

This Opinion Is Not a
Precedent of the TTAB

Mailed: January 16, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
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CDOC, Inc.

v.

*Liberty Bankers Life Insurance Company and
The Capitol Life Insurance Company*

—
Opposition No. 91236945

Opposition No. 91237330
—

Christina D. Frangiosa of Eckert Seamans Cherin & Mellot, LLC
for CDOC, Inc.

Timothy J. Zarley of Zarley Law Firm, P.L.C.
for Liberty Bankers Life Insurance Company and The Capitol Life Insurance
Company.

—
Before Zervas, Bergsman and English, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Liberty Bankers Insurance Company (“Applicant”) filed an application on the
Principal Register for the mark LIBERTY BANKERS LIFE INSURANCE

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COMPANY and design, shown below, for “Underwriting and administration of life insurance, health insurance, and annuities,” in Class 36.¹



Applicant provides the following description of its mark:

The mark consists of the words “LIBERTY BANKERS LIFE INSURANCE COMPANY” in stylized font. “LIBERTY BANKERS LIFE” appears with initial caps on the first line with an underscore on the second line and running the width of the words. On the third line appear the words “INSURANCE COMPANY” with initial caps appearing in a smaller font. To the left of the words is a square-shaped stylized flag that is the same height as the words.

Color is not claimed as a feature of the mark.

Applicant disclaims the exclusive right to use the words “Bankers Life Insurance Company.”

Liberty Bankers Life Insurance Company and The Capitol Life Insurance Company (“Applicants”) filed an application on the Principal Register for the mark LIBERTY BANKERS LIFE THE CAPITOL LIFE and design, shown below, for “Underwriting and administration of life insurance, health insurance, and annuities,”

¹ Application Serial No. 87435442, filed May 3, 2017, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming September 15, 2007 as Applicant’s dates of first use of its mark anywhere and in commerce. This application is the subject of Opposition No. 91236945.

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in Class 36.² The Capitol Life Insurance Company is a wholly owned subsidiary of Liberty Bankers Life Insurance Company.³



Applicants provide the following description of their mark:

The mark consists of the words “Liberty Bankers Life The Capitol Life” in stylized font. “Liberty Bankers Life” appears with initial caps on the first line with an underscore on the second line running the width of the words. On the third line appear the words “The Capitol Life” with initial caps. To the left of the words in the mark is a square-shaped stylized flag that is the same height as the words.

Color is not claimed as a feature of the mark.

Applicants disclaim the exclusive right to use the words “Bankers Life” and “Life.”

CDOC, Inc. (“Opposer”) filed Notices of Opposition against the registration of Applicants’ marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicants’ marks for the identified services are likely to cause confusion with Opposer’s registered mark BANKERS LIFE (in standard characters) for “insurance underwriting services,” in Class 36.⁴

² Application Serial No. 87436780, filed May 4, 2017, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming September 15, 2007 as Applicants’ dates of first use of their mark anywhere and in commerce. This application is the subject of Opposition No. 91237330.

³ Applicants’ response to Opposer’s interrogatory No. 1 (12 TTABVUE 8).

⁴ Registration No. 0892222, registered July 2, 1970; third renewal. Opposer disclaimed the exclusive right to use the word “Life.”

Applicants, in their Answers, denied the salient allegations in the Notices of Opposition.

The Board consolidated proceedings in its January 9, 2018 Order.⁵

I. Preliminary Issue

The parties filed extensive objections. Because an opposition proceeding is akin to a bench trial, the Board is capable of assessing the proper evidentiary weight to be accorded the testimony and evidence, taking into account the imperfections surrounding the admissibility of such testimony and evidence. As necessary and appropriate, we will point out any limitations in the evidence or otherwise note that we cannot rely on the evidence in the manner sought. We have considered all of the testimony and evidence introduced into the record. In doing so, we have kept in mind the various objections the parties raise and we have accorded whatever probative value the subject testimony and evidence merit. *See Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1479 (TTAB 2017), *appeal dismissed per stipulation*, No. 17-00345 (E.D. Va. August 24, 2017); *U.S. Playing Card Co. v. Harbro, LLC*, 81 USPQ2d 1537, 1540 (TTAB 2006). *See also Poly-America, L.P. v. Illinois Tool Works Inc.*, 124 USPQ2d 1508, 1510 (TTAB 2017) (“we choose not to make specific rulings on each and every objection”).

II. The Record

The record includes the pleadings, and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the subject applications. The parties also stipulated

⁵ 7 TTABVUE.

that either party may introduce and rely on the discovery deposition of Brandon Phillips, Applicants' President.⁶ The parties also stipulate that the documents Applicants' produced during discovery are authentic documents kept in the ordinary course of business by Applicants and may introduced into evidence by either party.⁷ The stipulations are approved.

The record also includes:

A. Opposer's testimony and evidence.

1. Notice of reliance on Opposer's pleaded registration printed from the USPTO database showing the current status of and title to the registration;⁸
2. Notice of reliance on Applicants' responses to Opposer's interrogatory Nos. 1, 2, 4, 5, 12 and 13;⁹
3. Notice of reliance on a summary of the premiums collected and number of insurance policies Applicants have issued from 2010 through 2018;¹⁰
4. Testimony declaration of Robert Yates, Vice President in charge of Distribution Planning and Operations of CNO Financial Group, Inc., Opposer's parent company;¹¹
5. Notice of reliance on printed publications referring to Opposer and Opposer's trademark;¹²

⁶ 10 TTABVUE 2.

⁷ *Id.* at 3.

⁸ 11 TTABVUE.

⁹ 12 TTABVUE.

¹⁰ 13 TTABVUE (confidential). These documents are admissible pursuant to the stipulation noted above.

¹¹ 14 TTABVUE. Opposer has posted the confidential portions of the Yates declaration at 15 TTABVUE.

¹² 16 TTABVUE.

6. Testimony declaration of Gerardo Monroy, CNO Financial Group's Chief Marketing Officer;¹³
7. Notice of reliance on excerpts from the discovery deposition of Bradford Phillips, Applicants' President;¹⁴
8. Testimony declaration of Erin Loniello, Opposer's Director of Marketing Services;¹⁵
9. Notice of reliance on third-party registrations that include the word "Liberty" and evidence purporting to show use of those marks by the registrants for insurance and financial services in Class 36;¹⁶
10. Notice of reliance on third-party registrations that include the word "Capitol" and evidence purporting to show use of those marks by the registrants for insurance and financial services in Class 36;¹⁷
11. Notice of reliance on Internet evidence purporting to show third-party use of marks incorporating the word "Capitol" for insurance and financial services;¹⁸
12. Notice of reliance on third-party registrations that include a representation of a U.S. flag and evidence purporting to show use of those marks by the registrants for insurance and financial services in Class 36;¹⁹
13. Notice of reliance on Internet evidence purporting to show third-party use of marks incorporating the word "Liberty" for insurance and financial services;²⁰ and

¹³ 17 TTABVUE. Opposer has posted the confidential portions of the Monroy declaration at 18 TTABVUE

¹⁴ 19-20 TTABVUE. Opposer has posted the confidential portions of the Phillips discovery deposition at 21 TTABVUE.

¹⁵ 22 TTABVUE. Opposer has posted the confidential portions of the Loniello declaration at 23 TTABVUE.

¹⁶ 24 TTABVUE.

¹⁷ 25 TTABVUE.

¹⁸ 26 TTABVUE.

¹⁹ 27 TTABVUE.

²⁰ 28 TTABVUE.

14. Notice of reliance on excerpts from Applicants' website from <archive.org>.²¹

B. Applicants' testimony and evidence.

1. Notice of reliance on Internet evidence purporting to show third-party use of marks incorporating the word "Bankers" for insurance and financial services;²²
2. Notice of reliance on copies of third-party registrations incorporating the word "Bankers" for insurance and financial services in Class 36;²³
3. Testimony declaration of Bradford Phillips, Applicants' President;²⁴
4. Excerpts from the cross-examination testimony deposition of Bradford Phillips;²⁵
5. Notice of reliance on Internet evidence purporting to show third-party use of the marks incorporating the term "Bankers Life" for insurance and financial services;²⁶
6. Notice of reliance on copies of third-party registrations incorporating the term "Bankers Life" for insurance and financial services in Class 36;²⁷
7. Notice of reliance on multiple copies of Opposer's website from the website <archive.org>;²⁸

²¹ 41 TTABVUE.

²² 30 TTABVUE.

²³ 31 TTABVUE.

²⁴ 32 TTABVUE. Applicant posted the confidential portions of the Phillips declaration at 33 TTABVUE.

²⁵ 39 TTABVUE. Although Opposer designated the deposition as rebuttal testimony, it is clearly a cross-examination deposition.

²⁶ 34 TTABVUE.

²⁷ 35 TTABVUE.

²⁸ 36 TTABVUE.

8. Testimony declaration of Eric Johansson, Applicants' Executive Vice President and Chief Operations Officer;²⁹
9. Excerpts from the cross-examination testimony deposition of Eric Johansson;³⁰ and
10. Testimony declaration of Edward Martin, Applicants' Executive Vice President and Chief Marketing Officer.³¹

III. Standing

Standing is a threshold issue in every inter partes case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *John W. Carson Found. v. Toilets.com Inc.*, 94 USPQ2d 1942, 1945 (TTAB 2010). To establish standing in an opposition or cancellation proceeding, a plaintiff must prove that it has a "real interest" in the proceeding and a "reasonable" basis for its belief of damage. *See Empresa Cubana*, 111 USPQ2d at 1062; *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (TTAB 1982).

Opposer has established its standing by properly introducing into evidence its pleaded registration showing its current status and title in Opposer. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (plaintiff's two prior registrations suffice to establish plaintiff's direct commercial interest and its standing); *N.Y. Yankees P'ship v. IET Prods. & Servs.*,

²⁹ 37 TTABVUE.

³⁰ 40 TTABVUE. Although Opposer designated the deposition as rebuttal testimony, it is clearly a cross-examination deposition.

³¹ 38 TTABVUE.

Inc., 114 USPQ2d 1497, 1501 (TTAB 2015). Applicants, in their brief, did not challenge Opposer's standing.³²

IV. Priority

Because Opposer's pleaded registration is of record, priority in the opposition proceeding is not at issue with respect to the mark and services identified therein. *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1469 (TTAB 2016) (citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)). Applicants, in their brief, did not challenge Opposer's priority.³³

V. Likelihood of Confusion

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 the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*") cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). "Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered." *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)); see also *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114

³² Applicant's Brief, p. 13 (45 TTABVUE 18).

³³ Applicant's Brief, p. 13 (45 TTABVUE 18).

USPQ2d 1232, 1242 (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.”). “[E]ach case 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). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (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, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. The similarity or dissimilarity and nature of the services.

The description of services in Opposer’s pleaded registration is “insurance underwriting services” and the description of services in Applicants’ applications are “underwriting and administration of life insurance, health insurance, and annuities.” Because Opposer’s “insurance underwriting services” are broad enough to encompass Applicants’ “underwriting ... life insurance, health insurance,” the services are in part identical. *See Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB

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2015) (where services are broadly identified in an application or registration, “we must presume that the services encompass all services of the type identified.”). *See also In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”); *Venture Out Props. LLC v. Wynn Resorts Holdings, LLC*, 81 USPQ2d 1887, 1893 (TTAB 2007).

B. Established, likely-to-continue channels of trade and classes of consumers.

Because the services described in the applications and Opposer’s registration are in part identical, we presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1745 (TTAB 2018), *aff’d mem.* (No. 18-2236) (Fed. Cir. September 13, 2019) (“Because the services described in the application and the cited registration are identical, we presume that the channels of trade and classes of purchasers are the same.”); *United Glob. Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

C. The conditions under which the parties make sales.

The nature of the services and the conditions under which they are marketed can be influential factors in determining the degree of consumer care. *In re Thor Tech, Inc.*, 113 USPQ2d 1546, 1551 (TTAB 2015). There are no limitations in the recitations of services addressing conditions of sales.

Edward Martin, Applicants' Executive Vice President and Chief Marketing Officer testified that Applicants have approximately 10,000 independent agents who sell life and health insurance for Applicants and other companies and 24 career agents who are Applicants' employees selling life and health insurance and annuity products for Applicant. These agents develop leads by "networking with and through CPA firms, working with marketing organizations that generate leads, advertising in newspapers and/or with postcards or flyers, holding seminars, and even old-fashioned 'door-knocking'."³⁴ Potential customers learn about Applicant and its underwriting life and health insurance and annuity services through contact with these agents.

Once a lead is obtained, the agent contacts a prospective customer by phone or e-mail to set up a meeting or to conduct a sales presentation over the phone. The sales presentation is tailored to the customer and the product. Marketing materials about Liberty Bankers Life Insurance are provided either before, or during the sales presentation. The marketing materials prominently displayed Liberty Bankers Life Insurance Company's name and logo, and all materials must be pre-approved by the Liberty Bankers Life Insurance Company's compliance department prior to use to ensure consistent branding, etc. The decision to purchase a life insurance, supplemental health, or annuity product takes time and careful consideration by the customer. Presentations typically are

³⁴ Martin Testimony Decl. ¶7 (38 TTABVUE 3).

held in the customer's home and take 1.5 hours, and often requiring multiple visits to complete placement of the product. Once a decision is made, the customer is presented with a number of documents including the application and policy that, again, prominently display the name of the company at the top and center of the documents.³⁵

Bradford Phillips, Applicants' President, corroborates the preceding testimony testifying that potential customers or policyholders learn about Applicant's services through an agent because, generally, Applicants do not do any advertising.³⁶

Opposer sells its insurance underwriting services through 5,600 independent licensed agents who agree only to sell on behalf of Opposer.³⁷ Opposer's "agents are required to identify themselves as licensed agents with BANKERS LIFE when communicating with prospects."³⁸

[Opposer's] products are generally promoted through localized prospecting efforts that [Opposer's] agents undertake utilizing pre-approved advertising content, through national lead generation campaigns including direct mail and digital advertisements, and through referral.³⁹

³⁵ Martin Testimony Decl. ¶8 (38 TTABVUE 4). *See also* Johansson Testimony Decl. ¶10 (37 TTABVUE 4) ("To assist agents, [Applicants] ha[ve] a number of advertising templates for agents to consider. If a template is used, the final advertisement must be approved by the compliance marketing department prior to use."); Applicants' response to Opposer's interrogatory No. 3 (12 TTABVUE 8) ("Applicants provide financial and/or insurance products through employees, independent agents appointed directly by Applicants, and through independent agents appointed through marketing organizations.").

³⁶ Phillips Discovery Dep., p. 80 (19 TTABVUE 63). *See also id.* (consumers almost never come across Applicants' insurance products through their websites).

³⁷ Monroy Testimony Decl. ¶18 (17 TTABVUE 7). *See also* Loniello Testimony Decl. ¶7 (22 TTABVUE 5).

³⁸ Monroy Testimony Decl. ¶20 (17 TTABVUE 7).

³⁹ Monroy Testimony Decl., ¶21 (17 TTABVUE 8).

Opposer distributes printed material to prospects “at the point of sale or to customers during service calls by Opposer’s independent agents.⁴⁰ In addition, Opposer uses third-party vendors to generate leads through direct mail and digital marketing.⁴¹ Finally, Opposer trains its agents “in appropriate methods of making initial solicitation contacts.”⁴²

Given the nature of the services and the personalized nature of the parties’ marketing efforts, relevant purchasers will exercise a relatively high degree of purchasing care when it comes to buying life and health insurance and annuities. *See Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas, Inc.*, 77 USPQ2d 1492, 1503 (TTAB 2005) (“it is common knowledge that even ordinary consumers tend to exercise some sophistication when it comes to decisions relating to healthcare and healthcare insurance services.”). *Cf. G.H. Mumm & Cie v. Densoes & Geddes, Ltd.*, 917 F.2d 1292, 16 USPQ2d 1635, 1638 (Fed. Cir. 1990) (reasonably focused need for champagne); *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1413 (TTAB 2010) (expensive and complex products purchased after careful consideration). Underwriting health and life insurance and annuities for others are not daily purchases or purchases made on a regular basis. They are unusual and complex purchases to which consumers pay particular attention when deciding whether and from whom to buy. Indeed consumers likely make a careful, personal examination of

⁴⁰ Loniello Testimony Decl. ¶9(a) (22 TTABVUE 5).

⁴¹ Loniello Testimony Decl. ¶9(b) and (c) (23 TTAB 5-6) (Confidential).

⁴² Monroy Testimony Decl. ¶23 (17 TTABVUE 8).

the life and health insurance and annuity products and their sources before buying (e.g., analyzing the reputations of the companies to insure that they have the means to make good on claims, comparing terms offered and costs, the condition of their health, extent of covered services, exclusions, deductibles, co-payments, and the like). In this regard, we assume that the agents selling the insurance and annuity products for the parties tout the financial stability of the parties to persuade potential consumers that the underwriters are a safe haven for the consumers' financial futures.

These types of services are not the kind that reasonably prudent purchasers buy without researching the underwriters to some degree. Rather, consumers purchase these services with care and deliberation. *See Carefirst of Maryland*, 77 USPQ2d at 1504. *Cf. In re Thor Tech, Inc.*, 113 USPQ2d 1546, 1551 (TTAB 2015) (noting that because trucks and recreational vehicle towable trailers are special purchases, not everyday purchases, consumers would likely carefully consider before buying); *Tiffany & Co. v. Classic Motor Carriages Inc.*, 10 USPQ2d 1835, 1841 (TTAB 1989) (automobiles would be purchased only upon careful consideration). In making purchasing decisions regarding services such as these, "the reasonably prudent person standard is elevated to the standard of the 'discriminating purchaser.'" *Weiss Assocs., Inc. v. HRL Assocs., Inc.*, 902 F.2d 1546, 14 USPQ2d 1840, 1841 (Fed. Cir. 1990).

We find that the conditions under which sales are made is a factor that weighs against a likelihood of confusion.

D. The lack of any reported instances of confusion.

The parties are unaware of any reported instances of confusion.⁴³ The absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by Applicants of their marks for a significant period in the same markets as those served by Opposer under its mark. *See Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 USPQ2d 1645, 1660 (TTAB 2010), *aff'd*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011); *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992). In other words, for the absence of actual confusion to be probative, there must have been a reasonable opportunity for confusion to occur. *Barbara's Bakery Inc. v. Landesman*, 82 USPQ2d 1283, 1287 (TTAB 2007) (the probative value of the absence of actual confusion depends upon there being a significant opportunity for actual confusion to have occurred); *Red Carpet Corp. v. Johnstown Am. Enters. Inc.*, 7 USPQ2d 1404, 1406-1407 (TTAB 1988); *Central Soya Co., Inc. v. North Am. Plant Breeders*, 212 USPQ 37, 48 (TTAB 1981) (“the absence of actual confusion over a reasonable period of time might well suggest that the likelihood of confusion is only a remote possibility with little probability of occurring”).

⁴³ Applicants' responses to Opposer's interrogatory Nos. 10 and 11 (12 TTABVUE 10); Phillips Testimony Decl. ¶22 (32 TTABVUE 10); Phillips Cross-Examination Dep., p. 24 (39 TTABVUE 26); Johansson Cross-Examination Dep., p. 9 (40 TTABVUE 13). Opposer, in its brief, did not identify any reported instances of confusion and argued that the absence of actual confusion is a neutral factor. Opposer's Brief, pp. 38-39 (42 TTABVUE 44-45); Opposer's Reply Brief, pp. 14-15 (48 TTABVUE 19-20).

This *DuPont* factor requires us to look at actual market conditions; we may not rely on presumptions. Any lengthy absence of actual confusion during a period of known, rather than legally presumed, use in the same channels of trade could be telling. In this regard, we consider all of the evidence of record that may be relevant to this *DuPont* factor.

Applicants began using their marks in connection with the sale of life insurance policies and annuities as of September 15, 2007.⁴⁴ In 2016, Applicants began selling Medicare Supplement health insurance.⁴⁵ The target market for Applicants life insurance are individuals over the age of 55.⁴⁶ Applicants' target market for annuities is anyone saving for retirement.⁴⁷ The target market for the Medicare supplement products are people over 65 that have traditional Medicare.⁴⁸ Applicants' trading area includes 49 states (i.e., Liberty Bankers Life Insurance Company offers services in 46 states and Capitol Insurance Company offers services in 45 states).⁴⁹ Applicants have received positive recognition in the financial industry.⁵⁰ For example, the National

⁴⁴ Phillips Discovery Dep, p. 30 (19 TTABVUE 28). *See also* Phillips Discovery Dep., pp. 19, 45, 48-49 (19 TTABVUE 17, 35, 38-39).

⁴⁵ Applicants' response to Opposer's interrogatory No. 5 (12 TTABVUE 9).

⁴⁶ Phillips Discovery Dep., p. 53 (19 TTABVUE 43).

⁴⁷ Phillips Discovery Dep., p. 54 (19 TTABVUE 44).

⁴⁸ Phillips Discovery Dep., p. 56 (19 TTABVUE 46).

⁴⁹ Phillips Testimony Decl. ¶¶6 and 7 (32 TTABVUE 3-4); *see also* Phillips Discovery Dep., p. 54 (19 TTABVUE 44).

⁵⁰ Johansson Testimony Decl. ¶17 and Exhibit 9 (37 TTABVUE 6 and 59-91).

Underwriter magazine ranked Applicants in the top 100 companies offering annuities.⁵¹

Applicants print, and presumably distribute, approximately 49,000 brochures featuring the LIBERTY BANKERS LIFE INSURANCE and design mark each year.⁵² In 2018, Applicants had over 170,000 visitors view their website, which displays the LIBERTY BANKERS LIFE and design marks. “This number is on-trend for past years.”⁵³

Opposer sells life insurance, Medicare supplement insurance, annuities, extended care insurance products, and supplemental health insurance⁵⁴ through approximately 5,600 licensed agents, in 263 offices in 47 states.⁵⁵

The target customers for [Opposer’s] services are middle-income Americans who are near or in retirement, as well as those who may already be retired. With offices and agents across the country, [Opposer’s] customers range from rural areas to those in more suburban and urban settings. [Opposer’s] entire suite of insurance products is designed to help this market as they plan for retirement.⁵⁶

Opposer “has spent millions of dollars in promotion and advertising of the BANKERS LIFE name and mark in connection with insurance underwriting since

⁵¹ Phillips Testimony Decl. ¶9 (32 TTABVUE 4).

⁵² Johansson Testimony Decl. ¶14 (37 TTABVUE 5).

⁵³ Johansson Testimony Decl. ¶13 (37 TTABVUE 5).

⁵⁴ Monroy Testimony Decl. ¶18 (17 TTABVUE 7); Loniello Testimony Decl. ¶8 (22 TTABVUE 5).

⁵⁵ Loniello Testimony Decl. ¶7 (22 TTABVUE 5).

⁵⁶ Monroy Testimony Decl. ¶24 (17 TTABVUE 8). *See also* Loniello Testimony Decl. ¶12 (22 TTABVUE 7).

2010.”⁵⁷ This includes lead generation activities, print materials and “other promotional activities,” including purchasing the naming rights to a sports arena in Indianapolis, Indiana, where the National Basketball Indiana Pacers and Women’s National Basketball Association Indiana Fever play that is called the BANKERS LIFE FIELDHOUSE.⁵⁸ “As a result of the nature and extent of [Opposer’s] advertising and promotional activities ... the mark [BANKERS LIFE] has become well and favorably known to the relevant public.”⁵⁹

Gerardo Monroy testified that Opposer has become “one of the nation’s largest individual health and accident insurance companies.”⁶⁰ Opposer introduced unsolicited media that refers to Opposer as “one of the nation’s largest health and accident insurance companies,”⁶¹ “a big provider of Medicare supplement, long-term care and other individual health, life annuity and group insurance products,”⁶² “the nation’s fourth-largest individual long-term care provider based on 1998 net premiums,”⁶³ and “a leading provider of insurance for more than 135 years and is one of the only companies in the U.S. devoted to primarily serving boomers and retirees.”⁶⁴

⁵⁷ Yates Testimony Decl. ¶12 (14 TTABVUE 6). *See also* Yates Testimony Decl. Exhibit 2 (15 TTABVUE 12) (Confidential).

⁵⁸ Yates Testimony Decl. ¶¶ 12-14 (14 TTABVUE 6-7).

⁵⁹ Loniello Testimony Decl. ¶30 (22 TTABVUE 14).

⁶⁰ Monroy Testimony Decl. ¶13 (17 TTABVUE 5).

⁶¹ The Miami Herald (September 29, 1983) (16 TTABVUE 16).

⁶² The Wall Street Journal ((September 14, 1993) (16 TTABVUE 33).

⁶³ Bestwire (April 18, 2000) (16 TTABVUE 49).

⁶⁴ Voices (Woodbury, Connecticut) (November 30, 2016) (16 TTABVUE 156).

The parties jointly employ a combined 15,600 agents to sell their insurance services (i.e., Opposer has 5,600 licensed agents, in 263 offices in 47 states and Applicants employ 10,000 independent agents in 49 states). Since 2007, the parties have been selling the same services to the same target demographic (i.e., Americans at or near retirement age, as well as those already in retirement). Both parties, especially Opposer, are well known and well regarded in the financial services industry. Under these circumstances, not one of the 15,000 agents selling insurance for the parties have reported one instance of actual confusion. Thus, we find that there has been a reasonable opportunity of confusion to occur. Because there are no reported instances of actual confusion of record, we find that this *DuPont* factor weighs against finding that there is a likelihood of confusion.

E. The strength of Opposer's BANKERS LIFE mark, including the number and nature of similar marks in use in connection with similar services.

In determining the strength of a mark, we consider both its inherent strength, based on the nature of the mark itself, and its commercial strength, based on marketplace recognition of the mark. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) ("A mark's strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning)."); *Top Tobacco, L.P. v. N. Atl. Operating Co., Inc.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006); 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:83 (5th ed. 2019) ("The first enquiry ... focuses on the inherent

potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another's use.”). Market strength is the extent to which the relevant public recognizes a mark as denoting a single source. *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d at 1899.

“[T]he strength of a mark is not a binary factor.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003)). It “varies along a spectrum from very strong to very weak.” *Id.* See also *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017).

1. The inherent strength of Opposer's mark BANKERS LIFE.

We start this analysis by defining the words comprising the mark “Bankers Life.” The word “Banker” is defined as “a person employed by a bank, especially as an executive or other official.”⁶⁵ The word “Life” when used in connection with “underwriting insurance services” is a shortened form for “Life Insurance” and, thus, Opposer has disclaimed the exclusive right to use it. The word “Bankers” and the term “Bankers Life” or “Bankers Life Insurance” is not descriptive of “underwriting

⁶⁵ Dictionary.com based on THE RANDOM HOUSE UNABRIDGED DICTIONARY (2020) accessed January 16, 2020. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

insurance services” because underwriting life insurance does not fall within the definition of the “Bankers.”

Nevertheless, to show that Opposer’s mark BANKERS LIFE is a weak term entitled to a narrow scope of protection, Applicants introduced evidence of third-party use and registration of marks comprising “Bankers Life,” and variations thereof, as well as “Bankers” in the insurance industry.

Applicants introduced evidence of three companies using the term “Bankers Life” in connection with insurance services:

- Bankers Life Insurance Company, dba Western Bankers Life Insurance Company;⁶⁶
- American Bankers Life Assurance Company of Florida;⁶⁷ and
- Global Bankers Insurance Group, LLC using the trademark COLORADO BANKERS LIFE INSURANCE COMPANY in various forms.⁶⁸

Applicants introduced a copy of Registration No. 3944218 for the mark BANKERS FIDELITY LIFE (standard character form) for “insurance services, namely, brokerage, underwriting, administration and claims processing of life insurance, short-term care insurance, disability insurance, health insurance, medicare

⁶⁶ 34 TTABVUE 5-7.

⁶⁷ 34 TTABVUE 8-10.

⁶⁸ 35 TTABVUE 5-16 and 26-34. Global Bankers Insurance Group, LLC is the owner of, inter alia, Registration No. 3351840 on the Principal Register under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), for the mark COLORADO BANKERS LIFE INSURANCE COMPANY (standard character form) for “insurance services, namely the administration of and underwriting of life, health and casualty insurance,” in Class 36. The registration issued on December 11, 2007 and has been renewed. Global Bankers Insurance Group disclaimed the exclusive right to use “Life Insurance Company.” 35 TTABVUE 26.

supplement insurance, payroll insurance,” in Class 36, registered on the Principal Register under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). Bankers Fidelity Life Insurance Company claimed that the word “Bankers” has acquired distinctiveness. Like Opposer did in its asserted registration, it disclaimed the exclusive right to use the word “Life.”⁶⁹ Applicants introduced an excerpt from Bankers Fidelity Life Insurance Company’s website to prove that the mark is in use.⁷⁰

Bankers Fidelity Life Insurance Company also owns Registration No. 4318945 for the mark BANKERS FIDELITY and design, reproduced below, for, inter alia, the services identified in the registration noted above.⁷¹



It also owns Registration No. 4740655 for the mark BANKERS FIDELITY ASSURANCE COMPANY (standard character format) for those same services.⁷²

Applicants introduced excerpts from seven websites showing the use of “Bankers” as part of a trademark or trade name in connection with insurance services.⁷³ The following are representative:

⁶⁹ 35 TTABVUE 17.

⁷⁰ 35 TTABVUE 20.

⁷¹ 31 TTABVUE 13.

⁷² 31 TTABVUE 38.

⁷³ 30 TTABVUE 8, 11-15, 18, 19, 21, 24, and 26-28. We only consider companies that render insurance related services. We did not include companies rendering banking services. (30 TTABVUE 10, 16, 20, and 32-36). We did not include the website for Bankers Insurance Group or Bankers Financial Corporation (30 TTABVUE 7, 8 and 23) because those companies are related to the Bankers Life Insurance Company referred to above. We did not include Bankers Insurance Company or Bankers Surety because those companies provide bail bond surety services. 30 TTABVUE 14 and 18. We did not include Bankers Assurance because we

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- Iowa Bankers Insurance and Services, Inc. (bankers-ins.com)⁷⁴



Group Term Life Insurance

- Bankers Alliance Insurance Group (baigonline.com)

Welcome to Bankers Alliance Insurance Group, LL

We have helped thousands of mobile and manufactured homeowners take advantage of up to 30% lower premiums on their homeowners insurance. ...

We are an Independent Insurance Agency, which means we have made available some of our best companies for you online quick quotes.⁷⁵

- California Department of Insurance company profile for Bankers Standard Insurance Company (interactive.web.insurance.ca.gov) identifying the company as being in the property and casualty field.⁷⁶

Finally, Applicant introduced Registration No. 361288 for the mark UNITED BANKERS AGENCY (standard character format) for “insurance agency services,” in Class 36.⁷⁷

could not determine the services the company is rendering. 30 TTABVUE 17 and 29. We did not include Bankers Title Agency of Nebraska, LLC because that company is rendering real estate title insurance services. (30 TTABVUE 31).

⁷⁴ 30 TTABVUE 12.

⁷⁵ 30 TTABVUE 21.

⁷⁶ 30 TTABVUE 27.

⁷⁷ 31 TTABVUE 49.

The evidentiary value of third party registrations is to show the sense in which a mark is used in ordinary parlance. *Juice Generation*, 115 USPQ2d at 1675. “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.” *Id.* (citing *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (even if “there is no evidence of actual use” of “third-party registrations,” such registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used”).

In addition, “a defendant [may introduce] third party uses ... to show that customers have become so conditioned by a plethora of such similar marks that customers ‘have been educated to distinguish between different [such] marks on the bases of minute distinctions.’” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). However, where, as here, the record includes no evidence about the extent of such third-party use, the probative value of the evidence is minimal. *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1561 (Fed. Cir. 2001).

We find that the combination of third-party registrations and third-party use establishes that Opposer’s mark considered as a whole BANKERS LIFE is suggestive and, thus, inherently protectable as a trademark.

2. The commercial strength of Opposer's mark BANKERS LIFE.

As discussed above, Opposer "has spent millions of dollars in promotion and advertising of the BANKERS LIFE name and mark in connection with insurance underwriting since 2010."⁷⁸ This includes lead generation activities, print materials and "other promotional activities," including purchasing the naming rights to a sports arena in Indianapolis, Indiana, where the National Basketball Indiana Pacers and Women's National Basketball Association Indiana Fever play that is called the BANKERS LIFE FIELDHOUSE.⁷⁹

"As a result of the nature and extent of [Opposer's] advertising and promotional activities ... the mark [BANKERS LIFE] has become well and favorably known to the relevant public."⁸⁰ In this regard, Opposer is "one of the nation's largest individual health and accident insurance companies."⁸¹ Opposer's unsolicited media refers to Opposer as "one of the nation's largest health and accident insurance companies,"⁸² "a big provider of Medicare supplement, long-term care and other individual health, life annuity and group insurance products,"⁸³ "the nation's fourth-largest individual long-term care provider based on 1998 net premiums,"⁸⁴ and "a leading provider of

⁷⁸ Yates Testimony Decl. ¶12 (14 TTABVUE 6). *See also* Yates Testimony Decl. Exhibit 2 (15 TTABVUE 12) (Confidential).

⁷⁹ Yates Testimony Decl. ¶¶ 12-14 (14 TTABVUE 6-7).

⁸⁰ Loniello Testimony Decl. ¶30 (22 TTABVUE 14).

⁸¹ Monroy Testimony Decl. ¶13 (17 TTABVUE 5).

⁸² The Miami Herald (September 29, 1983) (16 TTABVUE 16).

⁸³ The Wall Street Journal ((September 14, 1993) (16 TTABVUE 33).

⁸⁴ Bestwire (April 18, 2000) (16 TTABVUE 49).

insurance for more than 135 years and is one of the only companies in the U.S. devoted to primarily serving boomers and retirees.”⁸⁵ This renown has translated into the annual sale of tens of thousands of Medicare supplement, long-term care, supplemental health, and life insurance policies.⁸⁶

We find that Opposer’s mark BANKERS LIFE is commercially strong.

3. The overall strength of Opposer’s mark.

As explained above, in the likelihood of confusion analysis, “fame ‘varies along a spectrum from very strong to very weak.’” *Joseph Phelps Vineyards*, 122 USPQ2d at 1734 (quoting *Coors Brewing Co.*, 68 USPQ2d at 1063). Although BANKERS LIFE is suggestive, the commercial strength of the mark places it on the strong side of the spectrum especially without a significant showing of third-party use or registration of the term “Bankers Life.”

F. The similarity or dissimilarity of the marks.

We now turn to the *DuPont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. In comparing the marks, we are mindful that where, as here, the services are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the services. *Coach Servs., Inc. v. Triumph*

⁸⁵ *Voices* (Woodbury, Connecticut) (November 30, 2016) (16 TTABVUE 156).

⁸⁶ Yates Testimony Decl. Exhibit 1 (15 TTABVUE 10). Opposer designated its sales figures confidential; therefore, we refer to them in general terms.

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Learning LLC, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Prod. Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007). “The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 127 USPQ2d at 1801 (quoting *Coach Servs.*, 101 USPQ2d at 1721).

Opposer’s mark is BANKERS LIFE in standard character form. Applicants’ marks are reproduced below:



“Liberty Bankers Life” is the dominant element of Applicants’ marks for several reasons. There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Viterra*, 101 USPQ2d at 1908.

First, although we assess each mark in its entirety, wording often is considered the dominant feature of a mark comprising both literal and design elements because the literal portion is more likely to make an impression upon purchasers, would be remembered by them, and would be used by them to request the services. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1134 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 982 (2016); *Viterra*, 101 USPQ2d at 1908 (citing *CBS Inc. v. Morrow*, 708 F. 2d 1579, 218 USPQ 198, 200 (Fed. Cir 1983)). Nevertheless, as discussed more fully below, the stylized flag is a feature that distinguishes Applicants' marks from Opposer's mark. As noted above, we must compare the marks in their entireties. "The commercial impression of a trademark is derived from it as a whole, not from elements separated and considered in detail. For this reason it should be considered in its entirety." *Opryland USA, Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1473 (Fed. Cir. 1992) (quoting *Estate of P.D. Beckwith, Inc. v. Comm'r Patents*, 252 U.S. 538, 545-46 (1920)).

Second, "Liberty Bankers Life," as the leading part of the literal portion of the mark, has a position of prominence; consumers are likely to notice and remember "Liberty Bankers Life" and, thus, it plays a dominant role in the mark. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018) (finding "the identity of the marks' two initial words is particularly significant because consumers typically notice those words first"); *Palm Bay Imps. Inc.*, 73 USPQ2d at 1692 ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because

“veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate*, 23 USPQ2d at 1700 (upon encountering the marks, consumers will first notice the identical lead word).

Third, by placing “Liberty Bankers Life” over “Life Insurance” and “The Capitol Life” in the respective marks, Applicants have given the term “Liberty Bankers Life” a position of prominence.

Finally, in considering Applicants’ marks in their entirety, the stylized design of the American flag reinforces or highlights the word “Liberty” by engendering the commercial impression of freedom, thereby implying financial freedom or freedom from a financial problem. Moreover, the flag design is large and consumers cannot help but notice it.

Applicants’ marks are sometimes shortened to LIBERTY BANKERS or LIBERTY BANKERS LIFE, but not BANKERS LIFE.⁸⁷ “The word ‘Liberty’ is never excluded in any communication with [Applicants’] agents, customers, or prospective customers.”⁸⁸ The unsolicited third-party media referring to Applicants use “Liberty Bankers Life” or “Liberty Bankers.”⁸⁹

In this case, Applicants’ marks LIBERTY BANKERS LIFE and design and LIBERTY BANKERS LIFE THE CAPITOL LIFE and design completely incorporate

⁸⁷ Phillips Discovery Dep., pp. 7 and Exhibit 51 (20 TTABVUE 9 and 40), 25, 43, 65 (19 TTABVUE 23, 34, 51); Johansson Testimony Decl. ¶7 (37 TTABVUE 3-4); Johansson Cross-Examination Dep., p. 9 (40 TTABVUE 13) (confirming that not agent advertising omitted the word “Liberty”); 41 TTABVUE.

⁸⁸ Johansson Testimony Decl. ¶8 (37 TTABVUE 4).

⁸⁹ Johansson Testimony Decl. Exhibit 9 (37 TTABVUE 59-91).

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Opposer's mark BANKERS LIFE. This does not alone signify that the marks as a whole are similar. *See Miller Brewing Co. v. Premier Beverages, Inc.*, 210 USPQ 43, 48 (TTAB 1981).

“ . . . where a word comprising a registered or known mark (or a substantial portion thereof) is combined with other features in a new mark in such a manner that its identity is lost, or so merged with other features that similarity in sound, appearance or meaning is lacking, it should be registered even though that portion considered alone, would closely resemble it.”

Id. (quoting *Wyeth Inc. v. Ingram Labs., Inc.*, 83 USPQ 326, 327 (Comr., 1949). *See also Intercontinental Mfg. Co., Inc. v. Cont'l Motors Corp.*, 230 F.2d 621, 109 USPQ 105, 107 (CCPA, 1956); *United Drug Co. v. Mercirex Co.*, 182 F.2d 222, 86 USPQ 112, 113-14 (CCPA, 1950).

Even though the parties' marks all contain the term “Bankers Life,” Applicants' additions of the word “Liberty” and the stylized design of the American flag create marks that are sufficiently distinct from Opposer's mark BANKERS LIFE because, as discussed above, the term “Bankers Life” is suggestive. We may not focus on the term “Bankers Life” to the exclusion of the other elements of Applicants' marks. Applicants' marks are composites including the term “Liberty Bankers Life” and a stylized flag design that is a significant, albeit not a dominant, feature thereof. Considered in their entireties, there is sufficient dissimilarity between Applicants' marks and Opposer's mark because the marks have different appearances, sound different through the additional wording, and with all of these differences, engender different commercial impressions. *See Champagne Louis Roederer, S.A. v. Delicato*

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Vineyards, 148 F.3d 1373, 47 USPQ2d 1459, 1460 (Fed. Cir. 1998) (CRYSTAL CREEK for wine is not similar to CRISTAL for champagne because the marks evoke different commercial impressions and the marks look different and sound different); *Miller Brewing Co. v. Premier Beverages, Inc.*, 210 USPQ at 48 (OL' BOB MILLER is readily distinguishable from MILLER'S in every material respect and creates a commercial impression that is distinctive in its own right and would not be equated with or suggest MILLER alone); *Hershey Foods Corp. v. Cerreta*, 195 USPQ 246, 256 (TTAB 1977) (applicant's marks A BIG KISS FOR YOU and SEALED WITH A KISS are readily distinguishable from opposer's mark KISSES). The differences are sufficient to make any likelihood of confusion de minimus.

We find that Applicants' marks in their entireties are not similar to Opposer's mark.

G. Conclusion

Despite the fact that the marks are used in connection with services that are in part identical and, therefore, presumed to be offered in the same channels of trade to the same classes of consumers, because the marks are not similar, consumers exercise a high degree of purchasing care, and there have been no reported instances of actual confusion despite a reasonable opportunity for confusion to have occurred, we find that Applicants' marks LIBERTY BANKERS LIFE INSURANCE COMPANY and design and LIBERTY BANKERS LIFE THE CAPITOL LIFE and design both for "underwriting and administration of life insurance, health insurance, and annuities"

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are not likely to cause confusion with Opposer's registered mark BANKERS LIFE for
"insurance underwriting services."

Decision: The oppositions are dismissed.