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THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB NOV. 19, 98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Crestar Financial Corporation

v.

Crestmark Financial Corporation

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Opposition No. 101,223  
to application Serial No. 74/74/681,626  
filed on May 30, 1995

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Frank P. Presta of Sixbey, Friedman, Leedom & Ferguson for  
Crestar Financial Corporation

William H. Honaker of Howard & Howard Attorneys, P.C. for  
Crestmark Financial Corporation

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Before Cissel, Seeherman and Walters, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Crestar Financial Corporation has opposed the  
application of Crestmark Financial Corporation to register  
CRESTMARK BANK, with the word "bank" disclaimed, for bank

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services.<sup>1</sup> As grounds for opposition opposer has alleged that it is the owner of various registrations for CRESTAR for banking,<sup>2</sup> securities brokerage<sup>3</sup> and insurance agency services,<sup>4</sup> of CRESTAR and design,<sup>5</sup> shown below,



and CRESTAR MAX for banking services,<sup>6</sup> and CRESTFUNDS for mutual fund investment services; that opposer has used its above-listed CRESTAR marks, as well as the mark CRESTAR BANK, since prior to the filing date of applicant's intent-to-use application; and that applicant's mark CRESTMARK BANK so resembles opposer's CRESTAR, CRESTAR BANK, CRESTAR MAX and CRESTFUNDS marks that, if used in connection with applicant's identified bank services, it would be likely to cause confusion or mistake or to deceive.

In its answer applicant admitted that it made no use of its mark CRESTMARK BANK prior to the filing date of its application, and denied the remaining salient allegations of the notice of opposition.

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<sup>1</sup> Application Serial No. 74/681,626, filed May 30, 1995, based on an asserted bona fide intention to use the mark.

<sup>2</sup> Registration No. 1,462,235, issued October 20, 1987; Sections 8 and 15 affidavit accepted.

<sup>3</sup> Registration No. 1,462,234, issued October 20, 1987; Sections 8 and 15 affidavit accepted.

<sup>4</sup> Registration No. 1,470,005, issued December 22, 1987; Sections 8 and 15 affidavit accepted.

<sup>5</sup> Registration No. 1,467,624, issued December 1, 1987; Sections 8 and 15 affidavit accepted.

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The record consists solely of the application which is the subject of this proceeding, and all of opposer's pleaded registrations except for CRESTFUNDS for mutual fund investment services.<sup>7</sup> The case has been fully briefed,<sup>8</sup> and both parties were represented at an oral hearing before this Board.

Priority is not in issue in view of opposer's registrations, which are properly of record. See **King Candy Company v. Eunice King's Kitchen, Inc.**, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Moreover, applicant has conceded opposer's priority. Brief, p. 2.

Turning to the issue of likelihood of confusion, we note that, although this is an inter partes proceeding, the only evidence which is of record are opposer's registrations and applicant's application file. Thus, our analysis is more akin to that in an ex parte proceeding which involves merely a citation by an Examining Attorney of a registered mark. Accordingly, although we have considered all the

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<sup>6</sup> Registration No. 1,773,826, issued May 25, 1993.

<sup>7</sup> Opposer made five registrations of record with its notice of opposition by submitting status and title copies thereof. However, opposer submitted only a "soft" copy of its registration No. 1,758,744 for CRESTFUNDS, which was insufficient to make this registration of record as an attachment to the pleading. Trademark Rule 2.122(d)(1).

<sup>8</sup> With its reply brief opposer has moved to strike certain "factual" statements asserted by applicant in its brief, and detailed by opposer at page 1 of its reply brief. Opposer's motion is granted. As previously indicated, applicant submitted no evidence in this proceeding, and there is no evidentiary support in the record for such assertions as its earliest date of

duPont factors which are relevant, see **E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), we have no evidence which bears on certain of the factors.

In any determination of likelihood of confusion, two key factors are the similarity of the marks and the similarity of the goods or services. With respect to the services, the banking services identified in opposer's registrations for CRESTAR and CRESTAR MAX must be deemed to be identical to applicant's bank services. Because of the identical nature of the services, they must also be deemed to be offered in the same channels of trade to the same groups of consumers. Further, applicant has acknowledged that "there is no issue concerning the identity of goods [sic] sold under the marks. Opposer and Applicant both provide banking and other financial services." Brief, p. 2.

"When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." **Century 21 Real Estate Corp. v. Century Life of America**, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). This brings us to a consideration of the parties' marks.

Both opposer's and applicant's marks begin with CREST. Applicant essentially argues that this portion would not be as noticeable in opposer's mark because opposer's mark is

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use, its business, the manner in which it selected its mark, and

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pronounced so that the word STAR is emphasized, that is, as "kre STAR." We do not agree with applicant's position. It has frequently been noted that there is no correct pronunciation of a trademark which is an invented word. Therefore, opposer's mark may just as readily be pronounced as "CREST ar" as "kre STAR." Certainly, such a pronunciation would seem logical, since CREST is a readily recognizable English word which begins opposer's mark, and because many, if not most, two-syllable English words are pronounced with an accent on the first syllable. While the last letters of the mark do form another English word, STAR, for the aforesaid reasons we believe that consumers are not as likely to view the mark in this way.

CREST in applicant's mark is also likely to be noted and pronounced. Not only does it begin applicant's mark, but this portion will be recognized as a word because the syllable is followed by another recognizable word, MARK. As a result, it is unlikely that consumers would break up CRESTMARK into anything other than the two words which comprise the mark. That is, consumers are not likely to pronounce or regard it as, for example, "kres tmark" or "kre stmark."

We recognize that opposer's mark, CRESTAR, and the first word of applicant's mark, CRESTMARK, have more

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so on. Accordingly, this material has not been considered.

elements than the initial portion CREST. However, the remaining portions do not convey as strong commercial impressions as the identical first portions. "Ar" in opposer's mark is a mere suffix, while MARK in CRESTMARK may be regarded as a reference to a trademark, in the same manner as "brand."<sup>9</sup> Therefore, the CREST portion of both marks is the part most likely to be noted. The additional word BANK in applicant's mark, which is the generic word for applicant's services and has, indeed, been disclaimed, clearly does not have any source-identifying or distinguishing significance.

Applicant has provided some creative suggestions as to the connotations of each mark, viz., CRESTAR, with the connotation of heraldry or the top of something "indicates a reaching out for something, such as reaching for the stars," p. 6; in CRESTMARK BANK, CREST has the connotation of prestige and tradition, such as a family crest, while MARK connotes a mark of excellence or quality (see footnote 9), so that the combination of the two, CRESTMARK, has "the connotation of a prestigious bank that has a tradition of

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<sup>9</sup> Applicant asserts that "'MARK' connotes a mark of excellence or quality, such as water marks on high quality paper, or achieving high marks for continuing achievements of excellence." Brief, p. 6. As the term "mark" is used in applicant's own trademark, we think the trademark meaning of the word "mark" is more likely to be conveyed than that of a grade for achievements. We would also point out that a water mark is, in fact, a trademark.

providing banking services that comprise high standards of quality and excellence." Brief, p. 6.

We cannot agree that consumers will engage in the laborious analysis applicant has made and will therefore understand the marks to mean what applicant argues they do. Rather, we think that it is the initial portion CREST in each mark which will make the strongest impression on consumers, because of the appearance and pronunciation of the marks. Because of the lesser source-identifying value of the additional elements, the overall meaning conveyed by both marks relates to the word CREST.

In reaching the conclusion that opposer's marks and applicant's mark engender similar commercial impressions, we point out that we have considered the marks in their entireties. However, it is well established that in determining the issue of likelihood of confusion, it is permissible, for rational reasons, to give more or less weight to a particular feature of a mark. See **In re National Data Corp.**, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

An additional duPont factor which favors opposer is the fact that CRESTAR appears to be an arbitrary mark. Certainly applicant has not made of record any evidence of third-party use of CREST marks, or third-party registrations containing this element. Is such evidence were of record,

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it could indicate either that the public is aware of various parties using such marks, or that CREST has a suggestive significance, such that opposer's mark would not be entitled to a broad scope of protection.

Finally, we note that the record does not include any evidence of actual confusion. However, this factor does not favor applicant in that we have no information regarding either opposer's or applicant's use of the mark, and therefore we cannot ascertain whether there has been an opportunity for confusion to occur. Because applicant's application was based on an intention to use the mark, and no amendment to allege use was ever filed, we cannot even say, based on this record, that applicant has ever used its mark.

Decision: The opposition is sustained.

R. F. Cissel

E. J. Seeherman

C. E. Walters  
Administrative Trademark Judges  
Trademark Trial and Appeal Board