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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047559
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EAST WEST BANK,

Petitioner,

v.

THE AIMBRIDGE GROUP,

Registrant.

Cancellation No. 92047559

Registration No. 3,196,507

Mark: POWERBRIDGE

**REGISTRANT’S COMBINED REPLY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO OPPOSER’S CROSS MOTION FOR
SUMMARY JUDGMENT**

Petitioner East West Bank (“EWB”) admits that facts are undisputed with respect to Registrant Aimbridge Lending Group, LLC’s (“Aimbridge”) motion for summary judgment. Accordingly, there is no genuine issue of material fact that precludes the Board from GRANTING Aimbridge’s motion—and compelling justification for doing so—based on (a) the dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression:

POWERBRIDGE

versus

YOUR FINANCIAL BRIDGE

BUSINESS BRIDGE

and (b) the weakness of the marks asserted by EWB given the number of similar marks in use on similar services—demonstrated by seventy marks that have been approved and registered by the U.S. Patent & Trademark Office (“Trademark Office”) that include the BRIDGE term for use within the financial industry.

On the other hand, EWB’s motion for summary judgment implicates a number of disputed facts that preclude summary judgment on the first two bases urged: that (a) EWB has a

priority of use of its marks in interstate commerce, and (b) there is a likelihood of confusion as between EWB's and Aimbridge's marks. EWB's third asserted basis for summary judgment—that Registrant committed fraud on the Trademark Office—is untimely and inappropriate given that the claim of fraud has not been made, let alone pled with sufficient specificity, in this proceeding. Accordingly, for the reasons set forth below, EWB's motion for summary judgment should be DENIED.

I. UNDISPUTED AND DISPUTED FACTS AND CASE PROCEDURE

A. UNDISPUTED FACTS RELEVANT TO AIMBRIDGE'S MOTION FOR SUMMARY JUDGMENT

Registrant Aimbridge Lending Group, LLC ("Aimbridge") is a Colorado limited liability company located in Englewood, Colorado. Aimbridge is the assignee of all right, title to and interest in the mark at issue in this cancellation proceeding, U.S. Trademark Registration No. 3,196,507 for the mark POWERBRIDGE, from predecessor-in-interest The Aimbridge Group, Inc., a related company.

Aimbridge filed an application for registration of the unique POWERBRIDGE mark on February 24, 2006 based on use at least as early as June 2004. The Trademark Examining Attorney found no similar registered or pending marks that would bar registration and the POWERBRIDGE application was published for opposition October 24, 2006 in the following two services classes:

Int'l Class 36: Consumer lending services; Credit reporting services; Financial information provided by electronic means; Financial loan consultation; Matching borrowers with potential lenders in the field of consumer and mortgage lending; Mortgage procurement for others; Mortgages services, namely, buyer pre-qualification of mortgages for mortgage brokers and banks

Int'l Class 42: Providing online non-downloadable software for collecting, analyzing, monitoring and reporting the status of loan financing, mortgage lending and financial information services

Unopposed, the POWERBRIDGE mark was subsequently registered on January 9, 2007.

Aimbridge has been using a family of trademarks incorporating the company's AIMBRIDGE trade name with a wide variety of automobile and mortgage lending and financial information software and consulting services since at least as early as October 2002. This is confirmed by the verified interrogatory answers provided by Aimbridge in the copending opposition proceeding (Opposition No. 91173364) brought by EWB against another trademark owned by Aimbridge, namely, for AIMBRIDGE CONNECT. (Second Lowe Dec. Ex. 1, Nos. 1-3.) In addition to the mark at issue in this opposition, Aimbridge is the owner of the following seven federally registered trademarks incorporating the AIMBRIDGE term:

Mark	Reg. No.	Filing Date	Reg. Date	Class
AIMBRIDGE	3088546	May 20, 2004	May 2, 2006	35
AIMBRIDGE	2877898	Oct 7, 2002	Aug 24, 2004	39
AIMBRIDGE	2860999	Oct 7, 2002	Jul 6, 2004	36
AIMBRIDGE CONNECT	3146411	Jun 7, 2004	Sep 19, 2006	9
THE AIMBRIDGE GROUP	2940516	Oct 7, 2002	Apr 12, 2005	36
THE AIMBRIDGE GROUP	2880065	Oct 7, 2002	Aug 31, 2004	35
THE AIMBRIDGE GROUP	2875407	Oct 7, 2002	Aug 17, 2004	39

EWB claims ownership in and asserts as bases for this opposition two trademarks: YOUR FINANCIAL BRIDGE, U.S. Trademark Application Serial No. 78897563 (recently registered as U.S. Reg. No. 3,307,037) and BUSINESS BRIDGE, U.S. Trademark Application Serial No. 78890654. Both applications were filed the end of May 2006—well subsequent to Aimbridge's February 24, 2006 filing for the contested POWERBRIDGE mark and years after Aimbridge's filing for and registration of several of the seven AIMBRIDGE family marks noted above.

The BRIDGE term is frequently used as part of trade names and marks in the financial industry. The following seventy marks have been approved and registered by the Trademark Office for use in association with financial services:

Trademark	Reg. No.	Trademark	Reg. No.
AGBRIDGE FINANCE	3042267	ALPHABRIDGE	2517573
AGBRIDGE FINANCE	3042266	BRACEBRIDGE	2744542
AIMBRIDGE	2860999	BRIDGE	1526534
AIMBRIDGE CONNECT	3146411	BRIDGE COMMUNITY BANK	3101564

Trademark	Reg. No.
BRIDGE ETICKER	2613778
BRIDGE FINANCE GROUP, LLC	3180483
BRIDGE FUNDS	3178893
BRIDGE HEALTHCARE FINANCE	2957062
BRIDGE VIEW BANK	1825473
BRIDGE.COM	2554574
BRIDGECHANNEL	2222060
BRIDGEEXPRESS	3024430
BRIDGEFORCE	2810508
BRIDGELoAN INVESTORS	2312071
BRIDGELoAN.COM	2786815
BRIDGEPOINT	2957407
BRIDGEPOINT	2129371
BRIDGEPORTFOLIO	2549030
BRIDGES	2545962
BRIDGES	2518546
BRIDGESOURCE	3231445
BRIDGESTATION	2216675
BRIDGEWATER	2395503
BRIDGEWEALTH	2928314
BUILDING FINANCIAL BRIDGES	2376839
CAMBRIDGE SAVINGS BANK	2472254
CAMBRIDGE ASSOCIATES LLC	1448853
CAMBRIDGE SAVINGS BANK	2995105
CAMBRIDGECOMMERCE	2573800
CROSSBRIDGE	2598805
DRAGONBRIDGE	3270067
DRAWBRIDGE	2845803
ECBRIDGES	2307742
GLOBALBRIDGE	2591225
HIGHBRIDGE	2643425
HIGHBRIDGE CAPITAL	2417249

Trademark	Reg. No.
HIGHBRIDGE CAPITAL MANAGEMENT, LLC	2858395
INCOME BRIDGE	2968758
INCOME BRIDGE APPROACH	2979830
IRON BRIDGE	2784833
KNIGHTSBRIDGE	1476178
KNIGHTSBRIDGE PARTNERS	1476179
LIGHTBRIDGE	3172046
MACROBRIDGE	3245113
MARBRIDGE	2872371
MARKETBRIDGE	2747796
NORTH BRIDGE VENTURE PARTNERS	2796528
ONEBRIDGE	3014146
ONEBRIDGE	3014096
ONEBRIDGEHOUSE	3281576
PENNBRIDGE	3283756
ROCKBRIDGE CAPITAL	2623934
SOUNDBRIDGE	2870281
SOUNDBRIDGE CAPITAL MANAGEMENT	2870280
STARBRIDGE CHOICES	3149771
STRONGBRIDGE	3054495
SUNBRIDGE	2768072
TAXBRIDGE	3005901
THE AIMBRIDGE GROUP	2940516
THE BRIDGE GROUP	2995277
THE WIDOW'S BRIDGE	3249947
VANGUARD BRIDGE	2171983
VESBRIDGE PARTNERS	3058247
WEALTHBRIDGE	3080517
WESTBRIDGE CAPITAL	2546319
WHITEBRIDGE	3164000

Most of these registered marks have been in use for a substantial period of time. This is confirmed by the evidence of extensive third party use of these and other marks incorporating the BRIDGE term in association with the provision of financial services on the Internet, which is a medium universally recognized as generally accessible to the public throughout the world. Attached as Exhibit 2 to the Second Lowe Declaration are website pages taken from the Internet as well as the archive website WayBackMachine (www.archive.org), which has been capturing



and archiving websites since 1996, demonstrating the ongoing use of a plethora of marks incorporating the BRIDGE term for a wide variety of financial services.

B. DISPUTED FACTS PRECLUDE EWB'S MOTION FOR SUMMARY JUDGMENT

In addition to the weakness of the EWB marks and the dissimilarity between those marks and the POWERBRIDGE registration, there are further disputed issues of fact precluding EWB's motion for summary judgment. As explained in greater detail below, the credible evidence of record confirms that (a) EWB does not enjoy a priority of use of its marks in interstate commerce, and that (b) there is no evidence that the services provided in association with Aimbridge's mark and those asserted by EWB are competitive or even related or that they are provided in the same or overlapping channels of trade.

Apart from the inappropriate timing and nature of EWB's third basis for summary judgment, discussed below, Aimbridge strenuously disputes the existence of any facts supporting EWB's accusation that Aimbridge committed fraud on the Trademark Office in its registration of the POWERBRIDGE trademark.

C. CANCELLATION PROCEEDING STATUS

EWB's allegation that Aimbridge's motion for summary judgment was premature, and somehow denied EWB of an opportunity to seek discovery on its fraud claim, is wholly without merit. First, pursuant to 37 CFR § 2.127(e)(1), the only requirements regarding the timing of summary judgment motions are that they may not be brought until notification of the proceeding has been sent to the parties and must be brought prior to the commencement of the first testimony period. Aimbridge was perfectly within its rights to bring its motion for summary judgment when it did. Second, it was not Aimbridge's motion for summary judgment, but EWB's first motion to amend the pleadings, that prompted the Board to suspend the proceedings. Third, it is EWB's motion for summary judgment regarding fraud. Aimbridge certainly did not force EWB to file its motion for summary judgment at the time it did. Indeed, as discussed in



greater detail below, it was improper for EWB to bring a motion for summary judgment on a fraud claim that has yet to be asserted or otherwise allowed in this proceeding.

Fourth, and perhaps most compelling, is the fact that EWB is being dishonest with respect to the timing of discovery and its opportunity for investigation with respect to its specious allegations of fraud. EWB claims that it has been prejudiced because it “recently became aware of the fraud ground” and has not opportunity for discovery on this topic. (EWB’s motion, pg. 2.) Yet, according to its motion, the sole basis for EWB’s fraud claim is that (1) Aimbridge declared that it was using the mark in commerce with the identified services; and (2) the specimens submitted in association with its application fail to demonstrate such use with respect to several of the services in Class 36. (EWB’s motion, pg. 20.) These facts were wholly apparent from the face of the POWERBRIDGE registration and publicly available prosecution history at the time EWB filed the petition to cancel on May 22, 2007. While there is absolutely no basis for the fraud ground, there is certainly no credible support for EWB’s claim that it only “recently became aware of the fraud ground.” Even assuming such a ground existed, it existed as of May 22, 2007. EWB’s argument that it has had no opportunity to conduct discovery rings equally hollow. The discovery period opened June 12, 2007. Yet EWB failed to propound a single discovery request between that date and the date the proceedings were suspended on November 16, 2007—more than five months later. EWB has no one to blame but itself for its procrastination. And once again, since it is EWB’s own motion, EWB certainly had the option of waiting to file until (1) a fraud claim properly plead, and (2) if and when the suspension is lifted and discovery is allowed.

II. ARGUMENT

A. AIMBRIDGE IS ENTITLED TO SUMMARY JUDGMENT BASED ON THE DISSIMILARITY OF THE MARKS, PARTICULARLY GIVEN THE WEAKNESS OF EWB’S MARKS

It bears repeating: in determining whether a likelihood of confusion exists the Board need not consider every factor. *Ban Beauty Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336

whole in determining likelihood of confusion.”); *Recot, Inc. v. Becton*, 214 F.3d 1322 (Fed. Cir. 2000) (reversing decision for improperly dissecting conflicting marks to determine if the commercial impressions were confusing).

Neither case cited by EWB supports the improper dissection urged in this case. In *In re Chatam Int'l, Inc.*, 380 F.3d 1340 (Fed. Cir. 2004), the Federal Circuit upheld a finding that JOSE GASPAR GOLD and GASPAR'S ALE were similar so as to create a likelihood of confusion. The Federal Circuit reiterated the rule against improperly dissecting the two marks, which was not done by the Board, but affirmed the Board's analysis that emphasized the common GASPAR term and deemphasized the JOSE term (because it indicated a part of an individual's name), the GOLD term (because it indicated premium quality), and the ALE term (because it was descriptive of the goods). In *In re Nat'l Data Corp.*, 753 F.2d 1056 (Fed. Cir. 1985), the Federal Circuit upheld a finding that THE CASH MANAGEMENT EXCHANGE was similar to CASH MANAGEMENT ACCOUNT on a similar basis, namely, that the only different terms THE and EXCHANGE/ACCOUNT were generic or descriptive and therefore should be deemphasized. Of particular note, the Federal Circuit distinguished cases very similar to the present case where important terms were not “deemphasized” and a conclusion of no similarity or likelihood of confusion was affirmed. *In re Hearst Corp.*, 982 F.2d 493 (Fed. Cir. 1992) (reversal of Board decision that refused registration of VARGA GIRL because there was a likelihood of confusion with the registered mark VARGAS; Court concluded that the appearance, sound, sight, and commercial impression of VARGA GIRL derive significant contribution from the component “girl;” by stressing the portion “varga” and diminishing the portion “girl,” the Board inappropriately changed the mark); *Conde Nast Publications, Inc. v. Miss Quality, Inc.*, 507 F.2d 1404 (CCPA 1975) (affirmation of Board decision that there was not a likelihood of confusion between COUNTRY VOGUES for women's dresses and VOGUE for a magazine; only similarity between them is that VOGUE is



part of the mark COUNTRY VOGUES, and the dissimilarities between the marks, viewed in their entirety, outweigh this similarity sufficiently to leave no doubt).

The marks in cases cited by EWB are highly distinguishable from the marks at issue in this proceeding. The POWERBRIDGE mark consists of single word POWERBRIDGE, which is unitary in nature, meaning that it creates a “single and distinct commercial impression.” *In re Slokevage*, 441 F.3d 957, 962 (Fed. Cir. 2006). The POWERBRIDGE mark is different than any single word of the YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE marks. It is simply not appropriate to dissect the unitary POWERBRIDGE term to facilitate a comparison to EWB’s asserted marks; POWERBRIDGE constitutes an “inseparable whole.” *See id.* Indeed, absent improper dissection, the POWERBRIDGE mark does not even include the word BRIDGE; the BRIDGE term appears only as part of the unitary POWERBRIDGE mark. In a similar fashion, the further distinguishing terms YOUR and FINANCIAL of the YOUR FINANCIAL BRIDGE and BUSINESS of the BUSINESS BRIDGE marks asserted by EWB should not be removed from the overall comparison of the marks. These differences, taken both singly and together, confirm that there is no likelihood of confusion based solely on the strikingly different appearance of the marks.

2. *Sound*

EWB argues that the BRIDGE portion of the marks would be pronounced the same, and that this supports a finding of likely confusion. EWB’s conclusory statement is objectively flawed. First, it is improper to dissect BRIDGE from the mark in its entirety, POWERBRIDGE. Likewise, it is improper to dissect BRIDGE from the YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE marks in their entirety.

Properly considered, the POWERBRIDGE mark consists of a single word with three syllables. In contrast, the YOUR FINANCIAL BRIDGE mark consists of three words with the first and last words having a single syllable and the middle word having three syllables. Likewise, the BUSINESS BRIDGE mark consists of two words, the first having two syllables

and the second having one. Moreover, the only syllable in common as between the marks is the BRIDGE component, which appears at a very different position within each of the marks. In the POWERBRIDGE mark the BRIDGE term is the third syllable of the first word. In the YOUR FINANCIAL BRIDGE mark the BRIDGE term is the last syllable forming a wholly separate word in the phrase. Similarly in the BUSINESS BRIDGE mark the BRIDGE term is the last syllable forming a wholly separate word in the phrase.

Perhaps most compelling, the first two pronounced syllables of the POWERBRIDGE mark are very different from that found in the YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE marks. With the POWERBRIDGE mark, the first two pronounced syllables are POWER-. In contrast, the first two pronounced syllables in the YOUR FINANCIAL BRIDGE mark are YOUR and FIN-. With the BUSINESS BRIDGE mark, the first two pronounced syllables are BUSI-. There is simply no way to torture a pronunciation out of any of the three marks that is similar. Given the significant differences between the location and different use of words and syllables, as well as the different number of words and resulting pronunciations, the only conclusion is that the marks are phonetically dissimilar.

3. Connotation and Commercial Impression

EWB has failed to come forward with any evidence that either the connotation or commercial impression of the marks is similar. In the banking context for which EWB's marks are purportedly used, both the YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE marks create a commercial impression of a passage to financial security. The unitary term POWERBRIDGE is a wholly made up word with no corresponding dictionary definition or implied meaning.

4. Prolific Third Party Use of the BRIDGE Term for Similar Services Confirms That It Is Weak

EWB is incorrect regarding the relevance of the seventy cited registrations demonstrating the extensive third party adoption of marks incorporating the BRIDGE term for use in the

financial industry. It is settled law that such evidence is probative for several reasons directly relevant to the present summary judgment motion:

Third party registrations are also probative to determine a common, weak significance of a part of a composite mark. Third party registrations are relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak. Such registrations could also show that the PTO, by registering several marks with such a common segment, recognizes that portions of such composite marks other than the common segment are sufficient to distinguish the marks as a whole and to make confusion unlikely.

McCarthy on Trademarks, § 11:90 (2006) (citing cases); *accord Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915 (CCPA 1976); *Standard Brands Inc. v. Peters*, 191 USPQ 168 (TTAB 1976); *Basic Vegetable Products Inc. et al. v. General Foods Corp.*, 165 USPQ 781 (TTAB 1970).

The seventy registrations show that the Trademark Office, by registering numerous marks with the common BRIDGE term for use in the financial industry, recognizes that other portions of these marks are sufficient to distinguish the marks as a whole and to make confusion unlikely. Stated differently, contrary to EWB's position, the presence of the descriptive or suggestively weak BRIDGE term does not make confusion likely. *See, e.g., Spraying Systems Co. v. Delavan, Inc.*, 762 F. Supp. 772 (N.D. Ill. 1991), *aff'd*, 975 F.2d 387 (7th Cir. 1992) (third party registration of composites containing the "-JET" suffix were probative to show that it was descriptive for spray nozzles. "When the sole aim is to determine whether or not '-JET' is a descriptive term, it is unimportant that [the trademark proponent] was able to show that many of the registered trademarks were not in current use."); *Knight Textile Corp. v. Jones Investments Co.*, 75 USPQ2d 1313 (TTAB 2005) (no confusion was likely between senior ESSENTIALS and junior NORTON MCNAUGHTON ESSENTIALS (both for women's apparel) because the basic word "essentials" was "highly suggestive" of clothing that is "essential" to a person's wardrobe." Twenty-three third-party registrations of the term "essentials" helped to prove that



both others in the field and the Trademark Office have considered the word ESSENTIALS to have suggestive significant as applied to clothing).

Even though evidence of actual use of these marks is not required in order to demonstrate the weakness of the BRIDGE term, in fact most or all of these registered marks are presently and have been in use for a substantial period of time. (Second Lowe Dec. Ex. 2.)

Given the weakness of the BRIDGE term, EWB cannot claim sole ownership over it as used separately, let alone as a single syllable of a composite mark as it is in the POWERBRIDGE mark. This undisputed factor further supports the conclusion of no likelihood of confusion. *See Gruner + Jahr USA Publ'g v. Meredith Corp.*, 991 F.2d 1072, 1077 (2d Cir. 1993) (reasoning that the registration of a proper noun as a trademark does not by itself “remove it from being available to others” or “grant exclusive possession” of variations of the word to the trademark registrant).

B. EWB IS NOT ENTITLED TO SUMMARY JUDGMENT OF PRIORITY OF USE OR LIKELIHOOD OF CONFUSION

Genuine issues of material fact preclude summary judgment in favor of EWB.

1. EWB does not have priority of use of BRIDGE marks

EWB is not the first user—let alone the first to file for or register—of marks incorporating the term BRIDGE. EWB has failed to provide any credible evidence that it has used the asserted YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE marks as claimed “in the advertising, promotion and sale of a wide variety of banking and cash management services since at least as early as 1997.” Rather, the overwhelming evidence confirms that EWB in fact did not start using either its claimed YOUR FINANCIAL BRIDGE or its BUSINESS BRIDGE marks earlier than 2005. The specimen submitted by EWB in support of its YOUR FINANCIAL BRIDGE application is a flyer purportedly for a “business solutions seminar” scheduled for April 12, 2005. (Second Lowe Dec. ¶ 4.) This does not support use back to 1997, and in fact strongly suggests that, contrary to the representations made to the Trademark Office,



use did not begin prior to 2005. In a similar fashion, the specimen submitted by EWB in support of its BUSINESS BRIDGE application is an Internet webpage. (Second Lowe Dec. ¶ 5.) The date of this webpage has been confirmed to be no earlier than November 2005—more than eight years after the alleged date of first use.

EWB's own Internet webpages confirm that its use of the asserted marks started only recently. Attached as Exhibit 5 to the Second Lowe Declaration (Second Lowe Dec. ¶ 6) are EWB website pages (www.eastwestbank.com) taken from the Internet archive website WayBackMachine (www.archive.org), which has been capturing and archiving websites since 1996. As confirmed by the dated pages, the earliest use of the marks in association with the provision of EWB's services did not occur until June 2005.

In contrast, Aimbridge has provably been using the term AIMBRIDGE in association with its family of trademarks since at least as early as October 2002—more than two years prior to the apparent first use by EWB of its asserted marks. This is confirmed by the verified interrogatory answers provided by Aimbridge in the related opposition proceeding brought by EWB (Second Lowe Dec. Ex. 1, Nos. 1-3.) This is also evidenced by Exhibit 6 to the Second Lowe Declaration (Second Lowe Dec. ¶ 7), which consists of Aimbridge's website pages (www.aimbridge.com) taken from the Internet archive website WayBackMachine showing Aimbridge's use of the AIMBRIDGE mark in association with its goods and services at least as early as October 2002. Aimbridge has been using the contested POWERBRIDGE mark since at least as early as June 2004—nearly a year prior to EWB's first use of its asserted marks.

Accordingly, not only is prior use at issue, but the only credible evidence in the record demonstrates that Aimbridge—not EWB—is the first user of its respective marks.

2. *The parties' respective services and channels of trade are different*

EWB admits that facts are undisputed with respect to Aimbridge's motion for summary judgment on the dispositive likelihood of confusion factors of (a) similarity of the marks, and

(b) weakness of the asserted EWB marks. (EWB's opposition, pp. 4-5.) In addition, the fact that EWB includes these two factors among those asserted in its summary judgment motion constitutes a further admission that there are no material factual disputes concerning these factors.

It is a very different situation with respect to a comparison of the parties' services and channels of trade. EWB is challenging only the Class 36 services. Both of EWB's asserted marks are for use in association with services in International Class 36 for "banking; cash management." In contrast, none of the Class 36 services recited in association with the contested POWERBRIDGE mark constitute "banking; cashing management." Rather, Aimbridge's Class 36 services are as follows:

Int'l Class 36: Consumer lending services; Credit reporting services; Financial information provided by electronic means; Financial loan consultation; Matching borrowers with potential lenders in the field of consumer and mortgage lending; Mortgage procurement for others; Mortgages services, namely, buyer pre-qualification of mortgages for mortgage brokers and banks.

The most that can be said of the services recited in the parties' respective marks is that they all fall within the financial services industry. But this is not enough to demonstrate similarity of services for purposes of determining likelihood of confusion, let alone to justify granting summary judgment. EWB's conclusory statements claiming that its recited "banking" and "cash management" services encompass Aimbridge's recited services are both untrue and insufficient as a matter of law. The plain meaning and definition of "banking" is "the business carried on by a bank or a banker." (www.dictionary.com) EWB is a bank. Aimbridge is not a bank. Moreover, "cash management" as that term is commonly used connotes the provision of cash to consumers, falling within the banking industry. Aimbridge does not provide "cash management" and is not a member of the banking industry. In contrast, a close examination of the services recited in the POWERBRIDGE registration confirms that all of the services pertain

to providing mortgage lending and financial *information reporting, software and consulting* services—none of the services constitute *banking or cash management*.

EWB has failed to provide any evidence that the mortgage lending and financial information reporting, software and consulting services provided by Aimbridge are competitive or even related to the banking or cash management services purportedly provided by EWB. EWB has come forward with no evidence that “consumers are likely to mistakenly think that [Aimbridge’s services] come from the same source as [EWB’s services] or are sponsored by, affiliated or connected with [EWB].” *E. Remy Martin & Co., S.A. v. Shaw-Ross International Imports, Inc.*, 756 F.2d 1525 (11th Cir. 1985); *In re Save Venice New York, Inc.*, 259 F.3d 1346 (Fed. Cir. 2001). The burden for coming forth with this evidence rests with EWB. At a minimum, there are factual issues regarding the whether the services are competitive or related that preclude summary judgment in favor of EWB on this factor.

EWB’s fundamental premise regarding the similarity of channels of trade is flawed. Because the services of Aimbridge’s disputed mark are not similar to the services of EWB’s asserted marks, there is no assumption that the services travel in the same channels of trade. Moreover, EWB has failed to come forward with any evidence that the respective marks are used in the same or overlapping channels of trade. The only evidence presented has been by Aimbridge, which confirms that Ambridge’s services involve indirect lending tools to businesses (e.g., credit unions and dealerships) in a business-to-business capacity. Aimbridge does not provide banking services nor does it support online banking transactions or cash management functions. (Second Lowe Dec., Ex. 1, Nos. 13, 14.) In contrast, EWB’s services are provided in a business-to-consumer capacity. (*Id.*) This represents very different channels of trade precluding a likelihood of confusion. *See, e.g., Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713 (Fed. Cir. 1992) (both parties sold in the medical field; defendant sold EDS power supplies and battery charges to makers of medical equipment, plaintiff sold E.D.S. data processing services to medical insurers; no likelihood of confusion); *Dawn Donut Co. v. Hart’s*



Food Stores, Inc., 267 F.2d 358 (2d Cir. 1959) (not confusion where donuts sold at retail and donut mix sold to commercial buyers); *David Crystal, Inc. v. Soo Valley Co.*, 471 F.2d 1245 (CCPA 1973) (sales to industrial users versus to consumers). At a minimum, there are factual issues regarding the whether the respective services are provided in the same or similar channels of trade that preclude summary judgment in favor of EWB on this factor.

C. EWB’S ARGUMENT REGARDING THE DUTY OF A LATECOMER IS FLAWED

EWB asserts that it is the senior user of the BRIDGE term and that Aimbridge, as a “latecomer,” had both constructive knowledge of EWB’s marks and a duty to avoid confusion. EWB further argues that any doubts should be resolved in favor of EWB as the “prior user and registrant.” EWB’s argument is flawed on a multitude of levels.

First, as set forth above, EWB is not the senior user of the BRIDGE term. Rather, the only credible evidence in this proceeding confirms that Aimbridge was the first to adopt and use its AIMBRIDGE mark at least as early as October 2002, and its POWERBRIDGE mark in June 2004. Both of these dates precede both the apparent adoption of EWB’s marks as trademarks and the filing of EWB’s marks in May 2006.

Second, how could Aimbridge have had constructive knowledge—or any knowledge whatsoever—of EWB’s two asserted trademarks at any time prior to 2005, when they were apparently first adopted and used, or prior to May 2006 when the applications were filed? It is nonsensical to assert that Aimbridge should have constructive knowledge prior to that time. Indeed, it is EWB as the latecomer that is presumed to have had constructive knowledge of Aimbridge’s rights given that Ambridge filed for and obtained six registrations for its AIMBRIDGE family of marks prior to the time that EWB filed for the two marks it now asserts.

Third, EWB cannot be considered as the registrant for purposes of any presumption for resolution of doubt. Applications for both of EWB’s marks were filed at the end of May 2006—subsequent to Aimbridge’s February 24, 2006 filing for the contested POWERBRIDGE mark



and years after Aimbridge's filing for and registration of the following six marks, all incorporating the AIMBRIDGE term:

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AIMBRIDGE	3088546	May 20, 2004	May 2, 2006	35
AIMBRIDGE	2877898	Oct 7, 2002	Aug 24, 2004	39
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THE AIMBRIDGE GROUP	2880065	Oct 7, 2002	Aug 31, 2004	35
THE AIMBRIDGE GROUP	2875407	Oct 7, 2002	Aug 17, 2004	39

If anyone is to be considered the registrant it should be Aimbridge. Aimbridge's POWERBRIDGE mark was registered January 9, 2007, while EWB's YOUR FINANCIAL BRIDGE mark only just registered October 9, 2007, and the BUSINESS BRIDGE mark has yet to register.

Fourth, the cases cited by EWB are factually distinguishable. In *American Rice, Inc. v. H.I.T. Corp.*, 231 USPQ 793 (TTAB 1986), the applicant was aware of opposer's prior registrations before its adoption and use of the opposed mark. Such is not the case here. The verified interrogatory answers of Aimbridge in the related opposition proceeding confirm that it had no knowledge of EWB's alleged prior use of the asserted marks. (Second Lowe Dec. Ex. 1, Nos. 6, 15, 18.) Likewise, EWB's citation to *Kimberly-Clark Corp. v. H. Douglas Enterprises, Ltd.*, 774 F.2d 1144 (Fed. Cir. 1985) is without merit. In that case, the mark at issue was HUGGIES—a brand determined to be famous based on years of pervasive use including over \$300 million in sales and over \$15 million in advertising in 1982 alone. For the reasons explained above, the facts in this case are not remotely analogous to those in *Kimberly-Clark*.

D. EWB'S OVERREACHING AND LITIGIOUS HISTORY

EWB misses the point with respect to the evidence of its overreaching and litigious history. Aimbridge does not deny that a trademark owner possessing recognizable rights should fully investigate and pursue meritorious claims against potential infringers. Such is not the case here. Rather, without possessing any recognizable senior rights, and without investigating or



acknowledging the superior rights of third parties in marks incorporating the BRIDGE term, EWB has pursued a calculated and litigious campaign against third parties that incorporate, in whole or in part in any fashion, the BRIDGE term for use in any aspect of the financial industry. The right to pursue meritorious claims does not give EWB the right to threaten, harass and attempt to intimidate owners of noninfringing marks in an effort to “clear a space” desired by latecomer EWB.

E. EWB’S MOTION FOR SUMMARY JUDGMENT BASED ON FRAUD IS UNTIMELY AND INAPPROPRIATE AND EWB’S REQUEST FOR RULE 56(f) RELIEF IS UNAVAILING

EWB moves the Board for summary judgment on the basis that Aimbridge committed fraud on the Trademark Office in the prosecution of the POWERBRIDGE registration. Yet at no time prior EWB’s motion was the issue of fraud ever raised, and it was at no time plead. Pursuant to TBMP 528.07(a), even if otherwise justified, EWB may not obtain summary judgment on an issue that has not been pleaded. Likewise, pursuant to TBMP 528.07(a), EWB may not defend against Aimbridge’s motion for summary judgment by asserting the existence of genuine issues of material fact as to an unpleaded fraud claim. Because no fraud claim has been plead or otherwise allowed in this case, EWB’s motion for summary judgment on that issue is not ripe and no evaluation of the claim on the merits should be undertaken.

Pursuant to TBMP 528.06 (and Fed. R. Civ. P. 56(f)), a Rule 56(f) continuance is only available to a party opposing a motion for summary judgment. There is no provision in the rule that allows a moving party—who has the ability and obligation to prepare its summary judgment case prior to filing—to disrupt the established case schedule by a Rule 56(f) continuance. Yet that is precisely result urged by EWB. With no justifiable basis for its late efforts to assert a new fraud claim, EWB ignores that fact that it has had over five months to conduct discovery, if desired, and every opportunity to bring the motion for summary judgment on its own timetable. Indeed, as confirmed by the cases cited by EWB, the moving party’s (here EWB’s) exclusive

control of the information related to its own motion is a factor weighing heavily in favor of denying relief under Rule 56(f).

EWB disingenuously argues that it has been “railroaded” into bringing its own fraud based summary judgment motion. EWB’s argument defied logic or reason. EWB’s blatant disregard for rules and case procedure should not be rewarded.

III. CONCLUSION

For the reasons set forth above, Aimbridge respectfully requests that the Board GRANT summary judgment of no likelihood of confusion against EWB based on the dissimilarity of the marks and weakness of the claimed common term, and DENY EWB’s motion for priority of use, likelihood of confusion and fraud.

DATED this 7th day of January, 2008.

s/ David A. Lowe, PTO Reg. No. 39,281

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Email: lowe@blacklaw.com

Attorneys for Aimbridge Lending Group, LLC



CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2008, a true copy of the foregoing REGISTRANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO CROSS MOTION was served via First Class U.S Mail, addressed as follows:

Kirk Hermann
CHAN LAW GROUP^{LLP}
1055 W. 7th Street, Suite 1880
Los Angeles, CA 90079

EXECUTED on January 7, 2008.

s/ Sarah Gist

