In the Supreme Court of the United States



REBECCA CURTIN,

Petitioner,

v.

UNITED TRADEMARK HOLDINGS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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October 3, 2025

QUESTION PRESENTED

Whether a party desiring to participate in an administrative agency proceeding, including a trademark opposition proceeding at the United States Patent and Trademark Office, must satisfy the zone-of-interests and proximate-causation tests set forth in *Lexmark International*, *Inc.* v. Static Control Components, *Inc.*, 572 U.S. 118 (2014), for causes of action in federal court.

PARTIES TO THE PROCEEDINGS

Petitioner and Appellant below

• Rebecca Curtin

Respondent and Appellee below

• United Trademark Holdings, Inc.

Note: The United States Patent and Trademark Office participated as amicus curiae before the U.S. Court of Appeals for the Federal Circuit.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Federal Circuit No. 2023–2140

Rebecca Curtin, Appellant, v. United Trademark Holdings, Inc., Appellee

Opinion: May 22, 2025

U.S. Trademark Trial and Appeal Board No. 91241083

Rebecca Curtin v. United Trademark Holdings, Inc..

Opinion: May 4, 2023

TABLE OF CONTENTS

Page
QUESTION PRESENTEDi
PARTIES TO THE PROCEEDINGSii
LIST OF PROCEEDINGSiii
TABLE OF AUTHORITIESvi
PETITION FOR A WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION1
STATUTORY PROVISIONS INVOLVED2
INTRODUCTION2
STATEMENT OF THE CASE
I. Legal Background5
A. Trademark Registration5
B. Entitlement to Oppose or Cancel Trademark Registration
II. Background of the Case 8
A. Opposition Proceedings 8
B. The Decision Below 12
REASONS FOR GRANTING THE PETITION 14
I. The Federal Circuit Has Split from Other Circuits, and Its Decisions are Inconsistent With Precedent of This Court
A. The Court should grant certiorari in this case because the decision below marks the culmination of the Federal Circuit's break from other circuits on a basic principle of administrative law

	TABLE OF CONTEN	NTS – Continued	
		Pa	age
	B. The Federal Circ conflicts with decision	cuit's decision also ions of this Court	19
II.	The Importance of the	Issues Warrants This	
	Court's Review		23
CON	CLUSION		26
	APPENDIX TABLE	OF CONTENTS	
-	ion, U.S. Court of Appea Federal Circuit (May 22,		1a
· •	ion, U.S. Trademark Tri		25a

TABLE OF AUTHORITIES

Page	e
CASES	
Alexander Sprunt & Son, Inc. v. United States, 281 U.S. 249 (1930)	1
Amoskeag Mfg. Co. v. D. Trainer & Sons, 101 U.S. 51 (1879)28	5
Ass'n of Battery Recyclers, Inc. v. EPA, 716 F.3d 667 (D.C. Cir. 2013)	2
Associated Gen. Contractors of Cal., Inc. v. Ca. State Council of Carpenters, 459 U.S. 519 (1983)20	0
Bennett v. Spear, 520 U.S. 154 (1997)22	2
Brazoria County, Tex. v. EEOC, 391 F.3d 685 (5th Cir. 2004)18	8
Corcamore, LLC v. SFM, LLC, 978 F.3d 1298 (Fed. Cir. 2020) 10, 11, 12, 15 	
Davis v. Passman, 442 U.S. 228 (1979)	2
Delaware & Hudson Canal Co. v. Clark, 80 U.S. 311 (1871)	5
Ecee, Inc. v. Fed. Energy Regul. Comm'n, 645 F.2d 339 (5th Cir. 1981)14, 17, 18	8
Empresa Cubana del Tabaco v. Gen. Cigar Co., 753 F.3d 1270 (2014)	5
Envirocare of Utah, Inc. v. Nuclear Regul. Comm'n, 194 F.3d 72 (D.C. Cir. 1999) 17, 18, 19	9

TABLE OF AUTHORITIES - Continued
Page
FCC v. Pottsville Broad. Co., 309 U.S. 134 (1940)
FDRLST Media, LLC v. Nat'l Labor Relations Bd., 35 F.4th 108 (3d Cir. 2022)
Fly v. Heitmeyer, 309 U.S. 146 (1940)
Gardner v. FCC, 530 F.2d 1086 (D.C. Cir. 1976)19
Lexmark International, Inc. v. Static Control Components, Inc., 572 U.S. 118 (2014)i, 3, 10-13, 15,
Lipton Indus., Inc. v. Ralston Purina Co., 670 F.2d 1024 (CCPA 1982)
Norac Co. v. Occidental Petroleum Corp., 197 USPQ 306 (TTAB 1977)7
Park'n Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189 (1985)
Pension Ben. Gar. Corp. v. LTV Corp., 496 U.S. 633 (1990)
Pittsburgh & W.Va. Ry. v. United States, 281 U.S. 479 (1930)
Ritchie v. Simpson, 170 F.3d 1092 (Fed. Cir. 1999) 7-9, 12, 14, 15
Shepard v. NLRB, 459 U.S. 344 (1983)
Warth v. Seldin, 422 U.S. 490 (1975)

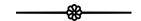
TABLE OF AUTHORITIES - Continued Page CONSTITUTIONAL PROVISIONS **STATUTES** 15 U.S.C. § 1051 et seq., Lanham (Trademark) Act, Pub. L. No. 79-489, 60 Stat. 427 15 U.S.C. § 1052.......

TABLE OF AUTHORITIES - Continued
Page
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S. Rep. No. 1333, 79th Cong. 2d Sess. (1946)
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Black's Law Dictionary (11th ed. 2019)
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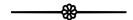
PETITION FOR A WRIT OF CERTIORARI

Petitioner Rebecca Curtin respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Federal Circuit.



OPINIONS BELOW

The Federal Circuit's opinion is reported at 137 F.4th 1359 and is reproduced in the appendix to this petition at Pet.App.1a-24a. The underlying order of the United States Patent and Trademark Office is not reported and is reproduced in the appendix to this petition at Pet.App.25a-39a.



JURISDICTION

The Federal Circuit entered judgment on May 22, 2025, Pet.App.1a. On August 6, 2025, the Court entered an order extending the time to file a petition for a writ of certiorari to October 3, 2025. (No. 25A157) This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

15 U.S.C. § 1063

Section 13 of the Lanham Act, codified in 15 U.S.C. § 1063 provides in relevant part that:

Any person who believes that he would be damaged by the registration of a mark upon the principal register... may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after publication under subsection (a) of section 1062 of this title of the mark sought to be registered.

INTRODUCTION

Eighty-five years ago, this Court admonished that "[u]nless [the] vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine." *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 144 (1940). With regard to who may participate in agency proceedings, the circuit courts have generally followed the Court's admonition. For instance, the Third, Fifth, and D.C. Circuits have held that the doctrines restricting access to federal courts, such as the zone-of-interests test, do not apply to administrative agencies. As the Third Circuit put it,

"[a]gencies 'are not constrained by Article III of the Constitution; nor are they governed by judicially created standing doctrines restricting access to the federal courts,' including the zone-of-interests test." *FDRLST Media, LLC v. Nat'l Labor Relations Bd.*, 35 F.4th 108, 119 (3d Cir. 2022). The decision below, however, marks the culmination of the Federal Circuit's break from these circuits and this Court's admonition.

In the decision below, the Federal Circuit held that to participate in an opposition to the registration of a trademark before the United States Patent and Trademark Office ("PTO"), the petitioner must satisfy the framework for statutory causes of action set forth in Lexmark International, Inc. v. Static Control Components, Inc., 572 U.S. 118 (2014)—namely, the petitioner must satisfy the zone-of-interests and proximate-causation tests. The Federal Circuit's holding directly conflicts with the decisions of the Third, Fifth, and D.C. Circuits, which hold that the zone-of-interests and similar tests do not apply to administrative agencies. It also conflicts with decisions of this Court. The Court has long held that there are wide differences between administrative agencies and courts and that the standards applicable to one should not necessarily be applied to the other. In *Lexmark*, the Court addressed only the standards applicable to a plaintiff bringing a cause of action in federal court. The notion that an agency proceeding could be a "cause of action" conflicts with this Court's explanation that "[t]he concept of a 'cause of action' is employed specifically to determine who may *judicially* enforce the statutory rights or obligations." Davis v. Passman, 442 U.S. 228, 239 (1979) (emphasis added). The Federal Circuit's imposition of the standards applicable to plaintiffs in federal court

on agency petitioners flies in the face of the basic fact that agencies are not courts, and the standards for participating in agency proceedings differ from those for participating in district court litigation.

The Court's immediate review is warranted to correct the Federal Circuit's recent break from wellestablished principles enshrined in numerous decisions of the Circuit Courts and this Court. The Court should also grant review to prevent the Federal Circuit's decisions from affecting numerous other agencies. This case arises from a trademark opposition proceeding before the PTO. However, the Federal Circuit has jurisdiction to review decisions from numerous other federal agencies. If left unchecked, the Federal Circuit's decisions could have far reaching consequences for various administrative schemes. As it stands, the Federal Circuit's decisions cut off administrative participation by consumers in trademark registration and cancellation proceedings. Consumers are now wholly dependent on marketplace sellers to challenge deficient trademarks before the PTO. This is so even though a core purpose of the Lanham Act is "to protect the ability of consumers to distinguish among competing producers." Park'n Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189, 198 (1985) (emphasis added) (citing S. Rep. No. 1333, at 3, 5), and even though Congress permits "[a]ny person who believes that he would be damaged" to participate in a proceeding. 15 U.S.C. § 1063; see id., § 1064.

The Court should grant the petition.

STATEMENT OF THE CASE

I. Legal Background

A. Trademark Registration

The Lanham Act erects a system "for the registration and protection of trademarks used in commerce." Lanham (Trademark) Act, Pub. L. No. 79-489, 60 Stat. 427 (July 5, 1946), codified at 15 U.S.C. § 1051 et seq. Among other things, the Act establishes an administrative process for trademark owners to register their marks on the principal register, which is administered by the PTO, and sets forth the conditions for registration. See 15 U.S.C. §§ 1051-52.

Once an applicant files a trademark application, the PTO refers the application to a PTO examining attorney. 15 U.S.C. § 1062(a). If the PTO examining attorney determines that the applicant is not entitled to register the mark, then it provides the applicant with an opportunity to respond to the rejection or amend the application. *Id.*, § 1062(b). If, on the other hand, it appears to the PTO examining attorney that the applicant is entitled to register the mark, the PTO "shall cause the mark to be published in the Official Gazette of the Patent Office." *Id.*, § 1062(a).

Under Section 13 of the Act, "[a]ny person who believes that he would be damaged by the registration of a mark . . . may . . . file an opposition" with the PTO within 30 days of that publication. 15 U.S.C. § 1063(a). In every opposition proceeding, the PTO Director must give notice to all parties and "shall direct a Trademark Trial and Appeal Board to determine and

decide the respective rights of registration." *Id.*, § 1067. "In such proceedings," the Board (on behalf of the Director) "may refuse to register the opposed mark, . . . may modify the application . . . , or may register the mark." *Id.*, § 1068. "Unless registration is successfully opposed," the PTO shall register the trademark, issue a certificate of registration, and publish a notice of registration. *Id.*, § 1063(b).

The Lanham Act also establishes a process for challenging and enforcing trademarks after registration. Section 14 of the Lanham Act permits "[a]ny person who believes that he is or will be damaged by" a registered trademark to initiate a proceeding with the PTO by "applying to cancel said registration." 15 U.S.C. § 1064(a)-(c). The Lanham Act further provides trademark owners various avenues to enforce a registered mark in court through a civil action. See 15 U.S.C. §§ 1114(1)(a), 1125(a)(1)(A).

B. Entitlement to Oppose or Cancel Trademark Registration

Under the plain language of the Lanham Act, "[a]ny person" who believes he or she will be damaged by registration of a trademark may oppose or cancel the registration. 15 U.S.C. §§ 1063(a), 1064(a). In assessing the entitlement to oppose or cancel, the Board for many years concluded that the "determinative issue" was whether the petitioner "would be 'damaged' by the registration. Lipton Indus., Inc. v. Ralston Purina Co., 670 F.2d 1024, 1026 (CCPA 1982). Later, the Board determined that the purpose of requiring a petitioner to demonstrate statutory standing was "to preclude meddlesome parties from instituting proceedings as self-appointed guardians of the purity of the Register."

Id. (quoting Norac Co. v. Occidental Petroleum Corp., 197 USPQ 306, 320 (TTAB 1977)). To serve that purpose, the Board required a party to demonstrate a "real interest in the proceeding." Id. (quoting Norac, 197 USPQ at 320).

The Board and Federal Circuit continued developing the statutory standing requirements for petitioners before the Board, culminating in the Federal Circuit's decision in Ritchie v. Simpson, 170 F.3d 1092 (Fed. Cir. 1999). In Ritchie, the Federal Circuit explained that standing before an agency differs from standing before a federal court because the "case' and 'controversy' restrictions for standing do not apply to matters before administrative agencies and boards. such as the PTO." Id., at 1094. In so stating, the court relied on decisions emphasizing that this principle extends to "prudential standing requirements," as well as "case or controversy" requirements. Id. Thus, the starting point for assessing administrative standing was the statute, which requires a showing that the petitioner would be damaged by the registration. Id., at 1095. Nevertheless, looking to long-standing precedent such as Lipton and Norac, the Ritchie court explained that a person is entitled to oppose or cancel a trademark registration when that person can show, in addition to would-be damage, two other requirements. The "opposer must have [1] a 'real interest' in the proceedings and must have [2] a 'reasonable' basis for his belief of damage." Id., at 1095. The Ritchie court explained that the 'real interest' requirement mandates that the opposer have "a legitimate personal interest in the opposition," i.e., a "personal stake in the outcome." Id. The "reasonable basis" requirement means that the belief in damage has "a 'reasonable basis in fact" and can be shown in several ways, including by showing that others share the same belief. *Id*.

II. Background of the Case

United Trademark Holdings ("UTH") sells dolls, including dolls with long blonde hair under the name "Rapunzel." Pet.App.5a. Rapunzel is the name of a fairy-tale character known in various forms for hundreds of years. See Pet.App.5a-6a.¹ UTH nonetheless filed a trademark application in 2017 to register the term RAPUNZEL as a trademark for dolls and toy figures. Id., at 5a. A PTO examiner approved the application, and the PTO published notice of registration in the Official Gazette on April 10, 2018. Id.

A. Opposition Proceedings

Within 30 days of that publication, Curtin filed a notice of opposition under 15 U.S.C. § 1063. Pet.App.5a. Curtin is a law professor but, more importantly, a long-time, avid collector of dolls and toy figures of fairy-tale characters. CAFC JA 226, 1424-57, 2128-51, 2640. Among the dolls and toys that Curtin collects are those featuring the fairy-tale character Rapunzel. *Id.*, at 266, 1569-1620, 2640-41. As amended, Curtin's notice of opposition showed that she satisfied both the statute's and *Ritchie*'s requirements to oppose registration of UTH's registration. In particular, Curtin showed that as a longtime collector of fairy-tale dolls, she has a legitimate interest in the outcome of the proceeding. She explained that if UTH were to obtain trademark protection for the name of a famous fairy-tale character,

 $^{^1}$ Joint Appendix 263-64, 1411, 1414, 1949-72, $Curtin\ v.\ United\ Trademark\ Holdings,\ Inc.,$ 23-2140 (Fed. Cir. filed Mar. 19, 2024) (hereinafter "CAFC JA").

consumers like her would be denied healthy marketplace competition for products bearing that name. *Id.*, at 266, 2646; Pet.App.5a-6a. As a result, she and other consumers would likely face an increased cost of dolls and types that depict Rapunzel, a fairy-tale character long in the public domain. CAFC JA 266, 2646; Pet. App.5a. Additionally, registration of the trademark would chill the creation of new dolls and toys based on the fairy-tale character, reducing or eliminating the benefit of diverse interpretations of the character. CAFC JA 266, 2647; Pet.App.5a-6a. Curtin further showed that her belief was reasonable by providing affidavits from several organizations and interest groups that expressed belief that allowing registration of RAPUN-ZEL would cause damage and over 400 petition signatures, including from collectors and other consumers. all of whom shared her belief. CAFC JA 266-67, 278-98, 2700-21, 2709; Pet.App.6a.

Having shown her entitlement to oppose registration of UTH's proposed trademark, Curtin argued that the proposed mark is descriptive, generic, and fails to function as a trademark because "Rapunzel" is the name of a fairy-tale character known in various forms for hundreds of years and because the class of goods for which UTH attempted to register its mark includes dolls and toys that represent the Rapunzel character. Pet.App.5a; CAFC JA 263-64, 1411, 1414, 1949-72.

In response to Curtin's entrance into the agency proceeding, UTH moved to dismiss, contending that Curtin lacked standing to oppose registration. The Board denied the motion, looking to the standard reiterated in *Ritchie* and stating that Curtin had "sufficiently alleged that she has a direct and personal stake in the outcome of the proceeding and that her belief of damage

has a reasonable basis in fact." CAFC JA 182; see Pet.App.27a & n.4.

After approximately two years and summary judgment briefing, the Board changed course, denying Curtin's motion for summary judgment by questioning her standing to oppose registration. Pet.App.25a-26a. The Board then *sua sponte* bifurcated the proceeding into two phases with the first phase focused on Curtin's entitlement to oppose. *Id.*, at 27a; *id.*, at 6a. After proceedings on this first phase, the Board concluded that Curtin lacked entitlement to oppose UTH's registration and dismissed her opposition. *Id.*, at 6a. The Board reached its conclusion by relying on this Court's decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), and the Federal Circuit's decision in *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298 (Fed. Cir. 2020).

In Lexmark, this Court addressed "whether . . . Static Control Components, Inc., may sue . . . Lexmark International, Inc." in federal court "for false advertising under the Lanham Act, 15 U.S.C. § 1125(a)." Lexmark, 572 U.S., at 120. The Court explained that the guestion in the case turned on "whether Static Control falls within the class of plaintiffs whom Congress has authorized to sue under § 1125(a)." Id., at 128. According to the Court, "a statutory cause of action extends only to plaintiffs whose interests 'fall within the zone of interest protected by the law invoked." Id., at 129. The Court explained that the "zone-of-interests test" had been placed "under the 'prudential' [standing] rubric in the past," but that is not the appropriate place for it. Id., at 127. Instead, the zone-of-interests inquiry is part of determining whether a plaintiff has a cause of action—i.e., "[w]hether a plaintiff comes within 'the

zone of interests' is an issue that requires [a court] to determine . . . whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." *Id.* Additionally, statutory causes of action are limited to plaintiffs whose injuries are proximately caused by a violation of the statute. *Id.*, at 132. The Court held that Static Control had sufficient allegations to demonstrate a cause of action. *Id.*, at 140.

In Corcamore, the Federal Circuit imposed the Lexmark framework in assessing whether a petitioner had standing to petition the PTO to cancel an existing trademark registration in an agency cancellation proceeding under § 1064. There, Corcamore had argued that the Board erred by granting default judgment against it, in particular because the petitioner, SFM LLC, lacked standing to petition to cancel the mark. 978 F.3d, at 1299. The Federal Circuit concluded that Lexmark provided the applicable framework for assessing whether SFM was entitled to petition to cancel the trademark. Id., at 1304. The court stated that an administrative cancellation proceeding under § 1064 is "a statutory cause of action" and Lexmark's framework applied, namely "zone of interests and proximate causation." Id.; see id., at 1305 ("We thus hold that the Lexmark zone-of-interests and proximatecausation requirements control the statutory cause of action under § 1064.").

Just as *Corcamore* extended *Lexmark*'s applicability from federal court actions to § 1064 agency cancellation proceedings, the Board in this case extended *Lexmark*'s applicability to § 1063 agency opposition proceedings. The Board concluded that a "plaintiff may oppose registration of a mark when doing so is within the zone of interests protected by the statute and she has

a reasonable belief in damage that would be proximately caused by registration of the mark." Pet.App.29a-30a. Looking to *Lexmark*'s discussion of false advertising, the Board further concluded that the Lanham Act's zone of interests protects only entities with commercial interests. *Id.*, at 32a, 35a. The Board thus found that a consumer does not fall within the zone of interests of the Lanham Act. *Id.*, at 35a. The Board also determined that Curtin had not shown proximate causation. *Id.*, at 37a-39a. The Board thus dismissed the proceeding. *Id.*, at 39a

B. The Decision Below

Curtin appealed the Board's decision to the Federal Circuit. Curtin argued that the proper test for assessing whether Curtin is entitled to oppose UTH's registration of RAPUNZEL is the long-standing one reiterated in Ritchie and that the Board erred in imposing the Lexmark framework (requiring a zone-of-interests test and proximate causation). The Federal Circuit rejected that argument, concluding that the "Board correctly applied the *Lexmark* framework in assessing whether Ms. Curtin was entitled to bring her opposition to UTH's mark under § 1063." Pet.App.15a. After discussing the *Lexmark* framework for causes of action. the court relied on *Corcamore's* statement that "there is 'no principled reason why the analytical framework articulated by the Court in *Lexmark* should not apply' to determine the class of parties who may seek cancellation of a mark under § 1064." Id., at 10a. The court rejected Curtin's argument that an administrative proceeding under § 1063 is not a cause of action and that the *Lexmark* framework applies only to causes of action. Id., at 12a. The court reasoned that opposition and cancellation proceedings should be treated the

same and rejected Curtin's position that Federal Circuit "caselaw regarding entitlement to challenge a trademark under § 1064 is inapplicable to entitlement to challenge a trademark under § 1063." *Id.*, at 15a; *id.*, at 13a-15a.

The Federal Circuit also rejected Curtin's argument that even under the Lexmark framework. Curtin is entitled to oppose UTH's registration because she is within the zone of interests of the Lanham Act and damage to her would be proximately caused by UTH's registration. Pet.App.15a-20a. The court concluded that a consumer like Curtin who seeks to challenge a registration as descriptive or generic does not fall within the zone of interests of the provisions of the Lanham Act that Curtin had invoked. Id., at 19a-20a. The Federal Circuit further concluded that Curtin could not establish proximate causation. In Lexmark, the Court held that "the intervening step of consumer deception is not fatal to a showing of proximate causation" by a seller for the false advertising claim at issue there. 572 U.S., at 133. However, the Federal Circuit concluded that the intervening step of harm to sellers was fatal to a showing of proximate causation by a consumer like Curtin. Specifically, the Federal Circuit concluded that Curtin's harm would be too remote under its case law because those harms "are downstream harms first suffered by a commercial actor." Pet.App.23a. The Federal Circuit therefore affirmed the Board's determination. Id., at 24a.



Certiorari is warranted because the decision below is the culmination of the Federal Circuit's break from other circuits and this Court's precedents on a fundamental principle of administrative law. In earlier years, the Federal Circuit recognized that entitlement to participate in an administrative proceeding, such as a trademark opposition, differed from the standards for maintaining a lawsuit in federal court. See Ritchie. 170 F.3d, at 1094-95 (citing Ecee, Inc. v. Fed. Energy Regul. Comm'n, 645 F.2d 339, 349-50 (5th Cir. 1981)) (explaining that neither "case or controversy or prudential standing requirements apply" to administrative adjudications). Through a series of subsequent decisions, however, the Federal Circuit has now departed from that principle of law. In doing so, it has split from decisions of other circuits and erected an approach that is at odds with this Court's precedent. The importance of the issue warrants this Cout's immediate review.

- I. The Federal Circuit Has Split from Other Circuits, and Its Decisions are Inconsistent With Precedent of This Court
 - A. The Court should grant certiorari in this case because the decision below marks the culmination of the Federal Circuit's break from other circuits on a basic principle of administrative law.

As the Federal Circuit explained in *Ritchie*, the long-standing test for assessing whether a party is

entitled to oppose a trademark registration before the Board was whether that party has a real interest in the proceeding and a reasonable belief of damage, 170 F.3d, at 1095. In Empresa Cubana—the first Federal Circuit decision after *Lexmark*—the court of appeals addressed the requirements to bring a cancellation proceeding under § 1064. See Empresa Cubana del Tabaco v. Gen. Cigar Co., 753 F.3d 1270 (2014); see Corcamore, 978 F.3d, at 1304 ("Empresa Cubana was this court's first post-Lexmark appeal to address the requirements to bring a cancellation proceeding under § 1064."). The court in *Empresa* noted the *Lexmark* Court's clarification that certain "issues sometimes discussed in terms of 'standing' are more appropriately viewed as interpretations of a statutory cause of action." 753 F.3d, at 1274. However, the court continued to apply the same test from *Ritchie*, stating that a "petitioner is authorized by statute to seek cancellation of a mark where it has both a real interest in the proceedings as well as a reasonable basis for its belief in damage." Id., at 1275; see Corcamore, 978 F.3d, at 1304.

In *Corcamore*, however, the Federal Circuit changed course. There, the Board had determined that the *Lexmark* framework did not apply to a § 1064 cancellation proceeding because *Lexmark* concerned a false advertising claim in a civil action, not a cancellation proceeding. 978 F.3d, at 1305. The court of appeals concluded, however, that "the Board's interpretation of *Lexmark* [was] unduly narrow." *Id.* The court reasoned that "§ 1064, like § 1125(a), is a statutory cause of action in the Lanham Act" because a cause of action merely requires "two elements: operative facts and the right or power to seek and obtain redress for infringement of a legal right." *Id.* Accordingly, the

court must "apply the 'traditional principles of statutory interpretation' articulated in *Lexmark*: zone of interest and proximate causation." *Id.*; *see id.*, at 1305 ("The *Lexmark* analytical framework applies to § 1064 and § 1125(a) because both are statutory causes of action."). The Federal Circuit faulted the Board for failing "to recognize that *Lexmark* binds all lower courts not only regarding § 1125(a) but also with respect to the analytical framework the Court used to reach its decision." *Id.*, at 1305. The court thus held that "the *Lexmark* zone-of-interests and proximate-causation requirements control the statutory cause of action analysis under § 1064." *Id.*

In the decision below, the Federal Circuit furthered its decision in *Corcamore*. The court explained that in Corcamore it "held there is 'no principled reason why the analytical framework articulated by the Court in Lexmark should not apply to determine the class of parties who may seek cancellation of a mark under § 1064." Pet.App. 10a. The court of appeals then "reject-[ed]" Curtin's argument that its "caselaw regarding entitlement to challenge a trademark under § 1064 is inapplicable to entitlement to challenge a trademark under § 1063." Id., at 15a. The court therefore concluded that the "Board correctly applied the Lexmark framework"—i.e., the zone-of-interests and proximatecausation tests—"in assessing whether Ms. Curtin was entitled to bring her opposition to UTH's mark under § 1063." Id., at 15a-16a. The Federal Circuit thus requires a petitioner to show "(1) her interests are within the zone of interests protected by the statute and (2) she has a reasonable belief in damage that would be proximately caused by registration" to

be entitled to an administrative adjudication under § 1063 and § 1064. *Id.*, at 15a.

Requiring satisfaction of a zone-of-interests and proximate-causation test for a petitioner to participate in an administrative proceeding conflicts with decisions of the Third, Fifth, and D.C. Circuits. In FDRLST Media, LLC v. National Labor Relations Board, 35 F.4th 108 (3d Cir. 2022), the Third Circuit addressed whether only those who are aggrieved by an alleged unfair labor practice may petition the NLRB. Id., at 115. In arguing that only those who are aggrieved may petition the Board, the employer relied on "judicial doctrines of standing and zone-of-interests." Id., at 119. The Third Circuit rejected the argument. It explained that "[t]he Board is not a court; it is not even a labor court; it is an administrative agency." Id. (quoting Shepard v. NLRB, 459 U.S. 344, 351 (1983)). And there "are wide differences between administrative agencies and courts." Id. (quoting Shepard, 459 U.S. at 351). The court held that "[a]gencies 'are not constrained by Article III of the Constitution; nor are they governed by judicially-created standing doctrines restricting access to the federal courts,' including the zone-ofinterests test." Id. (quoting Envirocare of Utah, Inc. v. Nuclear Regul. Comm'n, 194 F.3d 72, 74-75 (D.C. Cir. 1999)). Thus, provided the Board "acts within its statutory authority, standing analysis is irrelevant to the question of who can file an actionable charge." *Id*. The Federal Circuit's position that the zone-of-interests analysis governs administrative cancellation and opposition proceedings under § 1064 and § 1063 conflicts directly with the Third Circuit's decision.

The Federal Circuit's decision also conflicts with decisions of the Fifth Circuit. In *Ecee*, *Inc. v. Federal*

Energy Regulatory Commission, 645 F.2d 339 (5th Cir. 1981), the Fifth Circuit addressed challenges to FERC's regulations implementing the Natural Gas Policy Act. Id., at 344. Certain petitioners sought reversal on grounds that FERC lacked authority to grant standing to any person to protest and participate in section 503(b) proceedings. Id., at 348. The Fifth Circuit rejected the challenge. The court explained that "[a]dminstrative adjudications ... are not an article III proceeding to which either the 'case or controversy' or prudential standing requirements apply; within their legislative mandates, agencies are free to hear actions brought by parties who might be without standing if the same issues happened to be before a federal court." Id., at 349; see also Brazoria County, Tex. v. EEOC, 391 F.3d 685, 691 (5th Cir. 2004) ("Administrative adjudications . . . are not article III proceedings to which either the case or controversy or prudential standing requirements apply" (cleaned up)) (quoting Ecee, 645 F.2d, at 349). As the Lexmark Court explained, the Court previously had put the zone-of-interests test under the "prudential standing" rubric. 572 U.S., at 127. Thus, the Fifth Circuit's determination that "prudential standing requirements"—which include the zone-ofinterests test—do not apply to administrative proceedings directly conflicts with the Federal Circuit's decisions.

The Federal Circuit's decisions also conflict with the decisions of the D.C. Circuit, which has consistently held that the zone-of-interests test (and prudential standing) do not apply to parties before administrative agencies. For instance, in *Envirocare of Utah, Inc. v. Nuclear Regulatory Commission*, 194 F.3d 72 (D.C. Cir. 1999), the court of appeals addressed whether an

agency may refuse to grant a hearing to persons who would satisfy the criteria for judicial standing. Id., at 74. The D.C. Circuit explained that agencies "are not constrained by Article III of the Constitution; nor are they governed by judicially-created standing doctrines restricting access to federal courts." Id. It explained that "[i]udicially-devised prudential standing requirements, of which the 'zone of interests' test is one, are . . . inapplicable to an administrative agency acting within the jurisdiction Congress assigned to it." Id., at 75; see also Gardner v. FCC, 530 F.2d 1086, 1090 (D.C. Cir. 1976) ("The adjudication in the Commission . . . was not an Article III proceeding to which either the 'case or controversy' or prudential standing requirements apply."). This is because the "doctrine of prudential standing, like that derived from the Constitution, rests on considerations 'about the proper—and properly limited—role of the courts in a democratic society." Envirocare, 194 F.3d, at 75 (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)).

Thus, the Federal Circuit's cases culminating in the decision below directly conflict with the decisions of the Third, Fifth, and D.C. Circuits.

B. The Federal Circuit's decision also conflicts with decisions of this Court.

In *Lexmark*, the Court said nothing about entitlement to participate in agency proceedings, much less § 1063 opposition proceedings. The case concerned only causes of action in federal court. The question presented was whether "Static Control Components, Inc., *may sue* petitioner, Lexmark International, Inc." in a civil action "for false advertising." *Lexmark*, 572 U.S., at 120 (emphasis added). In clarifying the origin

of the analytical framework for its decision, the Court explained that its framework stemmed from cases addressing "the 'scope of the private remedy created by' Congress in § 4 of the Clayton Act, and the 'class of persons who [could] maintain a private damages action." Id., at 126 (quoting Associated Gen. Contractors of Cal., Inc. v. Ca. State Council of Carpenters, 459 U.S. 519, 529 (1983)) (emphases added). The purpose of the zone-of-interests test, the Court explained, was to determine "whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." Id., at 127. That is, the origin and purpose of the test concerned the "right to sue." Id. Indeed, the zone-ofinterests formulation itself, according to the Court, arose "as a limitation on the cause of action for judicial review conferred by the Administrative Procedure Act (APA)." Id., at 129. The Lexmark Court thus summarized "the question" presented as "whether Static Control falls within the class of plaintiffs whom Congress has authorized to sue under § 1125(a)," that is, "whether Static Control has a cause of action under the statute." *Id.*, at 128 (emphasis added).

The Federal Circuit's decisions imposing the *Lexmark* framework—which governs causes of action in federal court—on administrative agency proceedings conflicts with the "well settled" principle "that there are wide differences between administrative agencies and courts." *Shepard v. NLRB*, 459 U.S. 344, 351 (1983). As Justice Frankfurter explained some time ago, "[m]odern administrative tribunals are the outgrowth of conditions far different from those" giving rise to courts. *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 142 (1940). Agencies are vested "with power far exceeding and different from conventional judicial modes,"

precluding the imposition of judicial standards on agencies. Id. As Justice Frankfurter warned, "[u]nless these vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine." Id., at 144. Consistent with this warning, the Court has long recognized that the criteria for establishing administrative standing is permissibly less demanding than the criteria for judicial standing. See, e.g., Pittsburgh & W.Va. Ry. v. United States, 281 U.S. 479, 486 (1930); Alexander Sprunt & Son, Inc. v. United States, 281 U.S. 249, 255 (1930). The Federal Circuit, however, has now concluded that the standard for participating in administrative proceedings is the same as the standard for maintaining a federal lawsuit—the petitioner must satisfy the zone-of-interests and proximate-causation tests. Such a determination is fundamentally at odds with this Court's precedent.

The Federal Circuit purported to harmonize its decision with *Lexmark* by determining that a § 1063 or § 1064 administrative proceeding is a "cause of action." *See Corcamore*, 978 F.3d, at 1304 ("§ 1064, like § 1125(a), is a statutory cause of action provided in the Lanham Act."); Pet.App.14a-15a. But that determination also conflicts with this Court's precedents. As the Court has explained, "[t]he concept of a 'cause of action' is employed specifically to determine who may *judicially* enforce the statutory rights or obligations." *Davis v. Passman*, 442 U.S. 228, 239 (1979) (emphasis added). The Court further distinguished jurisdiction, standing, and relief from a "cause of action" by explaining that "cause of action is a question of

whether a particular plaintiff is a member of the class of litigants that may, as a matter of law, appropriately invoke the power of the *court*." *Id.*, at 239 n.18 (emphasis added).² And this is the same sense in which the Court used the term in *Lexmark*, stating that the appropriate view of the zone-of-interests test is "whether 'this particular class of persons ha[s] a right to sue under this substantive statute." 572 U.S., at 127 (quoting *Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 675-76 (D.C. Cir. 2013)). "In other words," the zone-of-interests test is part of the inquiry into whether a party "has a cause of action under the statute." *Lexmark*, 572 U.S., at 128. Nothing in the Court's cases suggests that a "cause of action" includes administrative proceedings.

Indeed, the very reason for the zone-of-interests test is at odds with the Federal Circuit's imposition of that test on administrative agencies. This Court has consistently emphasized that the zone-of-interests test, like other tests, "are 'founded in concern about the proper—and properly limited—role of the courts in a democratic society." Bennett v. Spear, 520 U.S. 154, 162 (1997) (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). The Court explained that tests assessing the zone of interests "serve to limit the role of the courts in resolving public disputes." Warth, 422 U.S., at 500. But admin-

² The Federal Circuit relied on *Black's Law Dictionary* in concluding that administrative proceedings before the Board are causes of action. *Corcamore*, 978 F.3d, at 1304. However, the *Black's Law Dictionary* relied upon in *Corcamore* makes clear that a "cause of action" is limited to proceedings "in court." *Cause of Action*, Black's Law Dictionary (11th ed. 2019) ("bases for suing"; a situation entitling a person "to obtain a remedy *in court* from another person" (emphasis added)).

istrative agencies are not constrained in the way federal courts are. Congress has invested "administrative agencies with power far exceeding and different from the conventional judicial modes for adjusting conflicting claims." *Pottsville Broad.*, 309 U.S., at 142. Imposing tests designed to limit the role of the judiciary on administrative agencies directly conflicts with this Court's precedents and the fundamental basis for such tests.

II. The Importance of the Issues Warrants This Court's Review

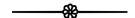
This Court's immediate review is warranted because of the importance of the issue and the potential impact of the Federal Circuit's decisions. The Federal Circuit has split from decisions of other Circuits and this Court on a fundamental issue of administrative law. The Court should grant review on that basis alone. See Fly v. Heitmeyer, 309 U.S. 146. 148 (1940) ("Because important questions of administrative law were involved, we granted certiorari."); see also Pension Ben. Gar. Corp. v. LTV Corp., 496 U.S. 633, 644 (1990) (granting certiorari "[b]ecause of the significant administrative law questions raised by this case."). But the Federal Circuit's unique position as the court of review for several administrative agencies also means the court's errant decisions could wreak havoc on several administrative schemes. The Federal Circuit reviews decisions from not only the U.S. Trademark Trial and Appeal Board, but also the U.S. Patent Trial and Appeal Board, Board of Contract Appeals, U.S. Merit Systems Protection Board, Office of Congressional Workplace Rights, Government Accountability Office Personnel Appeals Board, and U.S. International Trade Commission. See 28 U.S.C.

§ 1295. According to the Federal Circuit's decisions, the *Lexmark* framework applies anytime there are "operative facts and the right or power to seek and obtain redress." *Corcamore*, 978 F.3d, 1304. In other words, the Federal Circuit's reasoning could impose the *Lexmark* framework on any administrative adjudication. Thus, the Federal Circuit's decisions have the potential to severely impact the operation of numerous federal agencies, affecting who may petition those agencies. The Court should grant review now to ensure that the lower court's decisions do not adversely affect the petitioners before those agencies.

The Court's review is also important to preserve the ability for certain consumers to participate in the trademark registration process. The Federal Circuit imposed the zone-of-interests test on the road to deciding that no consumer can oppose the registration of a trademark on grounds that the trademark is descriptive or generic. A blanket bar against consumers participating in the administrative registration process is inconsistent with the Lanham Act. "From its earliest beginnings in legal history, trademark law has had the dual goals of both protecting property in a trademark and protecting consumers from confusion and deception." 1 McCarthy on Trademarks and Unfair Competition § 2:22 (5th ed.) (emphasis added). Indeed, this Court has remarked that a core purpose of the Lanham Act is "to protect the ability of *consumers* to distinguish among competing producers." Park'n Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189, 198 (1985) (emphasis added) (citing S. Rep. No. 1333, at 3, 5). The Senate Report on the Lanham Act indicates further that a purpose of the Act "is to protect the public so it may be confident that, in purchasing a

product bearing a particular trade-mark which it favorably knows, it will get the product which it asks for and wants to get." S. Rep. No. 1333, 79th Cong. 2d Sess. (1946). The Court has also recognized consumers' interest in preventing generic or descriptive trademarks: "No one can claim protection for the exclusive use of a trade-mark or trade-name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected." Delaware & Hudson Canal Co. v. Clark, 80 U.S. 311, 323 (1871) (emphasis added); see also Amoskeag Mfg. Co. v. D. Trainer & Sons, 101 U.S. 51, 53 (1879) (same). Without a doubt, consumers have a vested interest in trademarks and registration issues under the Lanham Act.

Restraints on who may maintain a lawsuit in federal court may make it difficult for consumers to participate in the judicial process. See Lexmark, 572 U.S., at 127-29. Administrative agencies, however, have a broader scope and different powers. *Pottsville Broad*., 309 U.S., 142. Consumers with sufficient interests should be allowed to participate in administrative proceedings dealing with trademark registrations. This is particularly so because if no marketplace seller desires to challenge the mark, "the public" would be left to bear the burden of the harm, and consumers may be the only ones left to ameliorate that harm. Delaware & Hudson Canal, 80 U.S., at 323. Here, UTH sought to register a trademark on the name of a fairy-tale figure that has been used throughout human history for hundreds of years. That name has entered the common lexicon to tell the story of a woman who uses her long hair to escape imprisonment from a tower. Denying the public's use of that name unquestionably harms the public. However, when no market-place seller stepped in to challenge UTH's registration, it fell to an avid collector to do so. The plain language of the Lanham Act would permit Curtin to oppose registration. 15 U.S.C. § 1063 ("Any person who believes that he would be damaged by the registration of a mark . . . may . . . file an opposition . . . ").



CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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October 3, 2025