

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Trustmark National Bank

Serial No. 76167220

W. Whitaker Rayner of Watkins Ludlam Winter & Stennis, P.A.
for Trustmark National Bank.

David H. Stine, Trademark Examining Attorney, Law Office
114 (Margaret Le, Managing Attorney).

Before Simms, Hanak and Walters, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Trustmark National Bank ("applicant"), a federally
chartered banking association, has appealed from the final
refusal of the Trademark Examining Attorney to register the
mark YOURMARK for banking; investment brokerage,
management, advice and consultation; insurance brokerage,

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administration, underwriting and consultation services.¹

The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 2,468,978, issued July 17, 2001, to John Nuveen & Co. Inc., for the mark LEAVE YOUR MARK for financial investments in the field of securities; financial and investment management and consultation services. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.²

Briefly, the Examining Attorney argues that applicant's investment brokerage, management and consultation services are substantially identical to the registrant's financial and investment management and consultation services. Further, one must presume that the respective services move in identical channels of trade and are available to all potential customers. Because the services are closely related, the degree of similarity between the marks need not be as great as where the services are different, the Examining Attorney argues. It

¹ Application Serial No. 76167220, filed November 16, 2000, based upon applicant's allegation of a bona fide intention to use the mark in commerce.

² The Examining Attorney has objected to the exhibits which were submitted for the first time with applicant's brief. Among other material, these exhibits include printouts of third-party registrations of marks which include the words "YOUR MARK." The Board, through a paralegal specialist, observed in an order issued May 20, 2004, that this evidence was untimely. See Trademark Rule 2.142(d). We shall not consider this evidence.

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is the Examining Attorney's contention that, comparing the respective marks as a whole, the overall commercial impressions created by the marks are very similar. This is because both marks contain the words "YOUR MARK".

Accordingly, the Examining Attorney argues that prospective clients familiar with the registered mark LEAVE YOUR MARK for registrant's services are likely to assume that applicant's YOURMARK services are a variation also offered by registrant. Finally, the Examining Attorney maintains that any doubt should be resolved in favor of the registrant.

Applicant, on the other hand, contends that there is no likelihood of confusion because the marks have different commercial impressions. In this regard, applicant states that its mark is a "coined, fanciful, non-descript term" (brief, 4) which has no meaning or connotation, while the registered mark is not an original or distinctive expression, but rather a well-known and commonly used expression or phrase meaning "leave an impression." Applicant has submitted printouts of a number of pages obtained from the Internet wherein the expression "leave your mark" was used. For example, applicant submitted an article with the headline "Singh looking to leave his mark in Malaysia." According to applicant, because of the

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common nature of the expression "leave your mark," the registrant has little right to exclude others. Therefore, even conceding the similarity of the respective services and their channels of trade (Response, 3, filed October 1, 2001), there is no likelihood of confusion, applicant contends, especially when one considers that the purchase of these services is not an impulse decision but rather a buyer is likely to be a careful, sophisticated purchaser.

Our determination of likelihood of confusion under Section 2(d) of the Act 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 issue. See *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Two key considerations are the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Upon careful consideration of this record and the arguments of the attorneys, we agree with applicant that, while the respective services are closely related,

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confusion is unlikely because of the differences in the marks and the fact that these services are likely to be offered and purchased by relatively sophisticated purchasers who are likely to spend some time in the purchasing decision.

Considering first the marks, it is well settled, of course, that marks must be considered and compared in their entireties, not dissected or split into component parts so that parts are compared with other parts. This is because it is the entire mark which is perceived by the purchasing public and, therefore, it is the entire mark that must be compared to any other mark. See *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992); and *Franklin Mint Corp. v. Master Manufacturing Co.*, 667 F.2d 1005, 212 USPQ 233 (CCPA 1981).

The registered mark, as argued, obviously has some differences in sound and appearance from applicant's mark because of the additional word "LEAVE." More importantly, the registered mark has a specific meaning or connotation-- "leave an impression." However, applicant's mark YOURMARK has no discernible meaning that we know of. Accordingly, we conclude that the marks are different in overall commercial impression.

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Also, purchasers of applicant's banking, investment brokerage, management, advice and consultation services and registrant's similar financial investment services in the field of securities and its financial and investment management and consultation services are likely to spend some time in the decision to purchase or use these services. In so doing, they are likely to develop some relationship with the offeror of these services and are likely to know the source of these services. Accordingly, considering the relevant *du Pont* factors, we conclude that, while the services are closely related, the marks are sufficiently different and the purchasers are likely to be relatively sophisticated such that confusion is not likely.

Decision: The refusal of registration is reversed.