

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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Mailed: October 15, 2014

Concurrent Use No. 94002592

Levin Tire Center, Inc.

v.

Irving Levine Automotive
Distributors, Inc.

Before Bucher, Zervas and Hightower, Administrative Trademark Judges.

By the Board.

Levin Tire Center, Inc. (“Applicant”), filed an application for concurrent use registration for the standard character mark **Levin Tire** for “Retail shops featuring tires and tire accessories; Retail tire stores” in International Class 35.¹ The application names Irving Levine Automotive Distributors, Inc., as owner of Registration No. 2484683² for the mark



and Registration No. 2575133³ for the mark



, both for

¹ Application Serial No. 86008741 was filed on July 12, 2013, and claims first use and first use in commerce on September 5, 1969.

² Registration No. 2484683 registered on September 4, 2001 and claims first use in 1992 and first use in commerce in November 1998.

³ Registration No. 2575133 registered on June 4, 2002 and claims first use in 1992 and first use in commerce in November 1998.

“Wholesale and retail distributorship services in the automotive field featuring parts and paints for automobiles, trucks and industrial equipment” in International Class 35, as exceptions to Applicant’s claim of exclusive right to use.

In its application, Applicant describes the geographic area in which it claims the exclusive right to use its mark as the states of Indiana and Illinois.

On September 29, 2014, Applicant filed a “Notice of Settlement” to resolve the concurrent use proceeding, enclosing a “Consent Agreement” between the parties, effective as of September 5, 2014, which provides for concurrent use by the parties of the marks in question within specified geographical territories.

The agreement provides that the parties believe that their respective uses of their marks permitted under the Consent Agreement are not likely to cause confusion in their separate geographical areas; that each party will limit its use of its mark for its services to its geographic area and will not use its mark for its services in the other’s geographic area; that each party will not advertise or promote its services under its mark in the other’s territory; that each party will include a disclaimer on its website that it is unaffiliated with the other; and that each party will cooperate and take steps to eliminate any instances of confusion.

Upon careful consideration of the Consent Agreement between the parties, which supports each party’s right to concurrent use registration, the

Board is persuaded that under the circumstances of this case, concurrent use by the parties of their involved marks will not, in fact, be likely to cause confusion.

In making its determination, the Board has taken into account not only the provisions of the agreement and the actual geographic restrictions of the areas of use, but also the voluntary entry by the parties into an agreement which includes provisions for concurrent use when it would be clearly against their business interests to cause confusion on the part of the public. *See Amalgamated Bank of New York v. Amalgamated Trust & Savings*, 842 F.2d 1270, 6 USPQ2d 1305 (Fed. Cir. 1988).

DECISION:

Applicant, Levin Tire Center, Inc., is entitled to registration of its mark for “Retail shops featuring tires and tire accessories; Retail tire stores” in International Class 35 for the area comprising the states of Indiana and Illinois. (Application Serial No. 86008741.)

Registration No. 2484683 for the mark  and

Registration No. 2575133 for the mark  both for “Wholesale and retail distributorship services in the automotive field featuring parts and paints for automobiles, trucks and industrial equipment” in International Class 35 owned by Irving Levine Automotive Distributors, Inc., will be restricted to the area comprising the entire United States except the states of Indiana and Illinois.