No. 25-435

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**

## REPLY BRIEF

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**



**Statutes**

## REPLY BRIEF

The Court has long held that the standards applicable to administrative agencies and federal courts differ. Indeed, the Court eighty-five years ago instructed that the "vital differentiations between the functions of judicial and administrative tribunals" must be observed. *FCC* v. *Pottsville Broad. Co.*, 309 U.S. 134, 144 (1940). The Federal Circuit has disregarded that admonishment by imposing doctrines restricting access to federal courts, such as the zone-of-interests test, on administrative trademark opposition proceedings. That not only conflicts with this Court's decisions, but also with the decisions of the Third, Fifth, and D.C. Circuits, which hold that such restrictions do not apply to administrative agencies.

The principal response of Respondent United Trademark Holdings, Inc. ("UTH") ignores all of this. Instead, UTH applies the zone-of-interests and proximate-causation tests without truly grappling with their applicability, concluding that Petitioner Rebecca Curtin fails to satisfy those tests. UTH insists that these tests are necessary under *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118 (2014), but, as the Petition demonstrates, *Lexmark* applies solely to causes of action—i.e., proceedings in federal court. It says nothing about administrative proceedings. To this, UTH has no response. Nowhere in its Opposition does UTH confront this Court's explanation that a cause of action is a judicial determination of rights and obligations. And UTH's insistence—like the Federal Circuit's—that the same standards governing federal court actions apply to administrative proceedings conflicts with the decisions of other circuits and this Court's

precedent. The conflicts created by the Federal Circuit's decision warrant this Court's intervention.

The importance of the issue presented further reinforces the need for this Court's review. And this case is the appropriate vehicle to address the question presented. UTH suggests the result would be the same under the test that existed before the Federal Circuit's errant decision in this case. But that suggestion ignores the record in this case. The Trademark Trial & Appeal Board ("Board") concluded that Curtin satisfied the long-standing test from *Ritchie* v. *Simpson*, 170 F.3d 1092 (Fed. Cir. 1999), that governed who may participate in opposition proceedings. Only after improperly importing the test from *Lexmark*—requiring the zone-of-interests and proximate-causation tests—did the Board change position. The resolution of the question presented is of consequence to this case.

The Court should grant the Petition.

## DISCUSSION

### I. CERTIORARI IS WARRANTED TO RESOLVE THE SPLITS CREATED BY THE FEDERAL CIRCUIT'S DECISION.

As the Petition demonstrates, certiorari is warranted to address the Federal Circuit's break from other circuit courts on a fundamental issue of administrative law. Pet. 14–19. Requiring a petitioner to an administrative proceeding to satisfy the zone-of-interests and proximate-causation tests to participate in that proceeding conflicts with decisions of the Third, Fifth, and D.C. Circuits. Pet. 15–19. Yet, that is precisely what the Federal Circuit has done. Pet. 15–16. Anyone seeking to oppose the registration of a

trademark before the Board must satisfy the zone-of-interests and proximate-causation tests. Pet.App.15a–16a. The Federal Circuit reached its conclusion by adopting the framework from *Lexmark* that this Court announced for causes of action in federal court. Pet.App.15a. The Petition shows that this determination conflicts with the decisions of this Court. Pet. 19–23.

UTH has no response to the conflict between the Federal Circuit's decision and the decisions of this Court. Indeed, UTH ignores this Court's pronouncement that 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). And it ignores the Federal Circuit's conflicting determination that an administrative opposition proceeding is a "cause of action." Pet. 21–22. Nor does UTH have any response to the Court's long-standing case law establishing that the standards for administrative agencies differ from those for federal court. Pet. 20–21. The few responses UTH does offer do nothing to diminish the split created by the Federal Circuit's decision or the need for this Court's review.

a. The Petition demonstrates that the decision in this case marks the culmination of the Federal Circuit's break from other circuits on a core principle of administrative law. Pet. 14–19. UTH seemingly agrees that the Third, Fifth, and D.C. Circuits "have held that zone-of-interests and prudential standing doctrines do not apply to administrative proceedings." Opp. at 2. The Federal Circuit's decisions conflict with these holdings. Pet. 14–15. UTH nonetheless asserts that no circuit split exists because there is no conflict between the Federal Circuit and other circuits "'on the

same important matter.'" Opp. at 16 (quoting Sup. Ct. R. 10). UTH is mistaken. The Third, Fifth, and D.C. Circuits have directly addressed whether the zone-of-interests and similar tests apply to administrative proceedings and held that they do not. Pet. 17–19. On that "same important matter" the Federal Circuit has come to the contrary conclusion, holding that a petitioner must 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. Pet.App.15a.

UTH contends that the Third, Fifth, and D.C. Circuits addressed different administrative schemes and "no other circuit has addressed the precise question of who may oppose a trademark registration under § 1063." Opp. at 15–16. But the administrative law principle at issue here does not rest on the administrative scheme; it rests on the differing nature of administrative agencies and federal courts. See *FDRLST Media, LLC* v. *Nat'l Labor Relations Bd.*, 35 F.4th 108, 119 (3d Cir. 2022) (explaining that there "'are wide differences between administrative agencies and courts'" and stating that agencies are not "governed by judicially-created standing doctrines restricting access to the federal courts, including the zone-of-interests test"); see also *Envirocare of Utah, Inc.* v. *Nuclear Regulatory Comm'n*, 194 F.3d 72, 75 (D.C. Cir. 1999) (explaining that the zone-of-interests test, like other prudential standing principles, "rests on considerations 'about the proper—and properly limited—role of the courts in a democratic society'"). The Federal Circuit broke from these other circuits by imposing a test for causes of action in federal court

onto an administrative proceeding. That split warrants this Court's review.

b. UTH principally opposes certiorari by contending that the "issue is not one of Article III constitutional standing" but whether a petitioner "falls 'within the class of plaintiffs whom Congress has authorized to sue.'" Opp. at 6. UTH contends that *Lexmark* and the framework it established resolve that issue. Opp. at 6–7. UTH's arguments are far off the mark.

First, Article III constitutional standing has nothing to do with this case. UTH suggests in several places that Curtin attempts "to recast this case as presenting the question whether Article III standing requirements apply to administrative proceedings." Opp. at 2, 3, 6, 9. Not so. The issue is not and has never been one of Article III standing. The Petition makes clear that the flaw in the Federal Circuit's decisions arises from imposing the requirements to maintain a cause of action in federal court on petitioners before an administrative agency. As the Court explained in *Lexmark*, the zone-of-interests and proximate-causation tests are presumed elements of a "statutory cause of action." 572 U.S. at 129. And, *Lexmark* dealt only with causes of action in federal court. As the Petition demonstrates, an agency proceeding is not a "cause of action." Pet. 21–23. And the Court has reiterated that the standards applicable to administrative agencies differ from those applicable to federal courts. Pet. 20–21.

Second, UTH's argument that *Lexmark* resolves this case is misguided. UTH contends that the issue of who may petition to oppose a trademark registration is one of statutory interpretation and that is precisely what *Lexmark* addressed. Opp. at 6, 7, 9. According to UTH,

this means that *Lexmark* answers this case. But that contention misunderstands *Lexmark* and administrative law. In *Lexmark*, the Court dealt only with a cause of action in federal court for false advertising. Pet. 19–20. As the Court explained, "[i]n sum, the question this case presents is whether Static Control falls within the class of plaintiffs whom Congress has authorized to sue under § 1125(a). In other words, we ask whether Static Control has *a cause of action* under the statute." 572 U.S. at 128 (emphasis added). And as the Court has explained, a cause of action is a *judicial* determination of rights and obligations. *Davis*, 442 U.S. at 239. *Lexmark* says nothing about administrative proceedings, and the Court has long reiterated that the standards applicable to administrative proceedings differ from those in federal court. Pet. 21–22. Indeed, the Federal Circuit and UTH ignore Justice Frankfurter's admonition 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." *Pottsville Broad. Co.*, 309 U.S. at 142.

UTH nevertheless contends that determining who may participate in an opposition proceeding is an issue of statutory interpretation and that *Lexmark* provides the "framework for statutory interpretation." Opp. at 7, 9, 10; see *id.* at 6. But the particular principles of statutory interpretation and the framework in *Lexmark* are specific to causes of action—i.e., proceedings in federal court. The zone-of-interests test comes into play solely because courts "presume that a *statutory cause of action* extends only to plaintiffs whose interests 'fall within the zone of interests

protected by the law invoked.'" *Lexmark*, 572 U.S. at 129 (emphasis added). Similarly, courts "presume that a *statutory cause of action* is limited to plaintiffs whose injuries are proximately caused by violations of the statute." *Id.* at 132 (emphasis added). As the Petition shows, an administrative proceeding is not a "cause of action," Pet. 21–23, and so the interpretative presumptions do not apply. UTH has no response. In fact, nowhere in its opposition does UTH confront what a "cause of action" is. Contrary to UTH's mere assumption, *Lexmark* does not resolve this case. To the contrary, the Federal Circuit erred by merely imposing the *Lexmark* framework applicable to federal courts on administrative proceedings.

The Federal Circuit's split from other circuits and this Court warrants this Court's intervention.

## II. THIS CASE IS AN APPROPRIATE VEHICLE TO ADDRESS THE IMPORTANT ISSUES RAISED BY THIS CASE.

As the Petition demonstrates, the importance of the issues and potential impact of the Federal Circuit's decision warrants this Court's immediate review. Pet. 23. UTH does not dispute that the Federal Circuit's decision could impact numerous other administrative schemes. In fact, UTH's argument that *Lexmark* merely established a general principle of statutory interpretation without limit suggests just how broad the impact the Federal Circuit's ruling could have. UTH's other arguments are unavailing.

a. UTH contends that review is unwarranted because Curtin's position would supposedly burden the Patent & Trademark Office by allowing meddlesome parties to participate in proceedings based solely on a consumer's subjective belief of harm.

Opp. at 16–17. This is a strawman. Curtin has not advocated for a subjective-belief standard. Before the Federal Circuit erroneously adopted the *Lexmark* framework, the Board and Federal Circuit developed a standard for participants in opposition proceedings that ultimately culminated in the Federal Circuit's decision in *Ritchie* v. *Simpson*, 170 F.3d 1092 (Fed. Cir. 1999). That decision explained that a petitioner must have "a 'real interest' in the proceedings" and "a 'reasonable' basis for his belief of damage." *Id.* at 1095. That standard governed § 1063 opposition proceedings until the Board and Federal Circuit changed the standard by adopting the *Lexmark* framework in this case. And the purpose of the *Ritchie* standard was to weed out meddlesome parties and ensure that petitioners had an objectively sufficient stake in the proceeding. Requiring the Federal Circuit to return the Board to a *Ritchie*-like standard would both dispel UTH's policy concerns and cure the Federal Circuit's legal error of imposing a standard for federal causes of action on administrative proceedings.

b. Finally, UTH contends that review is unwarranted because the Federal Circuit opined that "the Board 'likely would have reached the same conclusion that Ms. Curtin was not entitled to bring her opposition based only on her interests as a consumer.'" Opp. at 6 (quoting Pet.App.13a n.3); *id.* at 18. But the Federal Circuit did not undertake an analysis or consider the case under the *Ritchie* standard. It offered only an off-hand remark in a footnote. Nor did the Federal Circuit's remark consider the actual record in this case. When Curtin entered the opposition proceeding, UTH moved to dismiss, contending that Curtin lacked entitlement to oppose registration. The Board denied the motion. Relying on

*Ritchie*, the Board stated 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 nearly two years and summary judgment briefing, the Board changed course, concluding that Curtin lacked entitlement to oppose registration. Pet.App.25a–26a. But to reach that conclusion, the Board adopted the *Lexmark* framework—imposing the zone-of-interests and proximate-causation tests. Pet.App.29a–30a, 32a, 35a, 37a–39a. In other words, the sole basis for the change in position on Curtin's entitlement to oppose registration was the erroneous adoption of the *Lexmark* framework. Whether that was error is of consequence in this case.

## CONCLUSION

For these reasons and those in the Petition, the Court should grant the Petition for a writ of certiorari.

Respectfully submitted,

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