

This Opinion is Not a
Precedent of the TTAB

Mailed: November 21, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re iPayed, LLC

Serial No. 90855472

iPayed, LLC, *pro se*.

Benjamin Rosen, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

Before Adlin, English and Brock,
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

iPayed, LLC (“Applicant”) seeks registration on the Principal Register of the mark



(EBANK disclaimed) for “bank tendering, namely, tendering

of money; banking; electronic banking via a global computer network; home banking;
online banking; savings bank services” in International Class 36.¹

¹ Application Serial No. 90855472 was filed on July 29, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b) based on an allegation of a bona fide intent to use the mark. The application includes the following description of the mark: “The mark consists of the word ‘IPAYED’ appearing first in white letters on a navy blue background, with a blue and green dot forming a globe above the letter ‘I’. The word ‘EBANK’ appears last in black

The Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard-character mark IPAY registered on the Principal Register for the following services:

providing exchange-traded fund services in the nature of exchange traded funds brokerage and investment; management of exchange-traded funds that track select groups of securities; operation, creation and management of exchange-traded funds; exchange-traded fund consultation services, advisory services, investment services, planning services, development services, research services and analysis services; providing financial information; providing financial information in the field of finance, financial investments and exchange-traded funds; providing information, commentary and advice in the field of finance, financial investments, financial valuations and exchange-traded funds; providing financial information via a website; providing investors with financial information; financial information; providing financial brokerage and investment services with respect to securities and other financial instruments and products, namely, exchange-traded funds; providing financial services with respect to securities and other financial instruments and products, namely, providing financial market news and commentary; financial evaluation, tracking, analysis, consultancy, advisory and research services relating to securities and other financial instruments; information, advisory, consultancy and research services relating to finance and investments; management of portfolios of transferable securities; financial planning and investment advisory services; investment management in the fields of exchange-traded funds; issuance and provision of financial products and investment products in the nature of exchange-traded funds; creation, management, issuance and provision of securities portfolios" in International Class 36.²

letters with white shadowing on a light blue background." The colors navy blue, light blue, green, white and black are claimed as features of the mark.

² Registration No. 5935198 was issued on December 17, 2019 (the "Cited Mark" or "Cited Registration").

When the refusal was made final, Applicant appealed. Applicant and the Examining Attorney filed appeal briefs and Applicant filed a reply brief. We affirm the refusal to register under Section 2(d) of the Trademark Act.

I. Analysis

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. DuPont de Nemours & Co*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 144 (2015); *see also In re Charger Ventures*, 64 F.4th at 1381.

We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 1381 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, Opp. No. 91194974, 2015 WL 1646447, at *8 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). “The weight given to each factor depends on the circumstances of each case.” *In re Charger Ventures*, 64 F.4th at 1381; *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). Moreover, “each

case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods or services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002)). We address these two factors and other relevant *DuPont* factors below.

A. Similarity or Dissimilarity of the Services, Trade Channels and Consumers

Under the second *DuPont* factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration” and under the third *DuPont* factor we consider “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361. We must base our comparisons under the second and third *DuPont* factors on the services identified in the Cited Registration and the involved application. *See, e.g., In re Charger Ventures*, 64 F.4th at 1383 (“The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration.”)

(emphasis omitted); *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 WL 6072822, at *8 (TTAB 2021) (“[A]s with the relatedness of the goods, the similarity or dissimilarity of the channels of trade must be determined based on the identifications of goods in the parties’ registrations[.]”).

With respect to the second *DuPont* factor, it is well settled that the services need not be identical or even competitive to support a finding of likelihood of confusion. Rather, it is sufficient that the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, Opp. No. 91117739, 2007 WL 1431084, at *6 (TTAB 2007)); *see also In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (A proper comparison of the goods and services “considers whether ‘the consuming public may perceive [the respective goods and services of the parties] as related enough to cause confusion about the source or origin of the goods and services.’”) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002)). Further, it is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed in the identification of services in a particular class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *In re Aquamar, Inc.*, Ser. No. 85861533, 2015 WL 4269973, at *4 n.5 (TTAB 2015).

In comparing the services, we focus on Applicant’s “banking” services and Registrant’s “providing financial information” and “financial planning and investment advisory services.”

Both “banking” and “providing financial information” are broad identifications of services without limitation as to their nature. Thus, “we must presume that the services encompass all services of the type identified.” *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, Conc. Use No. 94002242, 2015 WL 4464550, at *17 (TTAB 2015), *aff’d mem.*, 652 F. App’x 971 (Fed. Cir. 2016); *see also Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1324 (Fed. Cir. 2014) (“The services recited in the application determine the scope of the post-grant benefit of registration.”); *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 WL 417620, at *7 (TTAB 2023) (“If an application or registration describes goods or services broadly, and there is no limitation as to their nature, it is presumed that the ‘registration encompasses all goods or services of the type described.’”) (quoting *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013)); *Paula Payne Prods. Co. v. Johnson Publ’g. Co.*, 473 F.2d 901, 902 (CCPA 1973) (giving “full sweep” to identification without limitations). We find that “providing financial information” is inherently related to Applicant’s banking services because providing customers with financial information, for example, providing monthly bank account statements, is an essential aspect of banking services. *Cf. In re Davey Prods. Pty. Ltd.*, Ser. No. 77029775, 2009 WL 2420527, at *5 (TTAB 2009) (finding electric motors for machines related to air compressors and parts therefor because the former “can be an essential component”

of the latter); *In re Summit Hotel Corp.*, 1983 WL 51899, at *1 (TTAB 1983) (finding restaurant and hotel services related because the services are complementary).

In addition, the Examining Attorney introduced Internet printouts showing five third parties using a single mark for both Applicant's "banking" services and Registrant's "financial planning and investment advisory services":

- CITI for banking, including digital banking and savings accounts, and investment services, including "professional planning and investment guidance";³
- WELLS FARGO for online banking and financial planning, investment and wealth management services;⁴
- GREAT WESTERN BANK for online and mobile banking as well as wealth management services;⁵
- FIRST NATIONAL BANK for online banking and investment services;⁶ and
- EFG for online and mobile banking as well as asset management services.⁷

³ April 27, 2022 Office Action, TSDR 90.

⁴ *Id.* at 98-99.

⁵ *Id.* at 24.

⁶ *Id.* at 23.

⁷ *Id.* at 21.

The Examining Attorney introduced evidence of eight additional third-party marks but he did not point out the services identified by those marks that are encompassed by **both** the Cited Registration and the involved application. Nor is it apparent to us.

The record also shows that banking and investment advisory services are offered on chase.com, albeit under different marks (CHASE banking and J.P. MORGAN wealth management and investment planning).⁸

The evidence establishes that Applicant’s banking services and Registrant’s “financial planning and investment advisory services” are related. *See, e.g., In re Charger Ventures*, 64 F.4th at 1382 (“Because the record shows that companies are known to offer both residential and commercial [real estate] services under the same mark and, often, on the same website, we find that substantial evidence supports the Board’s finding on [the second and third *DuPont*] factors.”); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (evidence that consumers encounter one mark designating a single source for the services of both parties supports a finding that the services are related); *In re Integrated Embedded*, Ser. No. 86140341, 2016 WL 7368696, at *12 (TTAB 2016) (websites made of record by examining attorney “demonstrate[d] that services of the type offered by both Applicant . . . and Registrant are marketed and sold together online under the same marks” and “[s]uch evidence is sufficient to find that the services at issue are related”).

Applicant argues that the third-party marks “are distinct from the scenario presented here” because they generally identify “an integrated suite of services under one name, which does not accurately reflect the separate and specialized nature of

⁸ *Id.* at 95, 97.

the services provided [under] the ‘IPAYED EBANK’ and ‘IPAY’ [marks].”⁹ As stated, Applicant and Registrant need not offer the services of the other to support a finding of relatedness. Moreover, Applicant’s statement acknowledging that the third-party marks identify “an integrated suite of services” is a tacit admission that banking and investment services are related in that they are sometimes offered together.

We also construe Applicant’s argument as an assertion that the third-party marks identify banking conglomerates that are different from the actual “specialized” services of Applicant and Registrant. With respect to actual use in the marketplace, Applicant further argues that the services it will offer “are notably distinct from those offered under the Cited Mark, with no commercial overlap.”¹⁰

[Applicant] will operate as a deposit only institution, refraining from issuing credit cards, prepaid cash cards, or providing brokerage and investment services. As a fully regulated insured depository electronic bank, it will conduct operations exclusively over the Internet and will be insured by the U.S. government through the FDIC. IPAYED EBANK will target the low-income underserved population in the United States, offering a no-cost online cash savings account. In summary, IPAYED EBANK will operate as a limited purpose, deposit only, U.S. nationally chartered bank targeting the unbanked and underbanked. ...

[T]he Cited Mark provides financial brokerage investment services pertaining to securities and other financial instruments and products, specifically exchange-traded funds. ... Any perceived similarities are superficial[.]¹¹

Applicant did not introduce evidence to support the purported “specialized” nature of Applicant’s and Registrant’s services. “[A]rgument is no substitute for evidence.”

⁹ Reply Brief, 9 TTABVUE 4-5.

¹⁰ Appeal Brief, 6 TTABVUE 9.

¹¹ *Id.* at 4, 9-10, 12.

Cai v. Diamond Hong, Inc., 901 F.3d 1367, 1371 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)). But even if it had, we cannot rely on extrinsic evidence of actual marketplace use or intended use to limit the services identified in the involved application or Cited Registration. *See, e.g., i.am.symbolic*, 866 F.3d at 1327 (“[T]he Board properly declined to import restrictions into the identification of goods based on alleged real world conditions.”); *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013) (“The PTO proceedings are ‘based on the content of the registration application’ and not upon any specific use of the challenged mark in commerce.”) (quoting *Mayer/Berkshire Corp. v. Berkshire Fashions, Inc.*, 424 F.3d 1229, 1232 (Fed. Cir. 2005)); *In re FCA US LLC*, Ser. No. 85650654, 2018 WL 1756431, at *4 (TTAB 2018) (“Evidence of actual marketplace usages that seeks to limit or alter the usages encompassed by the marks, goods and services, or usages listed in the application and registration are not considered in assessing likelihood-of-confusion in the registration context.”); *In re La Peregrina Ltd.*, Ser. No. 8676199, 2008 WL 695794, at *2 (TTAB 2008) (“[I]t is the identification of goods [or services] that controls, not what extrinsic evidence may show about the specific nature of the goods [or services].”). We must compare the services as identified. *See Stone Lion*, 746 F.3d at 1324 (“Parties that choose to recite services in their trademark application that exceed their actual services will be held to the broader scope of the application.”).


The cited third-party marks demonstrate that Applicant’s broadly identified “banking” services and Registrant’s similarly broad “financial planning and

investment advisory services” are the types of services offered under a single mark. We find that Applicant’s and Registrant’s identified services are related.

Turning to the third *DuPont* factor, there are no limitations on trade channels or consumers for Applicant’s “banking” services or Registrant’s “providing financial information” and “financial planning and investment advisory services.” Because we cannot read restrictions into the identifications, *Sabhnani*, 2021 WL 6072822, at *8, Applicant’s argument that it will target its services to “underserved populations” while Registrant’s consumers are “savvy investors” is unpersuasive.¹² We must presume that Registrant’s and Applicant’s services travel through all the normal channels of trade for such services to all normal classes of consumers. *See, e.g., i.am.symbolic*, 866 F.3d at 1327; *In re Integrated Embedded*, 2016 WL 7368696, at *13. The same evidence of third-party use showing that Applicant’s and Registrant’s services are related demonstrates that the normal channels of trade and consumers for Registrant’s and Applicant’s services overlap. *See, e.g., In re Charger Ventures*, 64 F.4th at 1382 (evidence of third-parties offering both residential and commercial real estate services under the same mark and, often, on the same website supported Board’s finding of relatedness under the second *DuPont* factor and “some overlap” under the third *DuPont* factor).

¹² Appeal Brief, 6 TTABVUE 12.

B. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the “similarity or dissimilarity of the marks [IPAY and ] in their entirety as to appearance, sound, connotation and commercial impression.” *DuPont*, 476 F.2d at 1361; *see also Stone Lion*, 746 F.3d at 1319. The issue is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions such that confusion as to the source of the services offered under the respective marks is likely to result. *Coach Servs.*, 668 F.3d at 1368. The focus is on the recollection of an ordinary consumer, who normally retains a general rather than specific impression of trademarks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007 (CCPA 1971); *L’Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 WL 1267956, at *5 (TTAB 2004); *Sealed Air Corp. v. Scott Paper Co.*, Opp. No. 91055167, 1975 WL 20752, at *3 (TTAB 1975).

We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entirety. *Stone Lion*, 746 F.3d at 1321; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). But one feature of a mark may be more significant than another, and it is not improper, for rational reasons, to give more weight to a dominant feature of a mark, provided the ultimate conclusion rests

on a consideration of the marks in their entireties. *See, e.g., In re Charger Ventures*, 64 F.4th at 1382 (permissible for the Board “to focus on dominant portions of a mark”); *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306, 1305 (Fed. Cir. 2018) (it was not error for the Board to focus on dominant portions of the marks).

We find that the word IPAYED is the dominant element of Applicant’s mark



because it is the first word in the mark and is displayed in a larger font than the generic term EBANK that has been disclaimed.¹³ *See, e.g., In re Detroit Athletic*, 903 F.3d at 1305 (“The non-source identifying nature of the words ‘Co.’ and ‘Club’ and the disclaimers thereof constitute rational reasons for giving those terms less weight in the analysis.”) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (finding DELTA the dominant part of the mark THE DELTA CAFE, in part because the generic word “cafe” was disclaimed); *Presto Prods. Inc. v. Nice-Pak Prods. Inc.*, Opp. No. 91074797, 1988 WL 252340, at *3 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered[.]”); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372-73 (Fed. Cir. 2005). The large blue rectangular background carrier for the words IPAYED EBANK and the smaller, lighter blue rectangular background carrier for the word EBANK are common geometric shapes with little, if any, source-identifying significance.

¹³ October 27, 2022 Office Action Response, TSDR 15 (CAMBRIDGE DICTIONARY defining e-bank “as a bank that operates over the internet”).

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Sabhnani, 2021 WL 6072822, at *18 (“In marks ‘consisting of words and a design, the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers....”) (quoting *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 WL 1620989, at *2 (TTAB 2018)); *Cf. In re Ocean Tech., Inc.*, Ser. No. 87405211, 2019 WL 6245131, at *6 (TTAB 2019) (circular design around wording in proposed mark found to be “a common geometric shape that consumers likely would perceive as a background design or carrier to the enclosed wording, rather than as a separable design element with trademark significance.”).

Even though there are some differences between the marks in appearance, specifically, Applicant’s mark (1) uses a misspelling of the past tense “paid” instead of the present tense “pay” used in the Cited Mark, (2) adds the word EBANK, and (3) includes two blue rectangular background carriers, consumers are likely to focus and rely on the first word in Applicant’s mark, IPAYED, which incorporates the whole, and merely changes the tense, of the Cited Mark IPAY. “Likelihood of confusion often has been found where the entirety of one mark is incorporated within another.” *Hunter Indus., Inc. v. Toro Co.*, Opp. No. 91203612, 2014 WL 1649332, at *11 (TTAB 2014); *see also Stone Lion*, 746 F.3d at 1320-22 (affirming Board’s finding of similarity where applicant’s mark STONE LION CAPITAL incorporated the entirety of the registered marks LION CAPITAL and LION); *Double Coin Holdings Ltd. v. Tru Dev.*, Can. No. 92063808, 2019 WL 4877349, at *9 (TTAB 2019) (in finding “the parties’ marks are similar in their entireties,” the Board noted that “Tru’s junior mark, ROAD WARRIOR contains Double Coin’s entire mark WARRIOR”).

Turning to sound, the basic rectangular design elements and color in Applicant's mark will not be pronounced. *In re Aquitaine Wine*, 2018 WL 1620989, at *2 ("The verbal portion of a word and design mark 'likely will appear alone when used in text and will be spoken when requested by consumers.'") (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1366 (Fed. Cir. 2012); *see also Sabhnani*, 2021 WL 6072822, at *18 (in marks consisting of words and a design, the words are normally accorded greater weight because they are likely to be used by consumers to request the goods [or services]). It also is likely that consumers with a penchant to shorten marks will drop the generic term EBANK, using only the dominant word IPAYED, to refer to Applicant's services. *See In re Bay State Brewing Co.*, Ser. No. 85826258, 2016 WL 1045677, at *3 (TTAB 2016) (consumers may drop the highly descriptive term 'Blonde' when calling for TIME TRAVELER BLONDE beer) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 815 (CCPA 1978) (Rich, J., concurring) ("[T]he users of language have a universal habit of shortening full names--from haste or laziness or just economy of words[.]")); *see also Spoons Rests. Inc. v. Morrison Inc.*, Opp. No. 91079317, 1991 WL 355249, at *5 (TTAB 1991) (recognizing consumers' "propensity for shortening names with which they have become familiar").

Applicant argues that the addition of the past tense "ED" to form the word IPAYED "modifies the pronunciation" of its mark.¹⁴ While use of the past tense in Applicant's mark might result in a slight difference in sound, we find that the Cited Mark IPAY and IPAYED sound quite similar. Thus, even if consumers were to

¹⁴ Reply Brief, 9 TTABVUE 2.

articulate the generic word EBANK when referring to Applicant's services the marks are overall similar in sound. *Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, Opp. No. 91189001, 2015 WL 5675641, at *15 (TTAB 2015).

As for connotation and commercial impression, consumers are likely to perceive the Cited Mark IPAY for Registrant's services as meaning "I pay" or "internet pay." Consumers of Applicant's banking services are likely to attribute the same meaning, albeit in past tense, to the source-identifying part of Applicant's mark, IPAYED, such that Applicant's mark in its entirety would likely be perceived as meaning "I paid from an ebank" or "internet paid through an ebank."

Applicant argues that the marks' meanings are different because the misspelled past tense "suggests a past or completed action, implying a different concept from the similar present tense 'IPAY'."¹⁵ Applicant further contends that the addition of the word EBANK differentiates its mark in connotation and meaning:

The term 'bank' carries a specific legal significance, as it denotes an institution that is authorized to engage in banking activities, which must include the acceptance of deposits. Therefore, its usage is governed by strict regulatory standards to ensure clarity and accuracy in the financial marketplace. In legal terms, the designation 'bank' is reserved exclusively for institutions that have obtained proper authorization and licensing from relevant regulatory bodies, as outlined in the Bank Holding Company Act of 1956. This Act prohibits non-banking entities from using the term "bank" in their name unless they are specifically chartered as a bank or savings association and have met the rigorous legal requirements and are officially recognized as banks by the government. Consequently, adherence to these regulations is paramount to prevent confusion and protect consumers from potentially misleading representations of financial institutions and maintain the integrity of the banking system.¹⁶

¹⁵ Reply Brief, 9 TTABVUE 2.

¹⁶ Appeal Brief, 6 TTABVUE 5-6.

We are not persuaded. The commercial impression of a personal or internet “payment” is the same in both marks, whether past or present. *See, e.g., In re Dahiquist, Inc.*, 1976 WL 21126, at *2 (TTAB 1976) (“The past tense, ‘phased’, of the verb of which ‘phase’ is the present tense and ‘phasing’ is the present participle, would, we think, convey to purchasers of, and dealers in, high fidelity sound reproduction equipment the same meaning or connotation as the words ‘phase’ and ‘phasing’”). The addition of the word EBANK does not meaningfully change this connotation or commercial impression. Indeed, given the relatedness of the services as discussed above, consumers may perceive Applicant’s mark as a variant identifying an extension of Registrant’s financial information and investment services to banking services, or vice versa.

In sum, we find that the similarities between the marks in their entireties in appearance, sound, connotation and commercial impression are more significant than

Applicant also argues that in “*In re Citigroup Inc.*, 93 USPQ2d 812 (TTAB 2009), the TTAB reviewed Citigroup’s application to register the mark ‘CITIBANK’ and found that the addition of ‘BANK’ provided sufficient distinction from their other marks containing ‘CITI.’ The TTAB determined that ‘BANK’ added a level of distinctiveness that reduced the likelihood of confusion with other similar marks.” Reply Brief, 9 TTABVUE 3. We were unable to find any case using the citation Applicant provided. Nor did we find any cases matching Applicant’s asserted fact pattern.

To the extent Applicant intended to cite *Citigroup Inc. v. Cap. City Bank Grp., Inc.*, Opp. No. 91177415, 94 USPQ2d 1645, 2010 WL 595586 (TTAB 2010) *aff’d*, 637 F.3d 1344 (Fed. Cir. 2011), the facts of that case are distinguishable. In *Citigroup*, the Board found the applicant’s marks consisting of or incorporating CAPITAL CITY BANK engendered “entirely different” commercial impressions than the opposer’s marks consisting of or incorporating CITIBANK because “Applicant’s marks will be perceived as CAPITAL CITY ... bank, not as CAPITAL ... CITY BANK.” *Id.* at 21.

As the distinguishable *Citibank* case demonstrates, the Board must decide each case on its own merits on the record before it. *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174 (Fed. Cir. 2009); *In re Nett Designs Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001). We are not bound by prior decisions concerning different marks based on different records.

the differences. *See, e.g., See In re Charger Ventures*, 64 F.4th at 1382 (recognizing that “an additional word or component may technically differentiate a mark but do little to alleviate confusion”); *In re St. Helena Hosp.*, 774 F.3d at 751 (“[M]arks must be considered ... in light of the fallibility of memory.”) (internal quotation marks omitted).

II. Conclusion

As a final step, we “weigh the *DuPont* factors used in [our] analysis and explain the results of that weighing.” *In re Charger Ventures*, 64 F.4th at 1384 (emphasis omitted). The services are related, the trade channels and consumers overlap, and the marks in their entireties are similar in appearance, sound, connotation and commercial impression. The first, second and third *DuPont* factors thus support finding a likelihood of confusion. No factors weigh against such a finding. Accordingly,

we find that Applicant’s mark  is likely to cause confusion.

Decision: The refusal to register Applicant’s mark under Section 2(d) of the Trademark Act is affirmed.