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**THIS DISPOSITION  
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Paper No. 11  
RLS/kk

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Century Bancorp, Inc.  
v.  
Century Bank and Trust Corporation

Cancellation No. 29,921

Treazure R. Johnson of Eckert, Seamans, Cherin & Mellott,  
LLC for Century Bancorp, Inc.

Robert B. Kennedy of Kennedy, Davis & Hodge for Century Bank  
and Trust Corporation.

Before Simms, Cissel and Holtzman, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

This case now comes up on Century Bank and Trust  
Corporation's (respondent's) motion for summary judgment and  
on Century Bancorp, Inc.'s (petitioner's) opposition thereto  
and cross-motion for summary judgment. Petitioner, after  
the close of discovery, also filed a motion to extend the  
discovery period.

In this proceeding petitioner, a Massachusetts  
corporation, seeks cancellation of respondent's registration  
of the mark shown below

for commercial banking and trust services. (Registration No. 1,887,432, issued April 4, 1995). Petitioner asserts that since 1969, it has used the mark CENTURY BANK for commercial and consumer banking services, and that it has filed an application to register that mark; that since 1972 it has used the mark CENTURY BANCORP for the same services and has filed an application to register that mark; that since 1991 petitioner has used the mark CENTURY FINANCIAL SERVICES for investment and brokerage services, and that it has filed an application to register that mark; and that respondent's mark so resembles petitioner's previously used marks as to be likely to cause confusion, to cause mistake or to deceive.

In its answer, respondent has denied the essential allegations of the petition, but has acknowledged that respondent first used the mark in June 1992. Respondent also asserts certain affirmative defenses such as acquiescence, estoppel and laches.

Essentially, respondent argues in its motion that there is no likelihood of confusion. Among other things,

**Cancellation No. 29,921**

respondent argues that the marks differ, petitioner usually using the "dominant feature" of a representation of a Roman centurion (see below),

and that the meanings of the marks therefore differ, in that petitioner's mark suggests that it is a strong guardian of financial assets, whereas respondent's mark connotes a 100-year time period. Respondent also asserts that, over the years, there have been many other banks that have included the word CENTURY in their marks for banking services. For example, respondent points to the following registered mark, against which petitioner has filed a petition for cancellation.

Respondent also argues that petitioner's brokerage and investment services are specifically different from respondent's commercial banking and trust services. Finally, respondent argues that there has been no actual confusion despite concurrent use for over eight years, with neither petitioner nor respondent even knowing of the

**Cancellation No. 29,921**

existence of the other until this proceeding. In this regard, respondent points out that petitioner has restricted its services to the northeast part of Massachusetts, while respondent's primary use has been in the state of Georgia.

Petitioner, in its opposition to respondent's motion and in support of its own cross-motion for summary judgment, maintains that there are no genuine issues for trial and that confusion is not only likely, it is inevitable in view of the similarity of the marks and the identity of the services. In this regard, petitioner argues that the dominant portion of the marks at issue is the word CENTURY and that both parties are offering commercial banking services. With respect to the design of a Roman centurion, petitioner maintains that this design is often, but not in all cases, used in conjunction with petitioner's word mark, and that petitioner is referred to as "CENTURY" or "CENTURY BANK" in media articles and by the public. Because petitioner has prior use, as demonstrated by a declaration of its chairman, president and chief executive officer, and because of the similarities of the marks and services, petitioner maintains that confusion is likely.

Finally, petitioner notes that neither the geographic extent of its prior use nor the geographic remoteness of the two businesses is relevant to the issue of likelihood of

**Cancellation No. 29,921**

confusion involved in a cancellation proceeding brought against a federally registered mark.<sup>1</sup>

A declaration of petitioner's officer indicates that since its establishment in 1969, petitioner has used the mark "CENTURY BANK" to identify its banking services; that often, but not in all cases, the word mark is accompanied by a representation of a Roman centurion; that as a result of petitioner's advertising and marketing activities, petitioner is usually referred to and known as "CENTURY" or "CENTURY BANK"; and that petitioner now has 16 branches with over \$900 million in assets, 40,000 consumer accounts and 4,000 commercial accounts, and is the 40<sup>th</sup> of 150 mid-sized financial institutions, with customers in Rhode Island, Maine, New Hampshire, Connecticut, Florida and New York.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. Fed R. Civ. P 56(c). The party moving for summary judgment has the initial burden of demonstrating the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793

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<sup>1</sup> *Coach House Restaurant v. Coach & Six Restaurants, Inc.*, 934 F.2d 1551, 19 USPQ2d 1401 (11<sup>th</sup> Cir. 1991), referring to Section 7(b) of the Lanham Act which "creates a presumption that the registrant has the exclusive right to use its mark throughout the United States."

**Cancellation No. 29,921**

(Fed. Cir. 1987). A factual dispute is genuine, if, on the evidence of record, a reasonable finder of fact could resolve the matter in favor of the moving party. *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992) and *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). The evidence must be viewed in a light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Products Inc. v. Ely's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993) and *Opryland USA, supra*. We note that, in respondent's reply to petitioner's motion, it has observed that the parties agree that there are no genuine issues of material fact.

We also believe that there are no genuine issues of material fact for trial. There is no dispute that petitioner is the senior user, having previously used the service mark CENTURY BANK (and CENTURY BANK AND TRUST COMPANY). Also, there is no dispute that petitioner's use of its mark is in connection with commercial banking services, substantially identical to the description "commercial banking and trust services" set forth in respondent's registration.

Nor do we believe that there are any genuine issues with respect to the similarity of the respective marks.

**Cancellation No. 29,921**

While respondent argues that its registered mark differs from petitioner's marks, we believe that these marks are clearly substantially identical in sound, appearance and commercial impression. In this regard, we cannot agree with respondent that the "dominant" origin-indicating feature of petitioner's mark is the representation of a Roman centurion. First, while this image appears in many uses of petitioner, most of the examples of record do not include the phrase "THE CENTURION SYMBOL OF STRENGTH AND LEADERSHIP." Accordingly, with respect to the majority of uses by petitioner, it is not at all clear that consumers would perceive the design of the soldier in armor as a "centurion," somehow affecting the significance or connotation of petitioner's marks CENTURY BANK and CENTURY BANK AND TRUST COMPANY. Clearly, the dominant origin-indicating feature is the word "CENTURY." Moreover, as noted, petitioner occasionally uses the phrase CENTURY BANK AND TRUST COMPANY, almost identical to the words CENTURY BANK & TRUST in respondent's registered mark.

With respect to any third-party marks, respondent has referred to another registered mark, belonging to a Colorado bank. Aside from the fact that petitioner has a pending cancellation petition against that mark, the existence of that registered mark does not create a genuine issue of fact for trial. Confusion is clearly likely if the parties use

**Cancellation No. 29,921**

their respective marks in connection with substantially identical services.

Respondent's motion for summary judgment is denied, petitioner's motion for summary judgment is granted, the petition for cancellation is granted, and respondent's registration will be cancelled in due course.

Because of this disposition, petitioner's motion to extend discovery is moot.