
Money Can't Buy the Federal Circuit: Luxury Brand Louis Vuitton Refused Trademark Registration for APOGÉE

IN RE: LOUIS VUITTON MALLETIER

By: Francyn Brown and Lisa Holubar | July 16, 2019

In a victory for KAB Brands, the Federal Circuit affirmed the TTAB (the “Board”)’s refusal to register the applied-for mark, APOGÉE for perfumery.¹ KAB Brands is the owner of two federally registered trademarks: APHOGEE and ApHOGEE used in connection with hair products. The trademark office refused to register Louis Vuitton’s trademark application on the basis of likelihood of confusion with KAB Brand’s registered trademarks.

First, the Federal Circuit evaluated the similarity of the marks. Louis Vuitton contended that the marks are not similar in appearance, sound, connotation and commercial impression because of the “É” in Louis Vuitton’s application, which suggests that the “product reflects the ‘height’ of continental chic.”² And that a consumer would recognize that Apogée is French for “height” whereas the “pH” in “ApHogee” creates the impression that the product relates to “a low acidity or alkalinity.” The Federal Circuit disagreed. Further, the Court discussed that neither Louis Vuitton’s or KAB Brands’ marks are recognized English words, which means that they conjure similar commercial impressions to consumers. The Court found that factor weighed in favor of finding a likelihood of confusion.

Next, the Court found that substantial evidence supported the Board’s determination that the goods are related. Specifically, the Board and the Court reasoned that perfume and hair care products are complimentary products that in many instances are sold from the same source. The relatedness of the goods factor thus favored a finding of likelihood of confusion. The Court then evaluated the channels of trade through which the goods travel. The Court, as had the Board, concluded that the registration for APHOGEE lacked any trade channel restrictions so it was presumed that KAB’s goods could travel in all normal channels of trade. Louis Vuitton argued that its products are sold in high-end retail stores but the Court rejected the contention that this was different than KAB’s channels of trade.

Although, the Court noted, “[g]iven the price differential, it seems unlikely that a consumer would mistakenly associate Louis Vuitton’s perfume with KAB’s hair care products,” it went on to explain that “nothing prevents Louis Vuitton from developing a low-cost version of its product or KAB from developing a high-end version of its product.”³ The Court ultimately found Louis Vuitton’s arguments unpersuasive and affirmed that a consumers would likely confuse the applied-for mark APOGÉE with the registered mark APHOGEE.

¹ In re: Louis Vuitton Malletier, Case No. 18-1651, (Fed. Cir. 2019).

² *Id.* at *5.

³ *Id.* at *10.