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## **Pryor Cashman Wins Victory For United States Golf Association In TTAB Trial Involving U.S. Open Trademarks**

Pryor Cashman client the United States Golf Association (“USGA”), the owner of thirteen OPEN Trademarks, has successfully opposed the attempt by applicants T-Golf LLC (“T-Golf”) and its owners, Dee and Christopher J. MacDonald, to register the mark SUPER OPEN in classes 25 and 41. In its September 30, 2009 ruling after trial, the Trademark Trial and Appeal Board (“TTAB”) refused registration of the SUPER OPEN mark on grounds of priority and likelihood of confusion.

The USGA has been the national governing body of golf in the United States since 1894. Among the many services it provides, the USGA conducts thirteen national championships and three international competitions each year, including its crown jewels, *i.e.*, the U.S. Open, the U.S. Women’s Open and the U.S. Senior Open. Through the efforts of the USGA and the high quality championships and programs it sponsors, the USGA’s OPEN trademarks, all of which are registered, have come to signify the USGA as a source of high quality golf-related products and services. The USGA’s OPEN Trademarks include OPEN, U.S. Open, National Open, U.S. Open Championship, U.S. Women’s Open, U.S. Senior Open, U.S. Open Golf Collection, U.S. Women’s Open Championship, United States Open, United States Open Championship and United States Senior Open Championship.

In 2006, over 110 years after the USGA used its first OPEN trademark in commerce in connection with golf tournaments and golf-related services (at the 1895 U.S. Open) and 33 years after the USGA first began to use certain of its OPEN Trademarks on apparel items: (a) T-Golf filed an Application in Class 25 based upon an intent to use a mark, SUPER OPEN, in connection with various golf-related goods; and (b) T-Golf’s owners, the MacDonalds, filed an Application in Class 41 based upon an intent to use SUPER OPEN for golf tournaments and golf-related services.

The USGA filed oppositions to both applications, arguing that the TTAB should deny Applicants’ attempts to register SUPER OPEN in either class because the registration of such mark, which Applicants had never used, would likely cause considerable confusion, dilution, mistake and/or deception in view of the facts that, inter alia:

- The USGA has used its OPEN Trademarks continuously for decades;
- The USGA has received a substantial amount of publicity worldwide with respect to its OPEN Trademarks and the goods and services associated therewith;
- The USGA’s OPEN Trademarks are famous and strong;

- Applicants' mark SUPER OPEN is confusingly similar to the USGA's OPEN Trademarks;
- The goods and services in connection with which Applicants intend to use SUPER OPEN, e.g., apparel items and golf tournaments, are identical to those offered by the USGA over the past century under its OPEN Trademarks such that an association as between the USGA and Applicants will inevitably be presumed in the minds of the consuming public and those in the trade; and
- Applicant's mark SUPER OPEN is deceptively and confusingly similar to the USGA's OPEN Trademarks, all of which were in use decades (and, in one case, a century) before Applicants filed their applications.

In its September 30, 2009 decision, the TTAB agreed, finding that there was a likelihood of confusion between the USGA's OPEN marks and applicants' SUPER OPEN mark based upon the fame of the USGA's OPEN Trademarks, the identical/closely related nature of the goods and services being offered, and the similarity of the marks.

The USGA was represented by Senior Litigation Partner Philip Hoffman, who was assisted by Counsel Nicole Kaplan.

To read the TTAB's decision, please [click here](#).