

This Opinion is Not a  
Precedent of the TTAB

Mailed: November 5, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Alliant Insurance Services, Inc.*

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Serial No. 97351644

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D. Whitlow Bivens of Musick, Peeler & Garrett LLP,  
for Alliant Insurance Services, Inc.

Shannon Twohig, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

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Before Zervas, Heasley and O'Connor,  
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Alliant Insurance Services, Inc. (“Applicant”) seeks registration on the Principal Register of the standard character mark ALLIANT INSURANCE FOUNDATION for “charitable foundation services, namely, providing financial support to individuals, institutions and organizations for providing opportunities relating to classes,

instruction and careers in insurance” in International Class 36.<sup>1</sup> Applicant disclaimed the term INSURANCE FOUNDATION.

The Examining Attorney refused registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark is likely to cause confusion with the following Principal Register registrations issued to the same entity:



- (i) U.S. Registration No. 4319809,<sup>2</sup> (HEALTH PLANS disclaimed) for “Health insurance underwriting; Insurance underwriting in the field of health insurance for individuals and businesses” in International Class 36;
- (ii) U.S. Registration No. 6408688,<sup>3</sup> ALLIANT HEALTH PLANS (HEALTH PLANS disclaimed) in standard characters for “Health insurance underwriting; insurance underwriting in the field of health insurance for individuals and businesses; insurance administration; health, dental, and vision insurance administration and underwriting; insurance services, namely, underwriting, issuance, and administration of insurance plans” in International Class 36; and
- (iii) U.S. Registration No. 6658499<sup>4</sup> for ALLIANT in standard characters for “Health insurance

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<sup>1</sup> Application Serial No. 97351644, filed April 7, 2022 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), claiming a bona fide intent to use the mark in commerce.

<sup>2</sup> Registered on April 16, 2013, renewed. The mark is described as consisting of the stylized capital letter “A” in white and outlined in blue. Running horizontally across the letter “A” is a blue rectangle featuring the word “ALLIANT” in white. Below this are the words “HEALTH PLANS” in blue.

<sup>3</sup> Registered on July 6, 2021.

<sup>4</sup> Registered on March 1, 2022.

underwriting; insurance underwriting in the field of health insurance for individuals and businesses; insurance administration; health, dental, and vision insurance administration and underwriting; insurance services, namely, underwriting, issuance, and administration of health, dental, and vision insurance plans” in International Class 36.

After the Examining Attorney issued a Final Office Action, Applicant filed a request for reconsideration, followed by its appeal. The Examining Attorney then denied the request for reconsideration, the Board resumed the appeal, Applicant filed its brief and the Examining Attorney filed her brief. For the reasons set forth below, we affirm the refusal to register.

### **I. Size of the Record**

On November 16, 2023 Applicant submitted 58,921 pages of evidence. Applicant explains:

On November 16, 2023, Alliant submitted its Request for Reconsideration along with supporting Exhibits A, B and C. Exhibit A consists of 11,721 live Registration Certificates that mention health insurance or other insurance-related services in their description of services. Exhibit B consists of 47,413 live Registration Certificates that mention charitable or foundation services in their description of services. Exhibit C consists of 376 live Registration Certificates that mention both health insurance or other insurance-related services and charitable or foundation services in their description of services.<sup>5</sup>

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<sup>5</sup> 6 TTABVUE 4.

Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 WL 2853282, at \*1 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

Applicant offers the following guidance for accessing evidence in its massive November 16, 2023 filing:

The easiest way to find Alliant’s Request for Reconsideration and the various Exhibits is to look at the file name of the “ORIGINAL PDF FILE” shown in TSDR:

ARGUMENT(S)	
Please see request for reconsideration and exhibits in the evidence section below.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	<a href="#">evi_240149001e0a231042281_f1a6e973880-2023111519100_7759465_RequestForRecon siderationFinal11152023.pdf</a>
CONVERTED PDF FILE(S) (4 pages)	<a href="#">\\TICRS\EXPORT\8\IMAGEOUT_18\973\516\97351644.xml\7_RFR0002.JPG</a>
	<a href="#">\\TICRS\EXPORT\8\IMAGEOUT_18\973\516\97351644.xml\7_RFR0003.JPG</a>
	<a href="#">\\TICRS\EXPORT\8\IMAGEOUT_18\973\516\97351644.xml\7_RFR0004.JPG</a>
	<a href="#">\\TICRS\EXPORT\8\IMAGEOUT_18\973\516\97351644.xml\7_RFR0005.JPG</a>
ORIGINAL PDF FILE	<a href="#">evi_240149001e0a231042281_f1a6e973880-2023111519100_7759465_ExhibitC1_376.pdf</a>
CONVERTED PDF FILE(S) (376 pages)	<a href="#">\\TICRS\EXPORT\8\IMAGEOUT_18\973\516\97351644.xml\7_RFR0006.JPG</a>
	<a href="#">\\TICRS\EXPORT\8\IMAGEOUT_18\973\516\97351644.xml\7_RFR0007.JPG</a>

As shown by the highlighted portions in the clip above, the name of the first ORIGINAL PDF FILE is “RequestForReconsiderationFinal11152023” – that is Applicant’s request for reconsideration. The name of the second original file is “ExhibitC1\_376” – that is Applicant’s Exhibit C.

We should not need special instructions for locating Applicant’s evidence. But more importantly, Applicant did not need to submit 59,510 registrations to make its point, discussed below.<sup>6</sup> Over ten years ago, the Board advised applicants that “the submission of a very large record consisting of materials that are not particularly probative of the issue under appeal is far less effective than submission of a more reasonably sized record consisting of materials that support an applicant’s contention ...” *In re Lorillard Licensing Co., LLC*, 99 USPQ2d 1312, 1320 (TTAB 2011). In

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<sup>6</sup> Applicant offered no assistance to us or the Examining Attorney by pointing to any of the 59,510 registrations as exemplary.

addition, the Federal Circuit has informed applicants that “the PTO is an agency of limited resources.” *In re Pacer Tech.*, 338 F.3d 1348, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003). *See also In re Loew’s Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865, 868 (Fed. Cir. 1985) (“The practicalities of the limited resources available to the PTO are routinely taken into account ....”). Applicant is advised that the TTAB expects applicants to generate an evidentiary record emphasizing quality over quantity.

## **II. Likelihood of Confusion**

Our determination under Section 2(d) of the Trademark Act is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) (“*DuPont*”); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). We must consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). “[E]ach case [however] must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973).

### A. Similarity or Dissimilarity of the Marks

We turn first to the similarity or dissimilarity of the marks, comparing the marks “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps.*, 73 USPQ2d at 1691 (quoting *DuPont*, 177 USPQ at 567). The test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar that confusion as to the source of the services offered under the respective marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012). Further, marks “must be considered ... in light of the fallibility of memory ...” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (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.”).

On the other hand, different features may be analyzed in considering whether the marks are similar. *Price Candy Co. v. Gold Medal Candy Corp.*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955). Therefore, “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 consideration of the marks in their entirety.” *In re Nat’l Data*, 224 USPQ at 751. That is, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012).

We limit our discussion to the cited ALLIANT standard character mark, *i.e.*, the mark of the Registration No. 6658499. If confusion is likely between Applicant’s mark and this mark, there is no need for us to consider the likelihood of confusion with the remaining marks. *See, e.g., In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

While ALLIANT is the only term in Registrant’s mark, Applicant’s mark includes the additional terms INSURANCE FOUNDATION. To state the obvious, Registrant’s mark is similar to Applicant’s mark in that Applicant’s mark incorporates the entirety of Registrant’s mark. While there is no explicit rule that the marks are automatically similar because Applicant’s mark contains Registrant’s entire mark ALLIANT, “[l]ikelihood of confusion often has been found where the entirety of one

mark is incorporated within another.” *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at \*6-7 (TTAB 2019) (quoting *Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2d 1651, 1660 (TTAB 2014)).

The marks are similar also because ALLIANT is the dominant term in Applicant’s mark and must be accorded greater weight than the other terms of that mark. First, ALLIANT is the initial term in Applicant’s mark, and consumers are generally more inclined to focus on the first portion in any mark. *See Palm Bay Imps.*, 73 USPQ2d at 1692. Second, other wording in Applicant’s mark is merely descriptive or generic of the underlying services and has been disclaimed.<sup>7</sup> Merely descriptive or generic matter that has been disclaimed is typically less significant or less dominant when comparing marks. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)).

Another point of similarity stems from the marks’ standard character format. A standard character mark may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 101 USPQ2d at 1909; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010). Thus, the marks may be presented in the same lettering style. *See, e.g., In re Viterra*, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*,

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<sup>7</sup> INSURANCE identifies the subject area of Applicant’s charitable services and FOUNDATION identifies the nature of the organization providing the services. Applicant’s disclaimer constitutes a concession that INSURANCE FOUNDATION is at best merely descriptive. *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972); *Bass Pro Trademarks, LLC v. Sportsman’s Warehouse, Inc.*, 89 USPQ2d 1844, 1851 (TTAB 2008).



697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”).

Applicant argues that the marks are dissimilar because its mark consists of nine syllables, whereas the registered mark consists of three syllables. A determination of likelihood of confusion, however, is not made on a purely mechanical basis, counting the number of syllables. *See In re John Scarne Games, Inc.*, 120 USPQ 315, 316 (TTAB 1959) (“Purchasers ... do not engage in trademark syllable counting[;] they are governed by general impressions made by appearance or sound, or both.”).

Applicant also argues that its mark “creates a very different commercial impression or meaning from the registered marks.”<sup>8</sup> We disagree. As mentioned, merely descriptive or generic matter that has been disclaimed is typically less significant or less dominant when comparing marks. Also, consumers may consider Registrant’s mark as a shortened form of Applicant’s mark. *See In re Bay State Brewing Co., Inc.*, 117 USPQ2d 1958, 1961 (TTAB 2016) (“we also keep in mind the penchant of consumers to shorten marks”) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring: “the users of language have a universal habit of shortening full names -- from haste or laziness or just

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<sup>8</sup> Applicant’s brief, 6 TTABVUE 9. The definition of “foundation” includes “an organization or institution established by endowment with provision for future maintenance.” (<https://www.merriam-webster.com/dictionary/foundation>, accessed on October 26, 2024). We take judicial notice of this definition. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

economy of words”); *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1819 (TTAB 2015) (“While Opposer’s beer was originally sold under the BUDWEISER brand, customers soon began to abbreviate the mark, calling for BUDWEISER beer just by the name ‘BUD’”). The descriptive or generic wording INSURANCE FOUNDATION does not distinguish Applicant’s mark from Registrant’s mark.

In view of the foregoing, we find that Applicant’s mark is highly similar to the registered mark in sound, appearance, meaning, and commercial impression, and the *DuPont* factor regarding the similarity of the marks weighs heavily in favor of finding a likelihood of confusion.

#### **B. Similarity or Dissimilarity of the Services**

The next *DuPont* factor we consider is the similarity or dissimilarity (or relatedness) of Applicant’s and Registrant’s respective services. *DuPont*, 177 USPQ 567. Similarity can be found “if the respective products [or services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012).

Applicant’s services are identified as:

Charitable foundation services, namely, providing financial support to individuals, institutions and organizations for providing opportunities relating to classes, instruction and careers in insurance,

and Registrant’s services are identified as:

Health insurance underwriting; insurance underwriting in the field of health insurance for individuals and businesses; insurance administration; health, dental, and vision insurance administration and underwriting; insurance services, namely, underwriting, issuance, and administration of health, dental, and vision insurance plans.

The Examining Attorney submitted screen captures from third party websites showing Applicant's and Registrant's identified services originating from the same source under the same mark:<sup>9</sup>

From February 13, 2023 Office Action:

- www.statefarm.com: showing STATE FARM used in connection with charitable foundation services and health insurance services (TSDR 13-21);<sup>10</sup>
- www.metlife.com: showing METLIFE used in connection with charitable foundation services and health insurance services (TSDR 33-43); and
- www.aetna.com: showing AETNA used in connection with charitable foundation services and health insurance services (TTABVUE 22-32).

From May 25, 2023 Office Action:

- www.cigna.com: showing CIGNA used in connection with charitable foundation services and health insurance services (TSDR 9-31);
- www.ibx.com and www.ibxfoundation: showing INDEPENDENCE BLUE CROSS used for charitable

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<sup>9</sup> Evidence of relatedness may include evidence from computer databases showing that the relevant services are advertised together or sold by the same source. *See In re Embiid*, 2021 USPQ2d 577, at \*22-23 (TTAB 2021) (citing *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at \*5 (TTAB 2020), *In re Davia*, 110 USPQ2d 1810, 1817 (TTAB 2014)).

<sup>10</sup> Citations in this opinion to the application record are to the downloadable .pdf versions of the documents in the Trademark Status & Document Retrieval ("TSDR") database of the United States Patent and Trademark Office ("USPTO"). *See In re Seminole Tribe of Fla.*, Ser. No. 87890892, 2023 WL 3751113, at \*1 n.1 (TTAB 2023).

foundation services and health insurance services (TSDR 10-42);

- www.pacificsource.com: showing the mark PACIFICSOURCE used in connection with charitable foundation services and health insurance services (TSDR 48-63);

- www.priorityhealth.com: showing the mark PRIORITY HEALTH used in connection with charitable foundation services and health insurance services (TSDR 64-82); and

- www.usaa.com: showing the mark USAA used in connection with charitable foundation services and health insurance services (TSDR 83-97).

Applicant argues the involved services are not related because:

Of the 11,721 registrations listing one of the insurance-related search terms from Exhibit A, only about 3.2% also list charitable or foundation services. Thus, about 96.8% of the time, a consumer will not run across both health insurance (or any insurance) services and charitable foundation services offered under the same mark.

Of the 47,413 registrations that list charitable or foundation services, only about 0.8% also list one of the insurance-related services from Exhibit A. Thus, about 99.2% of the time, a consumer will not encounter both charitable foundation services and insurance services offered under the same mark.<sup>11</sup>

We agree with the Examining Attorney that “it is entirely irrelevant to the refusal that there are some number of registrations that offer only insurance related services or only charitable-related services.”<sup>12</sup> There is no requirement that an entity using a particular mark in connection with services of the type involved herein obtain a single registration for a mark reciting both services. Further, other than attorney argument,

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<sup>11</sup> Applicant’s brief, 6 TTABVUE 9-10.

<sup>12</sup> 8 TTABVUE 7.

there is no indication from Applicant's submission whether the registrations are in effect.<sup>13</sup> Thus, of the 59,510 registrations Applicant submitted, 59,134 are irrelevant.

In addition, Applicant assumes that the registrations, which may not be active because Applicant did not provide information about their status, reflect the marketplace. Registrations alone are not evidence of the extent of use of the marks in commerce or of the public's familiarity with them. *See AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973) ("little weight is to be given [to third-party] registrations in evaluating whether there is likelihood of confusion" because "[t]he existence of these registrations is not evidence of what happens in the market place or that customers are familiar with them"); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993). Additionally, Applicant ignores the limitation in the cited registration pertaining to health, vision and dental insurance – not all concern health, vision and dental insurance.<sup>14</sup> It is incumbent on Applicant and its counsel to point us to specific materials in the record that support the claims Applicant makes in its brief. We are not truffle-hunting pigs looking for reasons to reverse the Examining Attorney based on evidence we cannot locate in the record. *See RxD Media, LLC v. IP Application Dev. LLC*, 125 USPQ2d 1801, 1803 (TTAB 2018), *aff'd*, 377 F.Supp.3d 588 (E.D. Va. 2019), *aff'd*, 986 F.3d 361, 2021

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<sup>13</sup> A cancelled registration is not evidence of any existing rights in the mark. *See Action Temp. Servs. v. Labor Force*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989). An expired or cancelled registration is evidence of nothing but the fact that it once issued. *Sunnen Prods. Co. v. Sunex Int'l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987).

<sup>14</sup> Registration No. 6062928, for example, identifies life insurance underwriting, not health, vision or dental insurance. November 16, 2023 Response (5<sup>th</sup> submission), TSDR 4.

USPQ2d 81 (4th Cir. 2021) (quoting *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991) (“A skeletal ‘argument,’ really nothing more than an assertion, does not preserve a claim [for appellate review] .... Judges are not like pigs, hunting for truffles buried in briefs.”)).

We find that the Examining Attorney has established that the services identified in the application and cited registration are related, and that the *DuPont* factor regarding the similarity (or relatedness) of the services favors a finding of likelihood of confusion.

### **III. Conclusion**

We have found Applicant’s mark to be highly similar to the cited mark and the services identified in the application similar to the services of the cited registration. We therefore conclude that confusion is likely between Applicant’s ALLIANT INSURANCE FOUNDATION mark for its services and Registrant’s ALLIANT mark for its services.

**Decision:** The refusal to register under Section 2(d) is affirmed. 15 U.S.C. § 105(d).