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A Good Old-Fashioned Priority Fight

Posted on November 19, 2010 by Dan Kelly

The Trademark Trial and Appeal Board issued a rare decision at the end of last month in the case of *Weatherford/Lamb, Inc. v. C&J Energy Services, Inc.* The two companies offer, among other things, oil and gas well fracturing services (explanation here). Weatherford uses the trademark FRACSURE for its services, and C&J uses FRAC-SURE. C&J obtained U.S. Trademark Registration No. 3496546 for its trademark, which was cited against Weatherford's later-filed application to register its FRACSURE trademark. Weatherford believed that it had used its trademark first, so it petitioned to cancel C&J's registration.

The decision is rare for several reasons (one of which is that the parties successfully used the TTAB's Accelerated Case Resolution procedure), but most significantly because the sole substantive issue was priority. The parties essentially conceded likelihood of confusion, what with the marks and services being essentially identical. Weatherford was able to prove by a preponderance of the evidence that it had used its FRACSURE trademark before C&J used its FRAC-SURE mark, therefore the TTAB rendered judgment in Weatherford's favor and canceled C&J's registration for FRAC-SURE.

Common law trademark rights in the U.S. are born when a company begins using a trademark. As the *Weatherford* case illustrates, the first to register a trademark is not necessarily assured of unassailable rights. This is why conducting a comprehensive trademark search prior to use and prior to applying for a trademark registration can save dollars and suffering down the road. The *Weatherford* case also underscores the importance of pursuing registration at the earliest moment possible, because it is much more costly to fight about priority after the fact than to insure that you've beat your competitors to the Trademark Office.