Law360 Quotes Karen Artz Ash on Consumers' Standing Limits Following New TTAB Precedent

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Karen Artz Ash, New York partner and Co-Chair of Katten's Trademark, Copyright and Privacy group, was quoted by *Law360* in an article about the Trademark Trial and Appeal Board's (TTAB) recent rejection of a professor's challenge to a "Rapunzel" trademark as a consumer of fairy-tale princess characters, and how it reinforces "the limits of who can bring an opposition under trademark law."

The TTAB's decision on May 4 held that "mere consumers such as [Rebecca Curtin] are generally not statutorily entitled to oppose registration," reversing a 2018 ruling by another panel of trademark judges that Curtin's "belief of damage has a reasonable basis in fact," as noted by *Law360*. The new precedent emphasizes that a trademark challenger must allege an "injury to a commercial interest in reputation or sales," despite the trademark statute's language that states "any person who believes that he would be damaged by the registration of a mark" can file one.

"It seems that the TTAB wants to underscore its unequivocal view that the relevant statutory language cannot be considered to be so flexible that it can be used to support any person's claim of perceived injury," Karen said. She added that Curtin's claims were more in line with a "consumer complaint," which doesn't meet the requirements for standing to challenge the trademark application.

"If she were misled into believing that the product branded with the Rapunzel name [was] directly related to the fairy tale when it is not, and she paid a premium price for that association, then perhaps she could seek some sort of remedy," Karen told *Law360*.

"TTAB Fortifies Consumers' Standing Limits In New Precedent" *Law360*, May 10, 2023

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