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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re The Central Bank of Alva

Serial No. 78301159

Mary M. Lee for The Central Bank of Alva.

Michael Webster, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).

Before Hairston, Bucher and Zervas, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

The Central Bank of Alva has appealed from the final refusal of the trademark examining attorney to register BANCCENTRAL, NATIONAL ASSOCIATION as a mark for the following services in Class 36:

> Banking; mortgage banking; investment banking services; online banking services; facilitating the exchange of needed information for financial compensation via the Internet; financial analysis and consultation; financial clearing houses; financial exchange; financial forecasting; financial guarantee and surety; financial information in the nature of rates of exchange;

> financial information provided by electronic means; financial information processing; financial management; financial planning; financial portfolio management; financial research; financial services in the nature of an investment security; financial services in the field of money lending; financial services, namely providing on-line stored value accounts in an electronic environment, money lending, and investment fund transfer and transaction services; financial sponsorship of nonprofit organizations; financial statement preparation and analysis for businesses; and financial valuation of personal property and real estate.[1]

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the mark BANK CENTRAL, previously registered for "telephone banking services,"[2] that, if used on the identified services, it would be likely to cause confusion or mistake or to deceive.

Applicant and the examining attorney have filed briefs, but an oral hearing was not requested.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set

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[1] Application Serial No. 78301159 filed September 16, 2003, based on an allegation of a bona fide intention to use the mark in commerce. The application includes a disclaimer of the words NATIONAL ASSOCIATION apart from the mark as shown. The application also covers services in classes 38 and 42. However, the refusal to register pertains to the Class 36 services only, and applicant's "[b]anking" services, in particular.

[2] Registration No. 1,909,447 issued August 1, 1995; renewed. The registration includes a disclaimer of the word BANK apart from the mark as shown.

forth in In re E. I. Dupont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, In re Majestic Distilling Company, Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Considering first the respective services, applicant argues that they are different because "[r]egistrant's service is limited [to] telephonic banking, while [a]pplicant's planned services include a range of banking and financial services, as well as computer and internet related services." (Brief, p. 5).

It is well settled that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992); and The Chicago Corp. v. North American Chicago Corp., 20 USPQ2d 1715 (TTAB 1991), and cases cited therein. Thus, where as here, applicant's

services are broadly described as “[b]anking,” we must presume that such services encompass all types of banking services, including telephone banking services. In short, for purposes of our likelihood of confusion analysis, registrant’s telephone banking services and applicant’s banking services are legally identical. Further, such services would be purchased and used by the same class of purchasers, namely, ordinary consumers.

Turning next to the marks, applicant argues that the marks are different pointing out that registrant’s mark consists of two words BANK CENTRAL and “bank” spelled with a “k,” whereas its mark consists of the combined term BANCCENTRAL and “bank” spelled with a “c,” along with the additional words NATIONAL ASSOCIATION.

With respect to the marks, we must determine whether applicant’s mark and registrant’s mark, when compared in their entireties are similar or dissimilar, in terms of sound, appearance, connotation and commercial impression. As our principal reviewing court has indicated, while marks must be considered in their entireties, including any descriptive matter, in articulating reasons for reaching a conclusion on the issue of likelihood 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 entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, according to the court, "that a particular feature is descriptive … with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark … ." Id.

Furthermore, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106 (TTAB 1975).

We find that when considered in their entireties, applicant's mark BANCCENTRAL, NATIONAL ASSOCIATION is so similar to registrant's mark BANK CENTRAL in sound, appearance, connotation and commercial impression that their contemporaneous use is likely to cause confusion as to the origin or affiliation of the respective services.

The dominant and distinguishing portion of applicant's mark BANCCENTRAL, NATIONAL ASSOCIATION is the term BANCCENTRAL due to the descriptiveness, as evidenced by the disclaimer, of the words NATIONAL ASSOCIATION. Indeed, it is likely that many customers of applicant would refer to applicant and any branches as BANCCENTRAL without using the descriptive words NATIONAL ASSOCIATION. The dominant portion of applicant's mark is substantially similar to registrant's mark BANK CENTRAL.

Here, the descriptive words NATIONAL ASSOCIATION in applicant's mark BANCCENTRAL, NATIONAL ASSOCIATION, while not present in registrant's mark BANK CENTRAL, are insufficient to distinguish such marks due, as noted above, to the fact that the dominant portion of applicant's mark BANCCENTRAL is substantially similar to registrant's mark BANK CENTRAL. This imparts a high degree of visual and phonetic similarity to the marks as well as a substantial identity in their connotation. Also, that registrant's mark consists of two words BANK CENTRAL and "bank" spelled with a "k," whereas applicant's mark consists of the combined term BANCCENTRAL and "bank" spelled with a "c" is insufficient to distinguish the marks. These are minor differences and overall, the respective marks project substantially the same general commercial impression.

Applicant argues that the words “bank/banc” and “central”, as applied to banking services, are so frequently used in marks for such services that the fact that both marks contain these words is not a sufficient basis for finding a likelihood of confusion. In support of its contention, applicant submitted two lists from the USPTO’s TESS database with a response to an Office action. One of the lists is of marks which contain BANC; the other list is of marks which contain CENTRAL and BANK. These lists show only the marks, the serial number and/or the registration number and an indication as to whether the application/registration is live or dead. There is no indication as to the goods or services. Further, many of the listed marks are for applications. Although third-party registrations may be used in the manner of dictionary definitions, see The Conde Nast Publications, Inc. v. Miss Quality, Inc., 507 F.2d 1404, 188 USPQ 422 (CCPA 1975), third-party applications have no such value. Also, with respect to third-party registrations, they do not show that the public is familiar with the marks shown in the registrations, nor can they justify the registration of what could be another confusingly similar mark.

In this case, however, the evidentiary failings with regard to the third-party registrations are not

critical to this case, since such registrations are not necessary to show the meaning of the words “bank” and “central.” We judicially notice the following definitions from The American Heritage Dictionary of the English Language (New College Edition 1976):

> **bank**: *A business establishment authorized to perform one or more of the following services: receive and safeguard money and other valuables; lend money at interest; execute bills of exchange such as checks and drafts; purchase and exchange foreign currency; and issue notes of circulation or currency.*
>
> **central:** *Dominant, essential.*

Here, the registered mark BANK CENTRAL, as applied to telephone banking services, suggests a bank that provides to its customers all essential services by way of telephone.

However, this does not help to distinguish BANCCENTRAL, NATIONAL ASSOCIATION and BANK CENTRAL. The term BANC in applicant’s mark is simply a variation of BANK. Further, BANCCENTRAL, as applied to banking services, suggests a bank that provides to its customers all essential services. Thus, BANK CENTRAL and BANCCENTRAL convey virtually the same suggestive significance, and the additional words NATIONAL ASSOCIATION in applicant’s mark does not

change that meaning or the commercial impression of the marks.

Further, applicant argues that registrant's mark is not famous, and that this fact weighs against a likelihood of confusion. While the fame of mark is a factor which weighs in favor of a likelihood of confusion, the absence of fame does not weight against a likelihood of confusion. In short, a mark need not be famous in order to be entitled to protection against a confusingly similar mark.

Finally, applicant asserts that customers of applicant's and registrant's services are sophisticated. It is common knowledge, however, that banking services are purchased by the public at large. However, even assuming that the purchasers of these services exercise care, this does not mean that such purchasers are immune from confusion where as here, the services are identical and the marks are substantially similar. Wincharger Corp. v. Rinco, Inc., 297 F.2d 261, 132 USPQ 289 (CCPA 1962); and In re Total Quality Group Inc., 51 USPQ2d 1474 (TTAB 1999).

We conclude that persons familiar with the registered mark BANK CENTRAL for banking services, in particular, would be likely to believe, upon encountering the substantially similar mark BANCCENTRAL, NATIONAL ASSOCIATION for telephone banking services, that such

services emanate from or are associated with or sponsored by the same source.

**Decision**: The refusal to register the services in Class 36 is affirmed. The application will go forward with respect to the services in classes 38 and 42.