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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 13  
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **The Provident Bank**

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Serial No. 75/544,371

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**Michael A. Marrero** of **Ulmer & Berne LLP** for **The Provident Bank**.

**Michael W. Baird**, Trademark Examining Attorney, Law Office 109  
(**Ronald R. Sussman**, Managing Attorney).

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Before **Hohein**, **Chapman** and **Wendel**, Administrative Trademark  
Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

**The Provident Bank** has filed an application to register  
the mark "PCFS FINANCIAL SERVICES" for "financial services;  
namely, direct lending to consumers, buying and selling consumer  
loans from third parties and the following services associated  
therewith: portfolio lending, loan processing and servicing, and  
loan funding."<sup>1</sup>

Registration has been finally refused under Section  
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that  
applicant's mark, when applied to its services, so resembles the

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<sup>1</sup> Ser. No. 75/544,371, filed on March 11, 1999, which alleges a date of  
first use anywhere of April 27, 1998 and a date of first use in  
commerce of May 5, 1998. The words "FINANCIAL SERVICES" are  
disclaimed.

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mark "P PACIFIC COAST FINANCIAL SECURITIES PCFS MEMBER NASD-SIPC"  
and design, which is registered in the form shown below



Pacific Coast  
Financial Securities

for "brokerage services for investors in the field of securities,"<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

Turning first to consideration of the respective services, it is well settled that goods or services need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods or services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same entity or provider. See, e.g., Monsanto Co. v. Enviro-Chem Corp., 199 USPQ

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<sup>2</sup> Reg. No. 1,867,198, issued on December 13, 1994, which sets forth dates of first use of August 1, 1993. The terms "MEMBER NASD-SIPC" and "FINANCIAL SECURITIES" are disclaimed.

590, 595-96 (TTAB 1978) and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

In support of his position that applicant's and registrant's services are so closely related that, if marketed under the same or similar marks, confusion as to the source or sponsorship of such services would be likely, the Examining Attorney has made of record copies of 11 use-based third-party registrations of marks which are registered for "consumer lending," "consumer loans," "lending and loan sales" or "mortgage lending" services, on the one hand, and "securities brokerage" or "investment securities brokerage" services, on the other. Although admittedly not evidence that the different marks shown therein are in use or that the public is familiar with them, the third-party registrations nevertheless have some probative value to the extent that they serve to suggest that the services listed therein are of the kinds which may emanate from a single source. See, e.g., In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993) and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 at n. 6 (TTAB 1988).

In addition, the Examining Attorney has supported his position with copies of several excerpts from a search of the "NEXIS" database, the most pertinent of which are reproduced below (emphasis added):

"BankAtlantic has boosted its direct **consumer** and small business **loans**, residential lending, trade finance, ... loan syndications and debit card distribution. At the same time, through its affiliates, it has ventured into ... **securities brokerage** and

commercial leasing." -- Miami Herald, July 22, 1999; and

"[The] combined company will ... offer numerous product lines including banking, **consumer lending**." -- Denver Business Journal, May 29, 1998.

The Examining Attorney has "also included a number of printouts of web pages, demonstrating that many securities brokerages offer lending services, and that many banks which offer lending services also provide securities brokerage services." Included therewith is a printout from applicant's web site, which states in particular that "Provident Bank sells and services **consumer** and small business deposits, **loans and investment products**" (emphasis added).

We agree with the Examining Attorney that such evidence is sufficient to establish that applicant's consumer lending services and registrant's securities brokerage services are so closely related in a commercial sense that, if offered under the same or similar marks, confusion as to the origin or affiliation thereof would be likely to occur. Applicant, while arguing in its main brief that the respective services "are not inexpensive and are of the type purchased by sophisticated purchasers," does not take issue with the Examining Attorney's contention that such services are closely related for purposes of assessing whether there is a likelihood of confusion. In fact, as the Examining Attorney points out, applicant has even conceded in its response to the initial office action that, albeit under a different mark, it "already offers services similar to the services offered by registrant under Registrant's registered mark."

Turning, therefore, to consideration of the marks at issue, the Examining Attorney argues that confusion is likely because applicant "has appropriated a significant portion of the registrant's mark and merely added generic wording of little or no trademark significance."<sup>3</sup> Specifically, while acknowledging that marks must be considered in their entirety, the Examining Attorney maintains that disclaimed matter "is typically less significant or less dominant" and that therefore:

The dominant feature of Applicant's ... mark is the acronym PCFS. This same acronym appears in the registered mark. Applicant argues that the Examining Attorney improperly determined that this acronym is [the] dominant feature of the registered mark, as it appears in a relatively small font as compared to the rest of the mark, and comprises a small fraction of the wording present in the entire mark.

The Examining Attorney agrees that the acronym, as it appears in the registrant's mark, is understated and comprises but a small portion of the total wording. However, it is by no means insignificant. As Applicant has noted, the acronym PCFS [in registrant's mark] is clearly derived from the registrant's name, Pacific Coast Financial Securities. .... The registrant is using the registered mark to educate the relevant consuming public, indicating that

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<sup>3</sup> While, as the Examining Attorney notes, applicant also contends that the acronym "PCFS" is relatively weak, and is entitled to only a narrow scope of protection, because of the existence of several third-party registrations applicant has made of record for marks which contain similar acronyms, we concur with the Examining Attorney that, "[a]t best, the evidence submitted by Applicant demonstrates that **similar** acronyms may coexist on the Register" (emphasis in original). However, as the Examining Attorney further points out, "[i]n no way does the evidence demonstrate that the acronym PCFS is 'weak' or in use by third parties." See, e.g., *National Aeronautics and Space Administration v. Record Chemical Co. Inc.*, 185 USPQ 563, 567 (TTAB 1975). Accordingly, the third-party registrations presented by applicant do not merit a finding that the marks at issue herein are not likely to cause confusion.

the acronym PCFS is synonymous with [the] rest of the wording in the mark. Through its use of the acronym, the registrant indicates an unambiguous intention to use the term as a source identifier. While admittedly a small portion of the overall registered mark, the overall commercial impression of the registered mark is to equate PCFS with PACIFIC COAST FINANCIAL SECURITIES. The acronym is therefore an important part of the registered mark.

Conversely, Applicant's mark makes no such effort to define the acronym. Instead, it is coupled with generic wording of little or no trademark significance. When confronted with the two marks, a potential consumer is likely to believe the following: 1) PCFS stands for "Pacific Coast Financial Securities (correct); and 2) PCFS FINANCIAL SERVICES are financial services offered by PCFS, or Pacific Coast Financial Securities (incorrect).

In view thereof, and inasmuch as "both Applicant's mark and the registrant's mark contain the acronym PCFS and have the same commercial impression," the Examining Attorney concludes that confusion is likely.

Applicant, on the other hand, insists that, when considered in their entirety, the respective marks engender different commercial impressions. In particular, applicant contends that:

[T]he prior mark is not simply PCFS but rather P PACIFIC COAST FINANCIAL SECURITIES PCFS MEMBER NASD-SIPC and design. .... PCFS is but a small part of the registrant's mark and nothing more than an abbreviation of the registrant's corporate name, Pacific Coast Financial Securities, Inc. Thus, PCFS is not the dominant portion of the entire mark.

Furthermore, the registrant uses a large upper case "P" in connection with its mark .... The "P" portion of the registrant's mark finds no counterpoint in appellant's

mark. The examining attorney appears to have ignored this large "P" and its visual prominence in the accompanying design when considering the likelihood of confusion between the registered mark and PCFS FINANCIAL SERVICES. ....

The examining attorney had no evidence ... that the registrant has been known by the designation "PCFS" instead of "Pacific Coast Financial Securities," or that "PCFS" creates a commercial impression separate and apart from the features of the mark P PACIFIC COAST FINANCIAL SECURITIES PCFS MEMBER NASE-SIPC and design. Instead, the examining attorney has missed the point that appellant's mark and the prior mark are to be compared in their entirety. ....

In short, both the letter "P," ... as visually depicted, and the words PACIFIC COAST FINANCIAL SECURITIES, should be treated as the dominant features of the registrant's mark. The examining attorney therefore should have given those features greater force and effect than the abbreviation "PCFS" when judging the likelihood of confusion between appellant's mark and the registered mark.

Initially, it should be noted that this appeal does not present a situation in which the marks at issue are essentially arbitrary arrangements of letters and would be so regarded by purchasers as such. See, e.g., ECI Division of E-Systems, Inc. v. Environmental Communications Inc., 207 USPQ 443, 450-51 (TTAB 1980); Autac Inc. v. Viking Industries, Inc., 199 USPQ 367, 368 (TTAB 1978); and Aerojet-General Corp. v. Computer Learning & Systems Corp., 170 USPQ 358, 362 (TTAB 1971). The facts of this appeal, instead, seem more analogous to those cases in which the letter combinations featured in the particular marks would most likely be viewed as acronyms for the corporate names from which such marks were derived rather than an arbitrarily arranged

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series of letters. See, e.g., Hewlett-Packard Co. v. Human Performance Measurement Inc., 23 USPQ2d 1390, 1396 (TTAB 1991); SSP Industries v. Solid State Products, Inc., 184 USPQ 628, 633 (TTAB 1974); and Sales Analysis Institute, Inc. v. Sales Training, Inc., 181 USPQ 341, 346 (TTAB 1973).

With the foregoing in mind, we are constrained to agree with applicant that, when the respective marks are considered in their entireties, including any disclaimed matter, applicant's mark does not so resemble registrant's mark that confusion is likely. Clearly, in terms of connotation, the letters "PCFS" in registrant's mark, to the extent that they may be noticed by purchasers and potential consumers of registrant's securities brokerage services, are an acronym for the name "PACIFIC COAST FINANCIAL SECURITIES" in such mark. However, as to applicant's mark, while it is apparent from the copyright notice appearing on the specimens of use in the application and the references in the printout of record from applicant's web site that the letters "PCFS" in applicant's mark comprise an acronym or abbreviation for its "Provident Consumer Financial Services," there concededly is nothing in the mark itself which would so indicate such fact to customers for applicant's consumer loan services. Thus, customers would not necessarily be aware of the derivation of the letters "PCFS" in applicant's mark and such letters admittedly could be regarded as standing for the name "Pacific Coast Financial Securities" to consumers familiar with registrant's mark.

However, despite this possibility of a shared identity in connotation, the respective marks overall are substantially different in sound and appearance, particularly since the acronym "PCFS" in registrant's mark is in such tiny lettering, like the other words in the design or seal surrounding the prominent letter "P," as to be relegated to an almost imperceptible term, especially in relation to the much larger display of the words "PACIFIC COAST FINANCIAL SECURITIES." In light thereof, we disagree with the Examining Attorney's assertion that the acronym "PCFS," which is plainly derived from the name formed by the dominant words "PACIFIC COAST FINANCIAL SECURITIES," "is by no means insignificant," particularly since the Examining Attorney "agrees that the acronym, as it appears in the registrant's mark, is understated and comprises but a small portion of the total wording."

In short, we find that any possible identity in connotation imparted by the "PCFS" acronym in the respective marks is simply outweighed by the substantial differences in sound and appearance lent to the marks by the other elements thereof. Customers for registrant's securities brokerage services would most likely pronounce and view its mark as if it were "P PACIFIC COAST FINANCIAL SECURITIES," since such terms, along with the seal design surrounding the prominent letter "P," are the dominant source-signifying elements of registrant's mark. Customers would regard the subordinate term "PCFS" in registrant's mark, if it were noticed at all, as just an acronym for the prominently displayed name "PACIFIC COAST FINANCIAL

SECURITIES." By contrast, customers for applicant's consumer loan services would tend to see the letters "PCFS" as the source-indicative element of applicant's "PCFS FINANCIAL SERVICES" mark.

Overall, and further considering that consumer loan services and securities brokerage services are relatively sophisticated financial transactions which generally are not impulsively purchased but rather are typically bought, given the amounts of money being placed at risk, with at least some degree of care if not a high level of discrimination, we find on this record that contemporaneous use by applicant of the mark "PCFS FINANCIAL SERVICES" is not likely to cause confusion with registrant's use of the mark "P PACIFIC COAST FINANCIAL SECURITIES PCFS MEMBER NASD-SPIC" and design mark.

**Decision:** The refusal under Section 2(d) is reversed.