

THIS DISPOSITION IS
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Mailed: January 6, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Mid-Atlantic Car Wash Technology, Inc.
v.
Carwash Tech

Concurrent Use No. 94002000

Kimberly O. Snead of Jagtiani + Gutttag for Mid-Atlantic Car Wash Technology, Inc.

Shane Guillory, pro se, for Carwash Tech.

Before Quinn, Holtzman and Zervas, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, Mid-Atlantic Car Wash Technology, Inc., has filed an application for concurrent use registration of the mark WASHTECH for "vehicle wash equipment, namely conveyORIZED car washes, drive-thru car washes, automatic car washes, touch-free car washes, and self-serve car washes" in International Class 7; and "vehicle wash equipment maintenance and repair services" in

International Class 37.¹ The application names common law user, Carwash Tech (aka TriStar Hawaii Corporation), as the exception to applicant's claim of exclusive right to use the mark in commerce. According to applicant, Carwash Tech uses the mark CARWASH TECH in the State of Hawaii in connection with "car wash technology goods and services."

Because Carwash Tech, as a common law user, was required to file an answer to the notice of the concurrent use proceeding but failed to do so, the Board entered judgment against said user precluding it from claiming any right more extensive than those rights acknowledged in the concurrent use application.² See TBMP §1107 (2nd ed. rev. 2004). In addition, the Board allowed applicant time to submit proof of its entitlement to concurrent use registration.

In response, applicant submitted the declaration of its president, Craig Hanson. Mr. Hanson states in his declaration that to the best of his knowledge, Carwash Tech operates facilities using the mark CARWASH TECH only in the State of Hawaii; that Hawaii is remote from any area where applicant is likely to operate; that applicant will not advertise its goods

¹ Serial No. 76150718, filed on October 20, 2000, alleging first use and first use in commerce on September 30, 1997, and seeking concurrent use registration for the area comprising the entire United States except for the State of Hawaii.

² The Board also advised the parties that in view of the default judgment against the user, and as provided in TBMP §1107 (2nd ed. rev. 2004), no further communications issued by the Board in this proceeding would be sent to the user, with the exception of the Board's final decision, and no further papers filed by applicant need be served on the user.

and services in Hawaii nor operate any facility using the WASHTECH mark in Hawaii as long as Carwash Tech continues to use CARWASH TECH in connection with car wash technology goods and services; that applicant has used the WASHTECH mark since at least September 1997 without any instances of confusion with the CARWASH TECH mark; and that if applicant encounters any actual confusion, it will cooperate with Carwash Tech in order to avoid such confusion in the future.

We believe applicant has established prima facie that the concurrent use of the involved marks is not likely to result in confusion, mistake or deception.

Decision: Applicant is entitled to concurrent use registration of the mark WASHTECH for its identified vehicle wash equipment and vehicle wash equipment maintenance and repair services in the area comprising the entire United States except the State of Hawaii.