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## *Princeton Vanguard v Frito-Lay*. each party gets a single choice of which type of appeal to pursue

United States of America - [Leason Ellis LLP](#)

- **At issue was whether a plaintiff may file a civil action in district court to appeal an adverse remand decision of the TTAB after having appealed the TTAB's initial ruling to the Federal Circuit**
- **The district court found that the plain language of the statute included an unrestricted waiver of a district court review once a party elects an appeal to the Federal Circuit**
- **The court also found that an appeal to the Federal Circuit would be more efficient**

A district court has held in a case of first impression that a party having once appealed a decision of the Trademark Trial and Appeal Board (TTAB) to the US Court of Appeals for the Federal Circuit (Federal Circuit) cannot thereafter appeal the TTAB's decision on remand to a district court ([Princeton Vanguard LLC v Frito-Lay North American Inc](#) (WDNC, 21 October 2019)).

### Background

The plaintiff had appealed to the Federal Circuit the TTAB's [2014 decision](#) holding its applied-for PRETZEL CRISPS mark to be generic. On appeal, the Federal Circuit [remanded](#) the case back to the TTAB, holding that the TTAB did not apply the correct standard for genericness. In its [decision on remand](#) in 2017, the TTAB again found the mark to be generic. The plaintiff again appealed, except this time to the District Court for the Western District of North Carolina. The district court, as a threshold issue, on its own, raised the issue of whether it had subject matter jurisdiction to hear the case, given that the first appeal was decided by the Federal Circuit.

There are two options for appealing a TTAB decision - namely, by filing an appeal with the Federal Circuit or by filing a civil action with a federal district court for a *de novo* review of the case (see 15 USC § 1071). The statute indicates that a party who appeals to the Federal Circuit waives its right to proceed with a civil action before a district court. The plaintiff argued, however, that because it was appealing a second ruling (ie, the TTAB's 2017 decision on remand), it was free to elect the alternative of filing a civil action with the district court for that ruling and that the waiver in the statute applied only to a particular ruling, not subsequent ones.

### Decision

The district court disagreed based on several considerations. First, it found that the plain language of the statute included an unrestricted waiver of a district court review once a party elects an appeal to the Federal Circuit. Second, it found that an appeal to the Federal Circuit would be more efficient, as the Federal Circuit had set forth guidelines for the test to be applied on remand, such that it was better suited to determine whether those guidelines were followed. Additionally, the district court noted that the Federal Circuit's expertise in the trademark area made it "better suited ... to determine if the TTAB has faithfully followed its earlier ruling".

The district court also consulted the few relevant decisions for guidance and relied on similar holdings in the patent context where appellants had waived an appeal to a district court. Finally, the district court distinguished the one trademark case that was arguably relevant, because in that case the other party was

taking the second appeal and thus was not bound by the election of its adversary to appeal to the Federal Circuit's predecessor court on the first appeal. Accordingly, this case makes clear that each party gets a single choice of which type of appeal to pursue.

The district court thus dismissed the case for lack of subject matter jurisdiction.

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## TAGS

[Enforcement and Litigation](#), [Food and Beverage](#), [North America](#), [United States of America](#)