No. 19-2316

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SNYDER'S-LANCE, INC.; PRINCETON VANGUARD, LLC,

Plaintiffs-Appellants,

v.

FRITO-LAY NORTH AMERICA, INC.,

Defendant-Appellee.

On Appeal from the United States District Court for the
Western District of North Carolina,
No. 3:17-cv-00652-KDB-DSC

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

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March 18, 2020

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INTRODUCTION

Congress provided a party dissatisfied with "the decision" of the Trademark Trial and Appeal Board with two options for review: appeal to the Federal Circuit under 15 U.S.C. §1071(a), or file a district court action under 15 U.S.C. §1071(b). Although Congress reasonably provided that a party that seeks Federal Circuit review of "the decision" waives its ability to seek district court review of that same decision (and vice-versa), nothing in the text, context, sound policy, or precedent supports the perverse result that electing Federal Circuit review of a 2014 TTAB decision precludes district court review of a different TTAB decision issued years later. Indeed, that counterintuitive notion never occurred to Frito-Lay until the District Court raised it *sua sponte* two years into this case. Frito-Lay's belated effort to embrace this newfound theory falls well short of the mark. As to text, Frito-Lay merely repeats §1071's waiver language, which only begs the question of what is waived (district court review of the decision appealed or district court review of all subsequent TTAB decisions), and provides no answer for the balance of the relevant text. Frito-Lay cites no supporting legislative history, and it cannot explain why Congress would have wanted to discourage Federal Circuit appeals or create jurisdictional traps. And its only support is inapposite *dicta* in an unpublished district court decision. In short, there is a reason Frito-Lay's newfound statutory argument escaped it for two years: it is a misreading of §1071 and it cannot stand.

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