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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner frames the question presented as whether the zone-of-interests and proximate-causation tests from *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 S. Ct. 1377, 1381, 188 L. Ed. 2d 392 (2014), apply to administrative agency proceedings. That framing is misleading. The Federal Circuit did not hold that Article III standing requirements govern agency proceedings; it held that the statutory text of 15 U.S.C. § 1063 must be interpreted using the traditional tools of statutory construction this Court identified in *Lexmark*. *See* App. 8a-9a. The actual issues decided below and presented by this case are:

1. Whether the Lanham Act's provision authorizing an opposition by "[a]ny person who believes that he would be damaged," 15 U.S.C. § 1063, confers a right to sue on any person with a merely subjective belief of harm—regardless of whether her interests bear any relation to the statute's purpose—or whether it requires a determination using traditional tools of statutory interpretation this Court identified in *Lexmark*, of the specific class of persons Congress authorized to bring such a challenge.

2. Whether the Federal Circuit correctly concluded that a consumer's asserted interests in market competition and lower prices fall outside the commercial zone of interests protected by the Lanham Act's prohibitions against generic and descriptive marks, and that such alleged injuries are too remote and derivative to satisfy the proximate-cause requirement.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Respondent United Trademark Holdings, Inc. states that it is a wholly owned subsidiary of Elf Labs Inc. No other publicly held company owns 10% or more of Respondent's stock.

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PRELIMINARY STATEMENT

The Petition for a Writ of Certiorari ("Petition") should be denied. The Federal Circuit's unanimous decision faithfully applies the analytical framework this Court established in *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), to determine whether Petitioner, a self-described consumer and not a competitor, falls within the class of persons Congress authorized to bring an opposition proceeding under the Lanham Act (the "Act"). The decision below creates no circuit split, conflicts with no precedent of this Court, and raises no question of national importance warranting the exercise of this Court's certiorari jurisdiction. As noted, Petitioner is not a competitor of Respondent, but a law professor who has publicly promoted her role in this dispute, suggesting that her interest in appearing before this Court is principally academic rather than grounded in the vindication of a cognizable legal injury.

The Federal Circuit correctly held that Petitioner does not fall within the class entitled to bring opposition proceedings. The statutory provisions Petitioner invokes, namely the prohibitions against registering generic and merely descriptive marks, exist to protect commercial interests against unfair competition, not to provide a cause of action for consumers. Petitioner's asserted interests as a collector of dolls are simply not cognizable under these provisions. Moreover, her alleged injuries, including speculative price increases and hypothetical reductions in product variety, are classic downstream consequences of harms that would first be visited upon third-party competitors, rendering these claimed injuries too remote to satisfy the requirement of proximate causation. *See*

Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 268-270 (1992).

Petitioner's attempt to recast this case as presenting the question whether Article III standing requirements apply to administrative proceedings fundamentally mischaracterizes the decision below. The Federal Circuit did not impose constitutional standing requirements on the Board. It engaged in precisely the exercise this Court prescribed in *Lexmark*: interpreting the statutory text of 15 U.S.C. § 1063 to determine the class of persons Congress authorized to bring an opposition. That exercise in statutory construction is not only appropriate but required, regardless of the forum.

Notably, the Petition offers no argument that was not already raised before and rejected by the Federal Circuit. Petitioner's principal contention is that the decision below creates a circuit split with the Third, Fifth, and D.C. Circuits, which have held that zone-of-interests and prudential standing doctrines do not apply to administrative proceedings. Petition at 14-19. But as explained *infra*, those cases involved materially different statutes and different administrative schemes. None addressed a statute like the Lanham Act whose stated purpose is to "protect persons engaged in … commerce against unfair competition," 15 U.S.C. § 1127, and whose zone of interests this Court has already defined as requiring "an injury to a commercial interest in reputation or sales." *Lexmark,* 572 U.S. at 131-32. The question of who may participate in an agency proceeding necessarily turns on the text of the statute conferring the right to participate, and Petitioner's cited cases shed no light on the proper construction of § 1063.

Petitioner's secondary argument, that *Lexmark* by its terms applies only to "causes of action" in federal court, Petition at 19-23, was squarely presented to and rejected by the Federal Circuit, which correctly recognized that the *Lexmark* framework is a tool of statutory interpretation, and not a jurisdictional or constitutional standing requirement. *See* App. 12a-15a. Additionally, Petitioner's reliance on the phrase "[a]ny person" in § 1063 is misplaced. This Court confronted materially similar statutory language in *Lexmark* itself (§ 1125(a) likewise permits suit by "any person who believes that he or she is or is likely to be damaged." 15 U.S.C. § 1125(a)(1)) and held that such language does not authorize suit by *every* person who believes he or she has been injured. *Lexmark,* 572 U.S. at 128. The Court instead held that the phrase must be interpreted using traditional principles of statutory construction. *Id.* The same logic applies with equal force to the virtually identical language in § 1063.

Finally, Petitioner's policy arguments regarding the importance of consumer participation in the trademark system and the potential impact on other agencies, Petition at 23-26, amount to nothing more than disagreement with the result below and do not identify any concrete disruption or anomaly warranting this Court's review. In short, Petitioner recycles the same arguments the Federal Circuit already considered and rejected, repackaged under the banner of a purported circuit split that does not withstand scrutiny.

The Federal Circuit's decision is correct and presents no question warranting this Court's intervention, and the Petition should therefore be denied.

STATEMENT OF JURISDICTION AND RELIEF SOUGHT

Petitioner seeks review of the final judgment of the United States Court of Appeals for the Federal Circuit entered on May 22, 2025. This Court has discretionary jurisdiction to review the judgment by writ of certiorari under 28 U.S.C. § 1254(1). Respondent, United Trademark Holdings, Inc., respectfully requests that the Court deny the Petition for a Writ of Certiorari.

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

On November 20, 2017, Respondent United Trademark Holdings, Inc. ("UTH") filed an application to register the mark RAPUNZEL on the Principal Register for "dolls; toy figures" in International Class 28. The United States Patent and Trademark Office ("USPTO") examining attorney approved the application, and the mark was published for opposition on April 10, 2018.

On May 9, 2018, Petitioner Rebecca Curtin, a law professor and self-described consumer and collector of dolls, filed an opposition under 15 U.S.C. § 1063, which was later amended. Petitioner alleged that the RAPUNZEL mark should be refused registration because it is generic, descriptive, fails to function as a trademark, and the application was fraudulent.

The Trademark Trial and Appeal Board ("TTAB" or "Board") is an administrative tribunal of the USPTO. The Board is specifically empowered to determine the right to register a trademark. 15 U.S.C. § 1051 et seq. § 17, 15 U.S.C. § 1067, Act § 18, 15 U.S.C. § 1068, Act § 20, 15 U.S.C.

§ 1070, Act § 24, 15 U.S.C. § 1092. *See Conolty v. Conolty O'Connor NYC LLC*, 111 USPQ2d 1302, 1309 (TTAB 2014); *Blackhorse v. Pro-Football, Inc.*, 111 USPQ2d 1080, 1082-83 (TTAB 2014). The Board is not required to decide every pleaded claim, and uses its discretion to decide only those claims necessary to enter judgment regarding registrability. *Multisorb Tech., Inc. v. Pactiv Corp.*, 109 USPQ2d 1170, 1171 (TTAB 2013). The Board governs four types of inter partes proceedings, including oppositions such as that of Petitioner here. *See* 15 U.S.C. § 1063.

Early in the TTAB proceedings, the Board denied UTH's motion to dismiss, relying in large part on *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999), which dealt with sections of the Lanham Act barring the registration of "immoral" or "scandalous" matter. App. 27a-28a n. 4. However, following developments in the caselaw, including regarding entitlement to bring a statutory cause of action, the Board *sua sponte* bifurcated the proceeding to first resolve the threshold issue of Petitioner's entitlement to oppose the registration. *Id.* at 6a; *see Iancu v. Brunetti,* 588 U.S. 388, 399, 139 S. Ct. 2294, 2302, 204 L. Ed. 2d 714 (2019) (finding the bar on registration of "immoral" or "scandalous" matter unconstitutional). After trial on that issue, the Board dismissed Petitioner's opposition, determining that Petitioner, as a "mere consumer," failed to allege or prove a commercial interest falling within the zone of interests protected by the Lanham Act's provisions on generic and descriptive marks. *Id.* at 16a-17a. It further found that her alleged injuries, including potential price increases and reduced competition, were too speculative and remote to establish proximate causation. *Id.* at 21a.

The United States Court of Appeals for the Federal Circuit unanimously affirmed. App. 24a. It held that the Board correctly applied the two-part statutory analysis set forth by this Court in *Lexmark,* "zone of interests and proximate causality." 572 U.S. at 129. The appellate court agreed that the prohibitions on registering generic and descriptive marks serve to protect commercial interests against unfair competition, and Petitioner's asserted consumer interests fall outside that zone. *Id.* at 23a-24a. It also affirmed that Petitioner's alleged harms are "downstream harms first suffered by a commercial actor" and thus too remote to satisfy proximate causation. *Id.* at 23a. Notably, the Federal Circuit observed that even under the pre-*Lexmark* test articulated in *Ritchie v. Simpson,* 170 F.3d 1092 (Fed. Cir. 1999), 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." App. 13a n.3.

Petitioner then filed the instant Petition for a Writ of Certiorari on October 3, 2025.

STANDARD OF REVIEW AND GOVERNING LEGAL PRINCIPLES

The central issue is not one of Article III constitutional standing, but rather a question of statutory interpretation: whether Petitioner falls "within the class of plaintiffs whom Congress has authorized to sue under" 15 U.S.C. § 1063. *Lexmark*, 572 U.S. at 128. This Court resolves that question using "traditional principles of statutory interpretation." *Id.*

Under the framework established in *Lexmark*, a plaintiff must satisfy a two-part test to bring a cause of

action under the Lanham Act: (1) the plaintiff's interests must fall within the "zone of interests" protected by the specific statutory provision invoked, and (2) the plaintiff's injuries must be "proximately caused" by a violation of the statute.

To identify the relevant zone of interests, courts look to the text of the statute, including its statement of purpose. The Lanham Act's stated intent is, *inter alia*, "to protect persons engaged in … commerce against unfair competition." 15 U.S.C. § 1127. Proximate causation generally requires a direct relationship between the alleged injury and the unlawful conduct, barring suits for harm that "is purely derivative of misfortunes visited upon a third person by the defendant's acts." *Luca McDermott Catena Gift Trust v. Fructuoso-Hobbs SL*, 102 F.4th 1314, 1327 (Fed. Cir. 2024) (quoting *Lexmark*, 572 U.S. at 133).

While administrative agencies are not Article III courts and are therefore not bound by the same "case or controversy" limitations, the *Lexmark* analysis is not a judicially-created prudential standing doctrine. Rather, it is a framework for statutory interpretation to determine the scope of a legislatively conferred cause of action. App. 30a. As the Federal Circuit correctly determined, applying this framework to interpret who may bring an opposition under § 1063 is a matter of statutory construction, not an improper imposition of judicial standing rules on an agency proceeding. *Id*. at 31a. When an agency, such as the Board, interprets a statute, judicial review of that interpretation is *de novo*. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 179, 145 S. Ct. 1497, 1511, 221 L. Ed. 2d 820 (2025).

ARGUMENT

I. PETITIONER LACKS ENTITLEMENT TO SEEK RELIEF IN THIS FORUM

The Petition for a Writ of Certiorari should be denied because the Federal Circuit correctly determined that Petitioner lacks a statutory cause of action to oppose Respondent's trademark registration under the Lanham Act.

The Lanham Act itself identifies the interests it protects. Its statement of intent, codified at 15 U.S.C. § 1127, declares that the Act serves "to regulate commerce within the control of Congress … [and] to protect persons engaged in such commerce against unfair competition." This Court examined this precise language in *Lexmark* and held that to come within the Lanham Act's zone of interests, "a plaintiff must allege an injury to a commercial interest in reputation or sales." 572 U.S. at 131-132. The Court left no room for doubt:

> A consumer who is hoodwinked into purchasing a disappointing product may well have an injury-in-fact cognizable under Article III, but he cannot invoke the protection of the Lanham Act—a conclusion reached by every Circuit to consider the question.

Id. at 132. Such an injury is not "to a commercial interest in reputation or sales[,]" and therefore fails "to come within the zone of interests[.]" *Id.* at 131-32. The rule is categorical, not contextual; the Act affords commercial actors a statutory cause of action, not consumers.

Petitioner's theory that § 1063's reference to "[a]ny person who believes that he would be damaged" somehow establishes an open-ended right of participation unconstrained by a zone-of-interests analysis is unavailing. This Court in *Lexmark* addressed materially identical statutory language in § 1125(a), which permits suit by "any person who believes that he or she is or is likely to be damaged." 15 U.S.C. §1125(a)(1)(B). Despite this broad textual authorization, this Court held that "to come within the zone of interests in a suit for false advertising under § 1125(a), a plaintiff must allege an injury to a commercial interest in reputation or sales." 572 U.S. at 131-32. If the phrase "any person who believes … he or she is … likely to be damaged" does not confer an unlimited right to sue under § 1125(a), the nearly identical phrase in § 1063 cannot confer an unlimited right to oppose.

Petitioner's central contention, that the Federal Circuit improperly imported Article III standing requirements into an administrative proceeding, fundamentally misapprehends the nature of the inquiry below. The Federal Circuit did not undertake a constitutional standing analysis. It performed the very task this Court has instructed lower courts to perform: interpreting the reach of a statutory cause of action using "traditional principles of statutory interpretation." *Lexmark*, 572 U.S. at 134. As this Court has made clear, "the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate the case." *Id.* at 128 n.4 (quotations omitted). The question is simply whether Congress authorized this particular plaintiff, an individual who has no commercial interest and suffered no injury, to bring this particular challenge. The answer is a resounding no.

In *Lexmark*, this Court definitively resolved that the question of who may sue under a statute is not a matter of "prudential standing," which it considered "misleading", but rather a question of "whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." 572 U.S. at 118. The Court reasoned that the inquiry is properly governed by "traditional principles of statutory interpretation," and begins with the presumption that a statutory cause of action extends only to plaintiffs whose interests "fall within the zone of interests protected by the law invoked." *Id.* at 129 (citing *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1970)).

The Federal Circuit correctly applied the statutory framework set forth in *Lexmark* and its progeny here. In *Corcamore*, the appellate court held there is "no principled reason why the analytical framework articulated by the Court in *Lexmark* should not apply" to determine who may seek cancellation of a mark under 15 U.S.C. § 1064. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1305 (Fed. Cir. 2020). In this case, the Federal Circuit logically extended that reasoning to opposition proceedings under 15 U.S.C. § 1063. The *Corcamore* court noted that the provisions for opposition (§ 1063) and cancellation (§ 1064) share "nearly identical terms" in authorizing suit by "any person who believes that he … would be damaged." App. 14a. The Federal Circuit has long held that these provisions, due to their "linguistic and functional similarities[,]" must be construed consistently. *Id.* (citing *Young v. AGB Corp.*, 152 F.3d 1377, 1380 (Fed. Cir. 1998)).

Applying this framework, the Federal Circuit properly concluded that the purported bases for Petitioner's

opposition (i.e. that the RAPUNZEL mark fails to function and is generic and descriptive) are themselves rooted in protecting commercial interests. The prohibition against registering descriptive terms exists to "prevent the owner of a mark from inhibiting competition." App. 19a (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 813 (C.C.P.A. 1978)). Similarly, the bar on generic marks prevents a single commercial actor from obtaining "a monopoly" on common language for a class of goods. *Id.* (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1344 (Fed. Cir. 2001) (internal citation and quotation marks omitted)). The zone of interests for these specific grounds is therefore strictly commercial. And a person who asserts no commercial interest of her own falls squarely outside that zone.

Petitioner has alleged no such commercial interest. *See* Petition at 8 ("Curtin is a law professor but, more importantly, a longtime, avid collector of dolls and toy figures of fairy-tale characters."). She maintains that her asserted and speculative injuries are exclusively those of a consumer: potential price increases, reduced product variety, and a chilled market for "diverse interpreters of the fairy tale's legacy." Petition at 8-9; App. 28a-29a. While perhaps frustrating to Petitioner on a personal level, these are simply not injuries to either "reputation or sales." *Lexmark*, 572 U.S. at 132. While the Lanham Act's protections against unfair competition ultimately benefit consumers, the right to bring a cause of action under the Act belongs to those engaged in commerce (and not to the consuming public).

This Court recognized in *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 535-536 (1983),

that even where a statute's protections indirectly benefit a broad class, the cause of action is properly confined to those whose injuries Congress intended the statute to redress. Petitioner's interests as a "consumer who participates amongst other consumers in the marketplace" are "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue." *Lexmark*, 572 U.S. at 130 (quoting *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 178 (2011)). Accordingly, the Federal Circuit's conclusion that Petitioner's consumer interests fall outside the zone of interests protected by the Lanham Act's provisions on generic and descriptive marks is correct, and the Petition should be denied.

II. PETITIONER'S ALLEGED INJURIES ARE TOO REMOTE AND SPECULATIVE TO ESTABLISH PROXIMATE CAUSATION

Even assuming, *arguendo,* that Petitioner's consumer interests fell within the Lanham Act's zone of interests, her claim would independently fail for a second reason: her alleged injuries are not proximately caused by Respondent's registration of the RAPUNZEL mark. Both the Board and the Federal Circuit correctly concluded that Petitioner's claimed harms are too remote and too speculative to sustain a cause of action under 15 U.S.C. § 1063.

The proximate-causation requirement has deep roots in this Court's jurisprudence. In *Holmes,* this Court held that "proximate cause requires some direct relation between the injury asserted and the injurious conduct alleged[,]" and that claims predicated on harm to third

parties are too remote. *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 259, 112 S. Ct. 1311, 1313, 117 L. Ed. 2d 532 (1992) (quotations omitted). This Court imported the same requirement into the Lanham Act context in *Lexmark*, holding that a plaintiff must show that her injuries were "proximately caused" by defendant's alleged statutory violation. *Lexmark*, 572 U.S. at 132. The proximate-cause requirement "generally bars suits for alleged harm that is "too remote" from the defendant's unlawful conduct," which occurs when the harm "is purely derivative of misfortunes visited upon a third person by the defendant's acts." *Id.* at 133 (quoting *Holmes* at 268–269, 112 S. Ct. 1311).

That is precisely the deficiency present here. Petitioner's alleged injuries—potentially higher prices for her and other consumers, reduced product variety, and a "chill[ed]" market for new Rapunzel-themed toys—are not direct consequences of Respondent's trademark registration. They are speculative, downstream effects that depend on an intervening chain of independent decisions by third-party commercial actors. As the Federal Circuit correctly observed, these are "downstream harms first suffered by a commercial actor." App. 23a. Petitioner's theory of injury requires this Court to assume that (1) Respondent will use its registration to successfully pressure competing doll manufacturers; (2) those competitors will capitulate by ceasing production or foregoing new products; and (3) these changes in competitors' commercial behavior will, in turn, result in higher prices or diminished variety for consumers. At each link in this causal chain, dependent decisions by third-party actors intervene. This Court has consistently rejected such attenuated theories of causation. *See, e.g.*,

Bank of Am. Corp. v. City of Miami, 581 U.S. 189, 137 S. Ct. 1296, 1299, 197 L. Ed. 2d 678 (2017) (requiring "some direct relation between the injury asserted and the injurious conduct alleged" and noting that "the general tendency" of the proximate-cause requirement is "not to go beyond the first step.") (quoting *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 10, 130 S. Ct. 983, 175 L. Ed. 2d 943); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461, 126 S. Ct. 1991, 1998, 164 L. Ed. 2d 720 (2006) (holding that a plaintiff's injuries were too remote where they depended on the independent actions of third-party customers).

The Board rightly found that Petitioner's evidence "is too remote from registration and is entirely speculative," resting on "general economic theories" with no evidence that the market for fairytale-related products would perform as she theorizes. App. 24a. The Federal Circuit affirmed, correctly recognizing that harm "is 'too remote' from the alleged unlawful conduct if it 'is purely derivative of misfortunes visited upon a third person by the defendant's acts.'" *Id.* at 23a. Petitioner has not alleged an injury flowing directly from the challenged registration; she has alleged an injury that depends entirely upon the registration's hypothetical effect on third-party competitors and their subsequent commercial decisions. That is the very definition of a derivative injury, and it cannot satisfy proximate causation under *Lexmark* or the line of precedent upon which it rests.

III. PETITIONER'S CLAIM FAILS UNDER ESTABLISHED ARTICLE III AND PRUDENTIAL STANDING DOCTRINES

Even setting aside the statutory analysis, Petitioner's claim would face serious obstacles under any analytical framework. Her asserted injuries amount to a generalized grievance about the administration of the trademark register shared equally by every member of the public, and her theory of harm rests entirely on the assertion of rights belonging to third-party commercial competitors. These deficiencies together confirm that she is not the type of party Congress contemplated when authorizing opposition proceedings under § 1063.

IV. THERE IS NO CIRCUIT SPLIT

The cases Petitioner cites from the Third, Fifth, and D.C. Circuits do not create a conflict warranting certiorari. In *FDRLST Media, LLC v. NLRB*, 35 F.4th 108 (3d Cir. 2022), the Third Circuit addressed who may file an unfair labor practice charge with the NLRB—a statute with a fundamentally different structure and purpose from the Lanham Act. The NLRA authorizes "any person" to file a charge, 29 U.S.C. § 160(b), and the Board's investigative function in processing charges differs categorically from the adjudicatory opposition proceeding at issue here. Similarly, *Ecee, Inc. v. FERC*, 645 F.2d 339 (5th Cir. 1981), addressed FERC's discretionary authority to grant standing under the Natural Gas Policy Act—a statute that expressly empowered the agency to define the scope of participation. And *Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999), concerned the NRC's authority to determine hearing rights under the Atomic Energy Act.

None of these decisions addressed the Lanham Act or a statute whose zone of interests this Court has already defined in *Lexmark*. A circuit split exists only when the United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals "on the same important matter." Sup. Ct. R. 10. Here, no other circuit has addressed the precise question of who may oppose a trademark registration under § 1063, and the asserted "split" rests on inapposite analogies to different statutes administered by different agencies. These distinct legal questions thus cannot establish the kind of direct, irreconcilable conflict among the circuits that would justify this Court's review.

V. POLICY CONSIDERATIONS AND PRACTICAL CONSEQUENCES

Adopting Petitioner's position would carry far-reaching consequences for the administration of the Lanham Act and the trademark system as a whole. Permitting any consumer with a subjective belief of harm to institute an opposition proceeding would transform the Board into a forum for generalized public complaints, fundamentally altering the character of *inter partes* proceedings before the USPTO.

The Board has long been concerned with precluding "meddlesome parties from instituting proceedings as self-appointed guardians of the purity of the Register." *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1027 (C.C.P.A. 1982) (citing *Federated Foods, Inc. v. Fort Howard Paper Company*, 192 USPQ 24 (C.C.P.A. 1976); *Yoder Brothers, Inc. v. California-Florida Plant Corporation*, 537 F.2d 1347, 193 USPQ 264 (5th Cir.

1976)). Petitioner's proposed rule would invite precisely such mischief, burdening trademark applicants with the cost and delay of defending against challenges brought by individuals with no commercial stake in the outcome. The resulting proliferation of proceedings would further undermine the orderly administration of the trademark system and impose significant costs on the agency and on legitimate commercial actors. *See B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 143, 135 S. Ct. 1293, 1300, 191 L. Ed. 2d 222 (2015) (describing opposition proceedings as "similar to a civil action in a federal district court[,]" as they are "largely governed by the Federal Rules of Civil Procedure and Evidence[,]" and the Board conducts both discovery and depositions) (citing TTAB Manual of Procedure § 102.03 (2014)). Requiring applicants to endure the full weight of the Board's already elaborate procedural framework to defend against challenges brought by parties with no commercial stake in the outcome would thus likely impose unjustifiable costs on both the agency and legitimate trademark holders.

Moreover, this Court has recognized that Congress often chooses to channel enforcement through parties with a particularized and direct stake in the outcome, precisely because such parties are reliable "private attorney[s] general" whose self-interest aligns with the statute's objectives. *Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 338, 100 S. Ct. 1166, 1174, 63 L. Ed. 2d 427 (1980). The *Lexmark* framework preserves this design by confining the Lanham Act's cause of action to commercially interested parties, who are best positioned to police the register and whose challenges ensure the concrete adversarial presentation on which sound adjudication depends. This structure protects

both competitors and, indirectly, consumers, without overwhelming the administrative process or converting the Board into an open forum for any member of the public to challenge any trademark registration on a whim.

Review is also unwarranted because the question presented would not change the outcome of this case. As the Federal Circuit observed, Petitioner "likely would have" failed to establish entitlement to oppose even under the pre-*Lexmark* test from *Ritchie*. App. 13a n.3. This Court does not grant certiorari to resolve questions of no consequence. *See Stack v. Boyle*, 342 U.S. 1, 13, 72 S. Ct. 1, 7, 96 L. Ed. 3 (1951) ("[T]his Court will not exercise its certiorari power in individual cases except where they are typical of a problem so important and general as to deserve the attention of the supervisory power.")

CONCLUSION AND PRAYER FOR RELIEF

The Petition for a Writ of Certiorari should be denied. The Federal Circuit's decision is a faithful and straightforward application of this Court's precedent in *Lexmark*. It creates no conflict among the circuits, raises no question of national importance, and would not change the outcome for Petitioner even under the alternative framework she proposes. Petitioner lacks a statutory cause of action under the Lanham Act because her asserted consumer interests fall outside the zone of interests protected by the statutory provisions she invokes, and her alleged injuries are too remote and derivative to satisfy the requirement of proximate causation. The decision below is correct, and the questions presented do not warrant the exercise of this Court's certiorari jurisdiction.

For the foregoing reasons, Respondent United Trademark Holdings, Inc. respectfully requests that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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