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Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Cumberland Valley Financial Corporation*

Serial No. 86827085

Michael G. Frey of Wood Herron & Evans LLP,  
for Cumberland Valley Financial Corporation.

Jonathan Ryan O'Rourke, Trademark Examining Attorney, Law Office 104,  
Dayna Browne, Managing Attorney.

Before Quinn, Hightower, and Goodman,  
Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

Applicant Cumberland Valley Financial Corporation seeks registration on the

Principal Register of the mark  **CVinvestments** (with “investments”

disclaimed) for the following services in International Class 36, as amended:<sup>1</sup>

<sup>1</sup> Application Serial No. 86827085 was filed November 20, 2015 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), based on Applicant's claim of first use anywhere and in commerce since at least as early as April 28, 2015. The description of the mark states: “The mark consists of a stylized depiction of a tree within a circle, with the words ‘CV investments’ appearing to the side.” Color is not claimed as a feature of the mark.

Financial and investment services, namely, financial investment brokerage services, individual retirement account services, asset and investment acquisition, consultation, advisory and development; Management of investment of funds for others in the fields of mutual funds, stock, bonds, annuities, insurance, and money management; Asset acquisition and management of investment property; Managing real estate investment trust funds associated with investment properties.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as applied to the services identified in the application, so resembles the mark shown at right, previously registered on the Principal Register for "financial and investment services, namely, investment management of funds; investment services, namely, asset acquisition and management of investment property; managing real estate investment trust funds associated with investment properties" in International Class 36,<sup>2</sup> as to be likely to cause confusion, to cause mistake, or to deceive.



After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board and requested reconsideration. After reconsideration was denied, the appeal resumed. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567

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<sup>2</sup> Registration No. 4019081, issued August 20, 2011. The description of the mark states: "The mark consists of the letters 'C' and 'V', shown in block form and contained within a block circle shape." Color is not claimed as a feature of the mark.

(CCPA 1973); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the [services] and differences in the marks.”).

We first consider the second and third *du Pont* factors, the similarity of the services, channels of trade, and classes of customers. We must look to the services as identified in the involved application and cited registration, not to any extrinsic evidence of actual use. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014). A likelihood of confusion may be found with respect to a particular class based on any item within the identification of goods or services for that class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Services recited in the application include “asset acquisition and management of investment property; managing real estate investment trust funds associated with investment properties.” The cited registration recites identical services: “investment services, namely, asset acquisition and management of investment property; managing real estate investment trust funds associated with investment properties.” Applicant “does not dispute that the services under its mark and the cited mark are similar.” Appeal Brief at 7, 7 TTABVue 8.

Because there are no limitations as to channels of trade or classes of purchasers in the description of services in the cited registration, we presume that Registrant's services move in all channels of trade normal for such services and are available to all potential classes of ordinary consumers. *See Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Centraz Indus. Inc. v. Spartan Chem. Co.*, 77 USPQ2d 1698, 1700 (TTAB 2006); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Moreover, because the services described in the application and the cited registration are identical in part, we must presume that the channels of trade and classes of purchasers are the same. *See American Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011); *see also In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (finding Board entitled to rely on this legal presumption in determining likelihood of confusion).

In our likelihood of confusion analysis, these findings under the second and third *du Pont* factors strongly support a finding that confusion is likely.

We next address the first *du Pont* likelihood of confusion factor, focusing on “the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). “The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks

would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (quotation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015).


Because the similarity or dissimilarity of the marks is determined based on the marks in their entirety, our analysis cannot be predicated on dissecting the marks into their components. *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1134 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 982 (2016).

On the other hand, in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety. Indeed, this type of analysis appears to be unavoidable.


*In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Where, as here, the marks would appear in association with services that are identical in part, the degree of similarity necessary to support a conclusion of likely confusion declines. *In re Viterra*, 101 USPQ2d at 1908; *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016); *Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007).

The cited mark consists entirely of the letters C and V stylized within a circle.

Applicant's mark is , with "investments" disclaimed. Although we consider Applicant's mark in its entirety, we find that the term CV is its dominant portion, for three reasons.

First, although we consider each mark on a case-by-case basis, the wording in composite word and design marks normally is accorded greater weight in the likelihood of confusion analysis because the verbal portion is most likely to indicate the origin of the goods or services and be used by purchasers to request or refer to the goods or services. *In re Vitterra*, 101 USPQ2d at 1908. Accordingly, we give less source-identifying weight to the tree design in Applicant's mark, even though Applicant argues that it has used the stylized tree design in connection with financial and investment services for more than 30 years. *See* Appeal Brief at 13, 7 TTABVue 14.

Applicant made of record another registration it owns for the design  for various banking, investment, trust, and financial services.<sup>3</sup> As the Examining Attorney points out, however, this mark is not identical to the design element in the application, and there is no evidence concerning consumer awareness of it to designate Applicant's services.

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<sup>3</sup> Registration No. 2429207, attached to June 12, 2016 Response to Office Action at TSDR 2. We grant the Examining Attorney's objection to admission of a second registration owned by Applicant and referenced in its appeal brief, which also is claimed as a related property in the application but was not made of record during examination. *See* Appeal Brief at 6, 7 TTABVue 7; Examiner's Brief, 9 TTABVue 3-4. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) ("The record in the application should be complete prior to the filing of an appeal."). Even if considered, the second registration would not be persuasive of a different result.

Second, CV has a position of prominence as the lead word in Applicant's mark. *See, e.g., Palm Bay*, 73 USPQ2d at 1692 (stating that "veuve" is a prominent part of the mark VEUVE CLICQUOT because it is the first word in the mark); *Century 21 Real Estate*, 23 USPQ2d at 1700 (stating that consumers will first notice the identical lead word on encountering the marks); *Presto Prods. Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (stating that "it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered").

Third, the readily recognizable initialism CV is the only distinctive wording in Applicant's mark. The other word, "investments," is descriptive of Applicant's services. Although this additional descriptive word and the tree design do distinguish Applicant's mark somewhat from the cited mark in appearance – and, in the case of "investments," sound – we find that this matter has less significance in creating the mark's commercial impression and therefore is entitled to less weight in our likelihood of confusion determination. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) ("Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion.") (quotation omitted).

Thus, the dominant portion of Applicant's mark is identical to the entire literal portion of the cited mark, the recognizable letters CV. *See* Appeal Brief at 7, 7 TTABVue 8 ("There is no denying that the letter-string CV appears in both Applicant's mark and the cited mark."). Likelihood of confusion has been found where, as here, the entirety of one mark is incorporated within another, even though

we agree with Applicant that we make this finding on the facts specific to this appeal and not “automatically.” Appeal Brief at 7, 7 TTABVUE 8. *See, e.g., In Re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (affirming Board decision that ML is likely to be perceived as a shortened version of ML MARK LEES, and noting that “the presence of an additional term in the mark does not necessarily eliminate the likelihood of confusion if some terms are identical”); *China Healthways Inst. Inc. v. Wang*, 491 F.3d 1337, 83 USPQ2d 1123, 1125 (Fed. Cir. 2007) (finding the common word in CHI and CHI PLUS likely to cause confusion despite differences in the marks’ designs); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (MACHO COMBOS, with “combos” disclaimed, likely to cause confusion with MACHO).

We also are mindful that marks involving letter combinations can be more susceptible to confusion than word marks. *B.V.D. Licensing Corp. v. Rodriguez*, 83 USPQ2d 1500, 1509 (TTAB 2007). Applicant argues that consumers will recognize CV in each mark as an initialism referring to the name of its owner, thus causing the marks to present different commercial impressions. *See* Appeal Brief at 13-16, 7 TTABVUE 14-17. The respective corporate names of Applicant and Registrant, however, are not part of either mark. *See Christian Broadcasting Network Inc. v. ABS-CBN Int’l*, 84 USPQ2d 1560, 1569 (TTAB 2007). The derivations of letter marks, acronyms, or initialisms are of no particular significance in our analysis under Section 2(d), particularly where, as here, there is no evidence that purchasers are aware of the derivation. *B.V.D. Licensing Corp.*, 83 USPQ2d at 1508; *see also Edison*



*Bros. Stores, Inc. v. Brutting E. B. Sport-Int'l GmbH*, 230 USPQ530, 533 (TTAB 1986) (“It should be noted that the lettered marks in almost all of the cited decisions were, as in the case before us, derived from the trade or corporate names of the involved parties, but these facts had no negative influence upon the likelihood of confusion conclusions which were reached.”).

For all of these reasons, we find Applicant’s mark, considered in its entirety, to be similar to the cited mark, particularly in connotation and overall commercial impression. Bearing in mind that the marks are used with services that are identical in part, we find that the first *du Pont* factor supports a finding that confusion is likely.

Finally, we address Applicant’s contention that consumers are likely to exercise a high degree of care when purchasing the types of investment and other financial services offered by Applicant and Registrant. *See* Appeal Brief at 16-18, 7 TTABVue 17-19. This argument pertains to the fourth *du Pont* factor: the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *Id.*, 177 USPQ2d at 567.

Our primary reviewing court, the Court of Appeals for the Federal Circuit, addressed a similar argument in *Stone Lion*. There, the court found that “the Board properly considered *all* potential investors for the recited services, including ordinary consumers seeking to invest in services with no minimum investment requirement.” 110 USPQ2d at 1163. The court pointed out that Board precedent requires us to base our decision on the least sophisticated potential purchasers. *Id.* “[S]uch ordinary consumers will exercise care when making financial decisions, but are not immune

from source confusion where similar marks are used in connection with related services.” *Id.* at 1163-64 (quotations omitted). As in *Stone Lion*, we find the fourth *du Pont* factor to weigh in favor of a finding of a likelihood of confusion here.

We have considered all of the arguments and evidence of record as they pertain to the relevant *du Pont* likelihood of confusion factors, including any not specifically discussed herein. To the extent that any other *du Pont* factors for which no evidence was presented by Applicant or the Examining Attorney may nonetheless be applicable, we treat them as neutral.

We have found that the first, second, third, and fourth *du Pont* factors all favor a likelihood of confusion, with none weighing against. We find that Applicant’s mark is likely to cause confusion with the mark in cited Registration No. 4019081 when used in association with the services identified in the application.

**Decision:** The refusal to register Applicant’s mark is affirmed.