUST come from a single source.

Decision: Considered in their entirety, Applicant's mark so resembles Opposer's mark that there is a likelihood of confusion. Opposition sustained; registration of STAR WEAR refused.

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In re N.V. Organon, 79 USPQ2d 1639 (TTAB 2006)

The Board's first case considering the registrability of flavor or taste as a trademark.

Mark: "Orange flavor" for antidepressants in quick-dissolving pills.

Critical inquiry: Would the "orange flavor" be perceived as a source indicator or merely as a flavor of the pharmaceutical?

Applicant's pills are designed to dissolve on patient's tongue; there is a practical need for the medicine to have an appealing taste. Even though there are alternative flavors, that does not mean Applicant's orange flavor is not functional.

Because flavor is generally seen as a characteristic of the goods, rather than as a trademark, a flavor, just like color and scent, cannot be inherently distinctive.

Decision: Refusal to register affirmed.



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Daphne Leeds

First woman Assistant Commissioner

Active member of the ABA committee that participated in drafting the Trademark Act.
In 1955, she advocated creating an administrative board for trademark appeals.



Thanks to the USPTO's sophisticated online facilities, the services and proceedings of the TTAB are accessible to interested parties from any place with suitable internet access, and parties can generally participate in proceedings without ever having to physically visit the TTAB's offices in Alexandria, Virginia. In both appeals and trials, virtually all documents and supporting evidence must be filed with the TTAB in electronic form through the TTAB's dedicated e-filing system. Filings are open to the public and easily viewable in the TTAB's electronic case files, but confidential business materials can be filed in a manner that prevents public access.

The TTAB's professionals are highly experienced and dedicated to resolving trademark registration disputes fairly, in accordance with the law, while affording parties consistent and predictable procedures and procedural due process protections in the presentation of their cases. But the TTAB's decisions are not necessarily the final word on the registration of marks: the Federal courts remain an appeal option for parties seeking review of TTAB decisions.

We invite you to peruse our website, at www.uspto.gov/ttab, for more information.

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60th Anniversary

1958 - 2018

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Happy 60 Years TTAB!

1958-2018

At the Trademark Trial and Appeal Board (TTAB) we like to say: "We have our trials, but our work is appealing." So what does that mean, exactly? The TTAB's 60th birthday in 2018 offers the perfect opportunity to take a closer look.

Businesses register their trademarks, service marks, collective marks, and certification marks with the United States Patent and Trademark Office (USPTO) to obtain the special legal protections afforded by the Trademark Act of 1946. But sometimes disputes arise about whether the USPTO should allow a mark to be registered. When those disputes arise, an administrative body within the USPTO called the TTAB is charged with determining the right to register the mark.

When a USPTO Trademark examining attorney refuses to register a mark, the applicant may appeal to the TTAB. In an appeal, the TTAB reviews the full record of the application for registration, all evidence put in the record by the applicant and the examining attorney, and the briefs discussing the legal issues.

When two or more unrelated businesses disagree about whether a mark should be registered, or whether an existing registration should be cancelled or limited, they can bring their dispute to the TTAB for a trial. The parties to the trial proceeding can present testimony (which may be cross-examined), documentary evidence, and briefs. The parties also are allowed to "take discovery" of each other, to avoid undue surprise between them as to the nature of the evidence and testimony they will face at trial. The TTAB provides the parties options to tailor the trial process to their needs and, if they agree, to streamline or accelerate the trial process. Testimony in TTAB trials is not presented in person before the TTAB. Instead, parties submit either sworn affidavits or transcripts of testimony taken at a deposition before a court reporter, which are often supported by exhibits.

Each appeal or trial is decided by three Administrative Trademark Judges ("ATJs") who issue a written decision. Panels of three ATJs also work with Board Interlocutory Attorneys ("Interlocs") to decide all dispositive motions that arise during a trial, such as motions to dismiss or for summary judgment. In both appeals and trials the participants may request an oral hearing before the assigned panel of ATJs. A party, examining attorney or Board judge can participate in such hearings via video conference from a remote location.

TTAB staff currently includes 24 ATJs, and 14 Interlocutory Attorneys. One Interloc is assigned to oversee the conduct of each trial, be available to conference with the parties, and resolve procedural disputes. Often the Interloc will participate in the parties' initial settlement and discovery planning conference to help them develop a plan for trying the case. When potentially dispositive motions arise, the Interloc works closely with the panel of ATJs to decide the motion.

Eleven paralegals handle much of the initial processing of appeals and trials, manage case records, process uncontested motions, and respond to status inquiries from the parties. Trademark Information Specialists are available by telephone and email to handle customer service inquiries. They are a valuable resource for parties or attorneys who are new to the TTAB or parties who are not represented by counsel. They can help users navigate the TTAB's online systems, direct them to online versions of the TTAB's rules and regulations, and help them find publicly available information about their cases. Additional administrative staff includes a chief clerk, IT and data specialists, and a hearing and decision specialist.

USPTO Headquarters, Alexandria Virginia

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TTAB 60th Anniversary Project

I collaborated directly with the client to design posters, brochures, and invitations while ensuring all materials comply with 508 accessibility standards. Additionally, I documented the event through our design firm, providing professional photographic service.



logo identity designs

