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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

B&B HARDWARE, INC. *v.* HARGIS INDUSTRIES, INC., DBA SEALTITE BUILDING FASTENERS ET AL., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 13–352. Argued December 2, 2014—Decided March 24, 2015

Respondent Hargis Industries, Inc. (Hargis), tried to register its trademark for SEALTITE with the United States Patent and Trademark Office pursuant to the Lanham Act. Petitioner, B&B Hardware, Inc. (B&B), however, opposed registration, claiming that SEALTITE is too similar to B&B's own SEALTIGHT trademark. The Trademark Trial and Appeal Board (TTAB) concluded that SEALTITE should not be registered because of the likelihood of confusion. Hargis did not seek judicial review of that decision.

Later, in an infringement suit before the District Court, B&B argued that Hargis was precluded from contesting the likelihood of confusion because of the TTAB's decision. The District Court disagreed. The Eighth Circuit affirmed, holding that preclusion was unwarranted because the TTAB and the court used different factors to evaluate likelihood of confusion, the TTAB placed too much emphasis on the appearance and sound of the two marks, and Hargis bore the burden of persuasion before the TTAB while B&B bore it before the District Court.

Held: So long as the other ordinary elements of issue preclusion are met, when the usages adjudicated by the TTAB are materially the same as those before a district court, issue preclusion should apply. Pp. 8–22.

(a) An agency decision can ground issue preclusion. The Court's cases establish that when Congress authorizes agencies to resolve disputes, "courts may take it as given that Congress has legislated with the expectation that [issue preclusion] will apply except when a statutory purpose to the contrary is evident." *Astoria Fed. Sav. & Loan Assn.* v. *Solimino*, 501 U. S. 104, 108. Constitutional avoidance

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does not compel a different conclusion. Pp. 8–12.

(b) Neither the Lanham Act's text nor its structure rebuts the "presumption" in favor of giving preclusive effect to TTAB decisions where the ordinary elements of issue preclusion are met. *Astoria*, 501 U. S., at 108. This case is unlike *Astoria.* There, where exhausting the administrative process was a prerequisite to suit in court, giving preclusive effect to the agency's determination in that very administrative process could have rendered the judicial suit "strictly *pro forma*." *Id.,* at 111. By contrast, registration involves a separate proceeding to decide separate rights. Pp. 12–14.

(c) There is no categorical reason why registration decisions can never meet the ordinary elements of issue preclusion. That many registrations will not satisfy those ordinary elements does not mean that none will. Pp. 15–22.

(1) Contrary to the Eighth Circuit's conclusion, the same likelihood-of-confusion standard applies to both registration and infringement. The factors that the TTAB and the Eighth Circuit use to assess likelihood of confusion are not fundamentally different, and, more important, the operative language of each statute is essentially the same.

Hargis claims that the standards are different, noting that the registration provision asks whether the marks "resemble" each other, 15 U. S. C. §1052(d), while the infringement provision is directed towards the "use in commerce" of the marks, §1114(1). That the TTAB and a district court do not always consider the *same usages*, however, does not mean that the TTAB applies a *different standard* to the usages it does consider. If a mark owner uses its mark in materially the same ways as the usages included in its registration application, then the TTAB is deciding the same likelihood-of-confusion issue as a district court in infringement litigation. For a similar reason, the Eighth Circuit erred in holding that issue preclusion could not apply because the TTAB relied too heavily on "appearance and sound." Pp. 15–19.

(2) The fact that the TTAB and district courts use different procedures suggests only that sometimes issue preclusion might be inappropriate, not that it always is. Here, there is no categorical "reason to doubt the quality, extensiveness, or fairness," *Montana v. United States,* 440 U. S. 147, 164, n. 11, of the agency's procedures. In large part they are exactly the same as in federal court. Also contrary to the Eighth Circuit's conclusion, B&B, the party opposing registration, not Hargis, bore the burden of persuasion before the TTAB, just as it did in the infringement suit. Pp. 19–21.

(3) Hargis is also wrong that the stakes for registration are always too low for issue preclusion in later infringement litigation.

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When registration is opposed, there is good reason to think that both sides will take the matter seriously. Congress' creation of an elaborate registration scheme, with many important rights attached and backed up by plenary review, confirms that registration decisions can be weighty enough to ground issue preclusion. Pp. 21–22.

716 F. 3d 1020, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. GINSBURG, J., filed a concurring opinion. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 13–352

B&B HARDWARE, INC., PETITIONER *v.* HARGIS INDUSTRIES, INC., DBA SEALTITE BUILDING FASTENERS, DBA EAST TEXAS FASTENERS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[March 24, 2015]

JUSTICE ALITO delivered the opinion of the Court.

Sometimes two different tribunals are asked to decide the same issue. When that happens, the decision of the first tribunal usually must be followed by the second, at least if the issue is really the same. Allowing the same issue to be decided more than once wastes litigants' resources and adjudicators' time, and it encourages parties who lose before one tribunal to shop around for another. The doctrine of collateral estoppel or issue preclusion is designed to prevent this from occurring.

This case concerns the application of issue preclusion in the context of trademark law. Petitioner, B&B Hardware, Inc. (B&B), and respondent Hargis Industries, Inc. (Hargis), both use similar trademarks; B&B owns SEALTIGHT while Hargis owns SEALTITE. Under the Lanham Act, 60 Stat. 427, as amended, 15 U. S. C. §1051 *et seq.*, an applicant can seek to register a trademark through an administrative process within the United States Patent and Trademark Office (PTO). But if another party be-

lieves that the PTO should not register a mark because it is too similar to its own, that party can oppose registration before the Trademark Trial and Appeal Board (TTAB). Here, Hargis tried to register the mark SEALTITE, but B&B opposed SEALTITE's registration. After a lengthy proceeding, the TTAB agreed with B&B that SEALTITE should not be registered.

In addition to permitting a party to object to the registration of a mark, the Lanham Act allows a mark owner to sue for trademark infringement. Both a registration proceeding and a suit for trademark infringement, moreover, can occur at the same time. In this case, while the TTAB was deciding whether SEALTITE should be registered, B&B and Hargis were also litigating the SEALTIGHT versus SEALTITE dispute in federal court. In both registration proceedings and infringement litigation, the tribunal asks whether a likelihood of confusion exists between the mark sought to be protected (here, SEALTIGHT) and the other mark (SEALTITE).

The question before this Court is whether the District Court in this case should have applied issue preclusion to the TTAB's decision that SEALTITE is confusingly similar to SEALTIGHT. Here, the Eighth Circuit rejected issue preclusion for reasons that would make it difficult for the doctrine ever to apply in trademark disputes. We disagree with that narrow understanding of issue preclusion. Instead, consistent with principles of law that apply in innumerable contexts, we hold that a court should give preclusive effect to TTAB decisions if the ordinary elements of issue preclusion are met. We therefore reverse the judgment of the Eighth Circuit and remand for further proceedings.

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Trademark law has a long history, going back at least to

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