

This Opinion is Not a
Precedent of the TTAB

Mailed: July 17, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

CC Serve Corporation

v.

Apex Bank

Opposition No. 91254295

On Remand

Austin Padgett of Troutman Pepper Hamilton Sanders LLP,
for CC Serve Corporation.

L. Clint Crosby, Adam S. Baldridge, and Nicole Berkowitz Riccio of Baker Donelson
Bearman Caldwell & Berkowitz PC, for Apex Bank.

Before Lykos, Pologeorgis¹ and English,
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the three marks below,
each for “banking and financing services,” in International Class 36.

¹ Judge Cataldo was on the panel for the final decision appealed to the U.S. Court of Appeals of the Federal Circuit. He has since retired, and Judge Pologeorgis has been substituted for him on this decision on remand. *Cf. In re Bose Corp.*, 772 F.2d 866, 869 (Fed. Cir. 1985) (“[T]here was no error in substituting a board member without allowing reargument. The statutory requirement that a case be ‘heard’ by three board members means judicially heard, not physically heard.”).



² Application Serial No. 88573746, filed on August 9, 2019 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of a bona fide intent to use the mark in commerce. The word "BANK" has been disclaimed. The application includes the following description of the mark: "The mark consists of the word 'aspire' positioned above the word 'BANK' in a stylized font with the outline of a mountain peak extending from behind the word 'aspire'." Color is not claimed as a feature of the mark.

³ Application Serial No. 88573752, filed on August 9, 2019 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of a bona fide intent to use the mark in commerce. The word "BANK" has been disclaimed. The application includes the following description of the mark: "The mark consists of the word 'aspire' positioned above the word 'BANK' in a stylized font with the orange outline of a mountain peak extending from behind the word 'aspire'. The word 'aspire' is colored blue, and the word 'BANK' is colored orange." The colors blue and orange are claimed as features of the mark.

⁴ Application Serial No. 88573758, filed on August 9, 2019 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of a bona fide intent to use the mark in commerce. The word "BANK" has been disclaimed. The application includes the following description of the mark: "The mark consists of the word 'aspire' positioned above the word 'BANK' on a blue background in a stylized font with the orange outline of a mountain peak extending from behind the word 'aspire'. The word 'aspire' is colored white, and the word 'BANK' is colored orange." The colors white, blue, and orange are claimed as features of the mark.

I. Background

On February 17, 2020, Opposer filed a consolidated notice of opposition against Applicant's applications alleging a claim of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on ownership of a Principal Register registration for the standard-character mark ASPIRE for "credit card services," in International Class 36,⁵ and prior common law use of the mark ASPIRE for credit card services.⁶ In its answer, Applicant denied the salient allegations in the notice of opposition.⁷

On May 12, 2023, the Board issued a final decision (the "Prior Decision") sustaining the opposition as to each application finding that Opposer had proven by a preponderance of the evidence its entitlement and priority based on its pleaded registration for the standard-character mark ASPIRE and that Applicant's marks were likely to cause confusion therewith. With respect to likelihood of confusion, the Board:

(1) found under the second *DuPont* factor that the parties' services were: (i) "legally identical, in part" to the extent "Applicant's 'banking services' are broad enough to encompass the 'extension of credit' through issuance of credit cards and its 'financing services' are broad enough to include providing funds or extending credit through the issuance of credit

⁵ Registration No. 2126948, registered on January 9, 1998, Section 8 accepted and Section 15 acknowledged; twice renewed. Opposer attached to its notice of opposition printouts from the Office's Trademark Electronic Search System (TESS) and assignment database showing that the pleaded registration is active and owned by Opposer. 1 TTABVUE 15-42 (Exhibit C). See Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1).

⁶ Notice of Opposition, 1 TTABVUE.

⁷ The answer also asserts certain "defenses." Because our treatment of those "defenses," as set forth in the Board's May 12, 2023 decision, was not challenged on appeal; we maintain that treatment in this decision on remand. 59 TTABVUE 3, n.7.

cards”⁸ and (ii) otherwise substantially similar based on third-party marks in use and registered for credit card services on the one hand and banking and financing services on the other hand;⁹

(2) presumed under *In re Viterra, Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) that for the legally identical services the parties’ trade channels and consumers overlapped under the third *DuPont* factor;¹⁰

(3) deemed the sophistication of relevant consumers neutral under the fourth *DuPont* factor because “the standard of care for the likelihood of confusion analysis is that of the least sophisticated consumer and the record is devoid of evidence that such consumers would exercise more than ordinary care;”¹¹

(4) accorded Opposer’s ASPIRE mark “a normal scope of protection” finding that Opposer had failed to demonstrate commercial strength under the fifth *DuPont* factor and that Applicant had failed to demonstrate commercial or conceptual weakness under the sixth *DuPont* factor;¹² and

(5) found Applicant’s marks , and , in their entirety, “highly similar to Opposer’s registered standard-character mark ASPIRE in overall appearance, sound, connotation and commercial impression” under the first *DuPont* factor.¹³

Because all the relevant *DuPont* factors either weighed in favor of finding a likelihood of confusion or were neutral, the Board concluded that there was a

⁸ 59 TTABVUE 27-28.

⁹ 59 TTABVUE 28-34.

¹⁰ 59 TTABVUE 35.

¹¹ 59 TTABVUE 62.

¹² 59 TTABVUE 51.

¹³ 59 TTABVUE 60.

likelihood of confusion under Section 2(d) of the Trademark Act and sustained the opposition.¹⁴

Applicant appealed the Prior Decision to the U.S. Court of Appeals for the Federal Circuit (the “Court”), arguing “that the Board erred in its likelihood-of-confusion analysis, specifically with respect to its analysis of the second, sixth, and first *DuPont* factors.” *Apex Bank v. CC Serve Corp.*, 156 F.4th 1230, 1234 (Fed. Cir. 2025).

On September 25, 2025, the Court issued its decision, affirming the Board’s findings as to the second *DuPont* factor, but vacating the Prior Decision with respect to the sixth *DuPont* factor and remanding “for reconsideration of the appropriate scope of third-party marks eligible for consideration in view of the Board’s factual finding that the parties’ services are highly similar.” *Id.* at 1236. The Court also vacated the Prior Decision and remanded for reconsideration of the first *DuPont* factor explaining that “[b]ecause commercial impression informs the analysis under the first *DuPont* factor, ... reconsideration of the sixth *DuPont* factor may result in a different determination of the mark’s commercial strength or weakness and affect the overall commercial impression.” *Id.*

Pursuant to the Court’s decision, we reassess below the first and sixth *DuPont* factors and reweigh all the relevant *DuPont* factors in light of this reassessment. In so doing, we incorporate by reference our findings in the Prior Decision under the second, third, fourth and fifth *DuPont* factors, which were undisturbed on appeal.

¹⁴ 59 TTABVue 62-63.

II. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., Apex Bank*, 156 F.4th at 1234; *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019). But “any one of the factors may control a particular case.” *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022) (cleaned up; citation omitted); *see also In re Charger Ventures LLC*, 64 F.4th 1375, 1381 (Fed. Cir. 2023) (citation omitted) (“The weight given each factor depends on the circumstances of each case.”); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346 (Fed. Cir. 2010) (“No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark.”).

A. Sixth *DuPont* Factor

There are “two prongs of analysis” under the sixth *DuPont* factor: conceptual strength and commercial strength. *Id.* Applicant introduced evidence of third-party use and registration and based on this evidence argued that “[t]he word ASPIRE is weak as applied to credit card services and should be afforded a narrow scope of protection.”¹⁵

¹⁵ Applicant’s Brief, 55 TTABVUE 21.

One purpose of introducing evidence of third-party use is to show commercial weakness by demonstrating that “customers have become so conditioned by a plethora of ... similar marks that customers have been educated to distinguish between different [such] marks on the bases of minute distinctions.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324 (Fed. Cir. 2018) (quoting *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1374 (Fed. Cir. 2005)) (internal quotation marks omitted); *see also Apex Bank*, 156 F.4th at 1235 (“When a field is crowded with similar marks, the theory is that customers will be more adept at distinguishing marks from each other and are less likely to be confused by similar marks.”). A second purpose of third-party use, as well as third-party registrations, is to prove conceptual weakness by demonstrating “that some segment of the [mark] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015) (finding the Board erred because it “never inquired whether and to what degree the extensive evidence of third-party use and registrations indicates that the phrase PEACE & LOVE carries a suggestive or descriptive connotation in the food service industry, and is weak for that reason”) (emphasis omitted).

In considering third-party uses and registrations in the Prior Decision, the Board concluded that because “the parties’ services are legally identical to the extent Applicant’s ‘banking and financing services’ encompass Opposer’s ‘credit card services,’ ... for purposes of the sixth *DuPont* factor, the properly defined relevant

public are consumers of ‘credit card services’.”¹⁶ The Court held that this “analysis was legally flawed.”

The sixth *DuPont* factor requires the Board to consider similar marks for similar goods and services. In the Board’s analysis of the second *DuPont* factor, the Board determined that the parties’ services are highly similar, which led the Board to conclude that the second factor weighed heavily in favor of finding likelihood of confusion. When analyzing the sixth *DuPont* factor, however, the Board restricted the universe of marks it considered to only those relating to credit card services and excluded marks related to other banking and financing services. That was an error.

Apex Bank, 156 F.4th at 1235 (internal citations omitted).

The Court explained that “[w]hen the Board has already made a factual finding that the services are highly similar – in fact, partially legally identical—in its analysis of the second *DuPont* factor, the Board should retain the same scope in its consideration of similarity under the other factors.” *Id.* at 1236 (record citations omitted). The Court went on to say “[w]e see no reason to impose a different and more stringent legal standard for similarity under the sixth *DuPont* factor.” *Id.*

Accordingly, in our analysis under the sixth *DuPont* factor, we consider third-party marks for the parties’ goods, which we have found in-part identical and otherwise “substantial[ly] similar[]” under the second *DuPont* factor, specifically:

- “Credit card services,” namely, “issuing credit cards for use to finance purchases as well as counseling regarding credit card debt, processing credit card payments and transactions, credit card authorization, credit card monitoring and alerts, managing credit card accounts, and providing access to credit scores”;¹⁷

¹⁶ 59 TTABVUE 47.

¹⁷ 59 TTABVUE 25.

- “Banking services,” namely, providing for “the custody, loan, exchange, or issue of money, for the extension of credit, and for facilitating the transmission of funds”;¹⁸ and
- “Financing services,” namely, “sell[ing] something on credit”; “rais[ing] or provid[ing] funds or capital for”; and “furnishing funds.”¹⁹

The record includes website printouts showing use and, where noted, registration of the following third-party marks for such services.²⁰

1. ASPIRE, ASPIRE LIFESTYLE LENDING and ACU ASPIRE – for a credit card, home improvement loans and personal loans offered by America’s Credit Union;²¹ Opposer petitioned to cancel this entity’s registration for the mark



(Reg. No. 6793418) for “issuing credit cards; Providing personal loans and lines of credit.”²² We take judicial notice that after trial closed, the registration was voluntarily surrendered and Opposer’s petition for cancellation was denied without prejudice.²³

2. ASPIRE and THE ASPIRE CARD – for a secured credit card offered by Texell Credit Union.²⁴ The website promotes that to be eligible for Texell’s credit union services, persons must live in one of 12 counties in Texas, be an immediate family members of a credit union member, or any resident of Texas

¹⁸ 59 TTABVUE 27 (citing www.merriam-webster.com/dictionary/banking and www.merriam-webster.com/dictionary/bank).

¹⁹ 59 TTABVUE 27 (citing www.merriam-webster.com/dictionary/finance).

²⁰ As in the Prior Decision, we have excluded from this list third-party marks for which Opposer introduced evidence supporting that the marks are no longer in use or are in use only outside the United States.

²¹ Applicant’s Notice of Reliance, 42 TTABVUE 306-09 (Exhibit 29).

²² Stone Rebuttal Declaration, 51 TTABVUE 6, 81-82, ¶ 18 and Exhibit 15.

²³ Cf. *Harry Winston Inc. v. Bruce Winston Gem Corp.*, No. 91153147, 2014 WL 3686875, at *4 n.19 (TTAB 2014) (taking judicial notice of change in status and title of pleaded registrations that were properly introduced).

²⁴ Applicant’s Notice of Reliance, 42 TTABVUE 494-98 (Exhibit 71); see also *id.* at 675-76, 689 ((Opposer’s Rule 30(b)(6) deposition and Exhibit 21 thereto; Opposer’s witness Mr. Stone testified that he had not seen this use before).

that is a member of the “Texas Co [sic] Counsel.”²⁵ Texell also promotes itself as a “not-for-profit financial cooperative serving Central Texas since 1948.”²⁶

3. ASPIRE and ASPIRE CHECKING – a partially secured credit card and a checking account for college students offered by Addition Financial. The website promotes that “Anyone who lives, works, worships, attends school or vocational training, or is an alumni of any college, university, or educational institution located in 24 select [Florida] counties may join.”²⁷
4. ASPIRE CHECKING – a business checking account offered by B1Bank, that includes a “business rewards credit card”;²⁸
5. ASPIRE INTEREST CHECKING – interest checking account offered by Park Bank.²⁹ One telephone number is listed under “Customer Service” and it has a 608 area code,³⁰ which is located in Wisconsin.
6. ASPIRE FINANCIAL COUNSELING – promoting services to “gain control of your finances through budgeting and credit education, debt consolidation, loan modifications and more,” helping those who struggle with “bad or no credit,”

²⁵ Woodruff Rebuttal Declaration, 50 TTABVUE 189-90 (Exhibit 39).

²⁶ Woodruff Rebuttal Declaration, 50 TTABVUE 192 (Exhibit 40).

²⁷ Woodruff Rebuttal Declaration, 50 TTABVUE 186 (Exhibit 38).

²⁸ Applicant’s Notice of Reliance, 42 TTABVUE 527-30 (Exhibit 77). Opposer introduced a printout from the social media site X identifying this entity as having “99 Followers,” Woodruff Rebuttal Declaration, 50 TTABVUE 204 (Exhibit 42), but this information is hearsay. *WeaponX Performance Prods. Ltd. v. Weapon X Motorsports, Inc.*, No. 91221553, 2018 WL 1326374, at *4 (TTAB 2018) (explaining that “printouts from various websites ... constitute[] hearsay and may not be relied upon for the truth of the matters asserted therein.”).

²⁹ Applicant’s Notice of Reliance, 42 TTABVUE 548-53 (Exhibit 82).

³⁰ Applicant’s Notice of Reliance, 42 TTABVUE 553. We take judicial notice of the geographic location corresponding to the area code from the North American Numbering Plan Administrator (NANPA), www.secure.nanpa.com/public-report/npa/geographic-use (last visited July 9, 2026). *See* 47 C.F.R. § 52.13 (identifying responsibilities of NANPA). Fed. R. Evid. 201(b)(2) (“The court may judicially notice a fact that is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”); *In re tapio GmbH*, No. 87941532, 2020 WL 6938377, at *14, n.46 (TTAB 2020); *Nieves & Nieves LLC*, No. 85179263, 2015 WL 496132, at *3 (TTAB 2015) (“We take judicial notice of recent official U.S. government publications concerning Internet use in the United States: [from the government websites of www.census.gov and www.ntia.doc.gov].”).

offered by Kalsee Credit Union; one telephone number is listed with an area code of 269, which is located in Michigan.³¹



7. – offering online banking and a feature to “Control Your Cards”: “Monitor your cards, turn them off or on, and approve charges with Card Valet,” lists a telephone number with a 701 area code, which is in North Dakota.³²
8. HILTON HONORS AMERICAN EXPRESS ASPIRE CARD and HILTON HONORS ASPIRE CARD – a credit card offered by American Express;³³
9. ASPIRATION and ASPIRATION ZERO – savings, debit card and credit card services offered by Aspiration Financial, LLC;³⁴
10. ASPIRE BANK – online banking services; also uses ASPIRE FINANCIAL but the specific products and services offered under this mark are not identified. Under “Contact Us” two telephone numbers with a 701 area code are listed, for the cities Hatton and Fargo, North Dakota.³⁵

³¹ Applicant’s Notice of Reliance 42 TTABVUE 465-70 (Exhibit 64). We take judicial notice of this fact from NANPA. *See* www.secure.nanpa.com/public-report/npa/geographic-use (last visited July 9, 2026).

³² Applicant’s Notice of Reliance 42 TTABVUE 521-26 (Exhibit 76); *see also id.* at 671-73, 684 (Opposer’s Rule 30(b)(6) deposition and Exhibit 16 thereto). We take judicial notice that the 701 area code identifies telephone numbers in North Dakota. *See* www.secure.nanpa.com/public-report/npa/geographic-use (last visited July 9, 2026). Opposer introduced a printout from the National Credit Union Association website at mapping.ncua.gov listing this entity as having 6,472 members. Woodruff Rebuttal Declaration, 50 TTABVUE 202 (Exhibit 41). This information is hearsay. *Weapon*, 2018 WL 1326374, at *4. We do not take judicial notice of the contents of this printout because we do not know if the information was provided by the credit union or collected/verified by NCUA.

³³ Applicant’s Notice of Reliance, 42 TTABVUE 479-82 (Exhibit 67).

³⁴ Applicant’s Notice of Reliance 42 TTABVUE 336-43 (Exhibit 35). An apparent related company, Aspiration Partners, Inc. (*id.* at 343), owns Reg. No. 4778449 for inter alia, financial services, including investment advice, management and consultation, debt investment, trading financial instruments, wealth management, money management services all for low-and mid-net worth clients. *Id.* at 206-13 (Exhibit 14).

³⁵ Applicant’s Notice of Reliance, 42 TTABVUE 675, 688 (Opposer’s Fed. R. Civ. P. 30(b)(6) deposition and Exhibit 20 thereto). *See* n.30 explaining that the 701 area code identifies phone numbers in North Dakota.

11. ASPIRE ACCOUNT – checking account offered by Fairfield County Bank. The website lists a telephone number with a 203 area code, which is located in Connecticut.³⁶
12. ASPIRE CHECKING – checking account offered by Greater Nevada Credit Union. The website states: “Choose Greater Nevada Credit Union for personal and business banking throughout Nevada including branches in Carson City, Reno, Sparks, Dayton, Fernley, Ely, Minden / Gardnerville, West Wendover and Elko.”³⁷
13. ASPIRE CHECKING – checking account offered by Mississippi Federal Credit Union.³⁸ On Twitter (now X) this entity promotes itself as “A trusted community financial partner” with locations in Jackson, Oxford, Grenada and Clinton.³⁹
14. ASPIRE CHECKING – checking account offered by Spero Financial and promoted to “Reach Your Financial Hopes and Aspirations.”⁴⁰
15. ASPIRE CHECKING – checking account and debit card offered by Guardians Credit Union and South Florida FCU, a division of Guardians Credit Union.⁴¹ Social media page promotes Guardians’ services to “anyone living or working in Palm Beach, Martin or St. Lucie Counties” in Florida.⁴²

³⁶ Applicant’s Notice of Reliance, 42 TTABVUE 514-17 (Exhibit 74). We take judicial notice that the area code 203 identifies telephone numbers in Connecticut. See www.secure.nanpa.com/public-report/npa/geographic-use (last visited July 9, 2026).

³⁷ Applicant’s Notice of Reliance, 42 TTABVUE 518-20 (Exhibit 75); *id.* at 673-74, 686 (Opposer’s Rule 30(b)(6) deposition and Exhibit 16 thereto).

³⁸ Applicant’s Notice of Reliance, 42 TTABVUE 531-35 (Exhibit 78).

³⁹ Woodruff Rebuttal Declaration, 50 TTABVUE 213 (Exhibit 43). We take judicial notice that these are cities in Mississippi. www2.census.gov/programs-surveys/metro-micro/reference-maps/2020/state-maps/28_Mississippi_2020.pdf and www.britannica.com/topic/Mississippi-College#ref.271333 (both last visited July 9, 2026). See *Nieves & Nieves*, 2015 WL 496132, at *3.

⁴⁰ Applicant’s Notice of Reliance 42 TTABVUE 536-40 (Exhibit 79).

⁴¹ Applicant’s Notice of Reliance, 561-63 (Exhibit 84); see also *id.* at 42 TTABVUE 541-42 (Exhibit 80).

⁴² Woodruff Rebuttal Declaration, 50 TTABVUE 237-38 (Exhibit 47). The National Credit Union Association website at mapping.ncua.gov lists South Florida Credit Union as having 3,428 members. Woodruff Rebuttal Declaration, 50 TTABVUE 232-33 (Exhibit 45). This information is hearsay. *WeaponX*, 2018 WL 1326374, at *4.

16. ASPIRE and ASPIRE+ – business checking accounts offered by Max Credit Union; the webpage states: “MAX Credit Union is a full-service financial institution serving Central and East Alabama, including Montgomery , AL; Auburn, AL; Opelika, AL; Prattville, AL; Wetumpka, AL; and Troy, AL.”⁴³
17. ASPIRE SAVINGS – savings account offered by Bank of Oak Ridge with access to “credit card applications”; This entity promotes the local nature of the service: “Whether you are saving for your future or something special, enjoy the perks of Spectacularly local banking with Bank of Oak Ridge....”⁴⁴



18. **HOME MORTGAGE INC** – “online resource for personalized mortgage solutions, fast customized quotes, great rates, & service with integrity.” Corporate and “Main Office” listed as in Marlton, NJ with a branch office in North Wildwood, NJ.⁴⁵



19. **ASPIRE HOME LOANS** – offering home loans and listing a telephone number and address in Tennessee.⁴⁶
20. ASPIRE and ASPIRE RESOURCES INC – a student loan finance program directed to employers to provide to their employees; “Our College Finance Benefits program allows you to choose one or more student loan benefits to help your employees, no matter what stage they’re at.”⁴⁷
21. ASPIRE LENDING – an “online” mortgage broker facilitating home loans with a toll-free telephone number.⁴⁸

⁴³ Applicant’s Notice of Reliance, 42 TTABVUE 543-47 (Exhibit 81).

⁴⁴ Applicant’s Notice of Reliance, 42 TTABVUE 554 (Exhibit 83).

⁴⁵ Applicant’s Notice of Reliance, 42 TTABVUE 382-83 (Exhibit 45).

⁴⁶ Applicant’s Notice of Reliance, 42 TTABVUE 384-87 (Exhibit 46) (the text under ASPIRE is “HOME LOANS”).

⁴⁷ Applicant’s Notice of Reliance, 42 TTABVUE 327-31, (Exhibit 33). Applicant also introduced corresponding registrations for ASPIRE RESOURCES INC and ASPIRE RESOURCES INC & Design, both for “security services, namely, the origination, purchase and servicing of student loans.” Applicant’s Notice of Reliance, 42 TTABVUE 186-98 (Exhibits 11-12).

⁴⁸ Applicant’s Notice of Reliance, 42 TTABVUE 378-81 (Exhibit 44).



22. – providing information on student loan payments and forgiveness programs; listed address is Des Moines, Iowa, but listed telephone numbers are toll free.⁴⁹
23. ASPIRE VENTURES and ASPIRE UNIVERSAL – launching “a \$300 million investment fund through its venture arm to invest in technology to support precision medicine.” The ASPIRE UNIVERSAL mark is registered in standard characters, Reg. No. 5085019, and for, inter alia, “venture capital services, namely, providing financing to emerging and start-up companies.”⁵⁰

Applicant introduced numerous additional third-party marks in use for services other than “credit card services” or “banking and financing services.” Applicant asserts that these marks are relevant because they are used “in connection with the financial services industry more broadly,” including but not limited to, investment, retirement and wealth management services, insurance services, and tax and accounting services.⁵¹

The fact that services may fall within the same broad general category does not mean that they are “similar” for purposes of the sixth *DuPont* factor. *Omaha Steaks*, 908 F.3d at 1325 (rejecting applicant’s argument that third-party marks for “popcorn, wine, oriental foods and alcoholic beverages” are “similar” to the parties’ meat products under the sixth *DuPont* factor because they “can be bucketed into such broad categories” as “‘food products’ or products sold in a ‘grocery store’”; based on the

⁴⁹ Applicant’s Notice of Reliance, 42 TTABVUE 389 (Exhibit 47).

⁵⁰ Applicant’s Notice of Reliance, 42 TTABVUE 317, 323 (Exhibit 23); *id.* at 173-178 (Exhibit 9). This entity also owned Reg. No. 4681350 for the standard-character mark ASPIRE VENTURE for the same services. 42 TTABVUE 253-59 (Exhibit 21). We take judicial notice that the registration was cancelled after trial.

⁵¹ Applicant’s Brief, 55 TTABVUE 23.

record, such goods “bear no relationship to meat or meat-based products”); *cf. Calypso Tech. Inc. v. Calypso Cap. Mgmt., LP*, No. 91184576, 2011 WL 4090446, at *9 (TTAB 2011) (finding evidence did not establish that computer software in the financial services was related to “equity investment management and fund services,” even though there was “clearly some connection” between the goods and services because both were in the financial field); *Elec. Data Sys. Corp. v. EDSA Micro Corp.*, No. 91077705, 1992 WL 184671, at *4 (TTAB 1992) (“[T]he issue of whether or not two products are related does not revolve around the question of whether a term can be used that describes them both, or whether both can be classified under the same general category.”).

Under the sixth *DuPont* factor, “the ‘real world segment of the public is limited to the market or universe necessary to circumscribe purchasers or users of products or services like those being offered by the parties’ under a common mark.” *Omaha Steaks*, 908 F.3d at 1325 (quoting *Nat’l Cable Television Ass’n v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579 (Fed. Cir. 1991)). “Only if other offerings under the ‘common’ mark are also directed to that relevant public is it reasonable to infer that they may have become conditioned to draw fine lines between sources of ‘related’ goods or services.” *Nat’l Cable Television*, 937 F.2d at 1579.

In the circumstances here, the “relevant public” is consumers of credit, banking and financing services, so we focus on the third-party marks for these services, as identified above. The record, however, shows that retirement and financial planning and wealth management services are related to “banking services,” which as

discussed, are in-part legally identical to “credit card services.”⁵² We therefore give some consideration to the 18 ASPIRE-formative marks in the record for retirement and financial planning and wealth management services.⁵³ Although they are not as probative as the marks listed above, they have some persuasive value regarding the strength of Opposer’s mark.

Applicant’s threshold showing that third parties use the mark ASPIRE on their websites carries the presumption that the above-listed service marks are being used by third parties in connection with the offering of the advertised services. *Cf. Lloyd’s Food Prods., Inc. v. Eli’s, Inc.*, 987 F.2d 766, 768 (Fed. Cir. 1993) (“Lloyd’s Foods’ [sic]

⁵² Opposer’s Notice of Reliance, 37 TTABVue 50-55, 65-78, 88-94, 103-18, 127-33, 150-56, 166-71, 194-201, 215-27, 234-38, 262-73, 281-92, 310-12, 316-21, 331-46 (Exhibits 3, 5, 6, 8, 10, 11, 13, 16, 18, 22, 24, 25, 27, 29, 30, 32, 35, 37, 40, and 41) (CATHAY BANK registered for banking services and individual retirement accounts and offering banking, credit card and wealth management services; GIANTBANK.COM offering banking services, including retirement accounts; JONAH BANK offering banking services and wealth management services; PATH TO THE PACK registered for financial administration of retirement plans, financial planning and banking services; SIMMONS BANK offering banking, credit card and investment services; UNITED BANK offering banking, credit card and wealth management services; SOUTH ATLANTIC BANK registered and in use for financial consultation, wealth management, banking and credit card services; CAPITAL BANK offering banking services and individual retirement savings accounts; OAK BANK registered for individual retirement account and banking services; CENTENNIAL BANK offering banking and wealth management services; and FIFTH THIRD BANK offering banking and wealth management services).

⁵³ Applicant’s Notice of Reliance, 42 TTABVue 174-79, 180-83, 311-13, 325-26, 345-47, 352-77, 391-400, 413-27, 435-51, 456-59, 476-79 (Exhibits 10 and 23 (registration for ASPIRE CAPITAL ADVISORS) Exhibit 30 (ASPIRE GROWTH PARTNERS, “Aspire, Plan, Achieve”), Exhibit 36 (ASPIRE), Exhibit 38 (ASPIRE FINANCIAL PARTNERS) Exhibit 39 (ASPIRE PLANNING ASSOCIATES) Exhibit 40 (ASPIRE WEALTH GROUP), Exhibit 41 (ASPIRE WEALTH MANAGEMENT), Exhibit 42 (ASPIRE PLANNING GROUP LLC), Exhibit 43 (ASPIRE, “ASPIRE. AIM. ACHIEVE.”), 48 (ASPIRE WEALTH MANAGEMENT), Exhibit 49 (ASPIRE FINANCIAL GROUP), Exhibit 53 (ASPIRE CAPITAL), Exhibit 54 (ASPIRE and ASPIRE ADVISORS), 55 (ASPIRE), Exhibit 56 (ASPIRE and ASPIRE FINANCIAL SERVICES), Exhibit 58 (ASPIRE FINANCE SERVICES), Exhibit 59 (ASPIRE WEALTH BUILDERS), Exhibit 62 (ASPIRE BY TCI) and Exhibit 66 (ASPIRE FINANCIAL ADVISORS)).

threshold showing that the mark appears in advertising, in the form of current listings in the yellow and white pages, carries the presumption that the service mark is being used by third-parties in connection with the offering of the advertised services. It therefore was impermissible to disregard the directory listings. Eli's came forward with no evidence that the businesses listed are not, in fact, using the mark, or that their use has no effect on the consuming public, and consequently on the strength of Eli's registration."); *Anthony's Pizza and Pasta Int'l Inc. v. Anthony's Pizza Holding Co.*, No. 91171509, 2009 WL 4075365, at *7 (TTAB 2009) ("The telephone listings carry a presumption that the name 'Anthony's' is being use by third parties in connection with their restaurant services.").

Opposer argues that "there is no evidence regarding the scope of the third party's use or advertising."⁵⁴ Generally, the "probative value of third-party trademarks depends entirely upon their usage" and where "the 'record includes no evidence of the extent of [third-party uses] . . . [t]he probative value of this evidence is thus minimal.'" *Palm Bay*, 396 F.3d at 1373 (citation omitted) (original emphasis in italics changed to bold) (quoting *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1338 (Fed. Cir. 2001)). But even where the record does not include particulars about the extent of third-party uses in the marketplace evidence of widespread third-party use may be powerful on its face to demonstrate "that consumers have been educated to distinguish between different marks on the bases of minute distinctions." *Omaha Steaks*, 908 F.3d at 1324 (internal quotation marks omitted); *Juice Generation*,

⁵⁴ Opposer's Rebuttal Brief, 57 TTABVUE 20-21.

794 F.3d at 1337, n.1 (evidence of “considerable number” of third-party marks may be “powerful on its face”); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1373, n.2 (Fed. Cir. 2015) (discussing “voluminous evidence” of registration and use of paw print design elements); *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, No. 91217095, 2016 WL 7655551, at *7 (TTAB 2016) (“evidence of extensive use and registration of a term by others as a mark, as is the case here, can be ‘powerful on its face’”).

The record here includes evidence relevant to the extent of use of some of the third-party marks. As noted above, 13 out of the 23 third parties identified above promote themselves as regional businesses, located in different parts of the country.⁵⁵ In addition, Mr. Stone, Chief Risk and Data Science Officer for Opposer’s parent corporation Atlanticus Holdings Corporation, testified that “credit unions are generally much smaller institutions than bank[s]” and “are limited to a field of membership based on occupation, association or community.”⁵⁶ This testimony is supported by the third-party webpages identified above promoting limited membership eligibility and physical locations. When third-party uses are not in the same trading area, consumers are unlikely to encounter overlapping uses and learn to distinguish among them. *Anthony’s Pizza*, 2009 WL 4075365, at *7-8.

⁵⁵ See entities listed above in items 2-3, 5-7, 10-13, 15-17, and 19.

⁵⁶ Stone Rebuttal Declaration, 51 TTABVue 6-8, ¶¶ 19-24, 26.

That said, most of the third-party websites in evidence promote online and mobile banking, which can be done from anywhere. At least two third parties promote access to over 30,000 ATMs and 5,000 shared banking or credit union locations suggesting that the services are more broadly accessible than a certain geographic area.⁵⁷ And one third party promotes its ASPIRE checking account to college students as a service that students can take with them when they relocate:

While they go to school, start their first job, or take that next adventure, they can build their financial confidence The Aspire Checking Account is packed with digital banking tools that allow them to bank wherever they are. ... So go ahead, help them open an account today, and bring a piece of Fairfield County with them! ... Start a relationship with Fairfield County Bank that they can take with them no matter where life brings them.⁵⁸

Thus, there is evidence suggesting that consumers may encounter the cited ASPIRE marks regardless of whether the uses may be tied to a specific geographic region and membership.

We recognize that Opposer has successfully enforced rights in the ASPIRE mark against some third parties.⁵⁹ We further credit Mr. Stone's testimony that:

- “[B]anking institutions are subject to high rates of consolidation, such that there are fewer banks of all sizes each year. ... This is particularly true for ‘community banks,’ which the FDIC defines as a smaller institution based on asset size and other parameters. ... Like banks, the number of credit unions is similarly declining on a consistent basis each year.”⁶⁰

⁵⁷ Applicant's Notice of Reliance, 42 TTABVue 518-20, 536-40 (Exhibits 75 and 79).

⁵⁸ Applicant's Notice of Reliance, 42 TTABVue 514-17 (Exhibit 74).

⁵⁹ Stone Rebuttal Declaration, 51 TTABVue 5-6, 52-65, 66, 171-80, 190-92, ¶¶ 13-17, Exhibits 5-14, 35; Woodruff Rebuttal Declaration, 50 TTABVue 25-26, ¶ 2, Exhibit 6.

⁶⁰ Stone Rebuttal Declaration, 51 TTABVue 6, 95-110, ¶¶ 19, 21, 23 and Exhibits 16-17 thereto consisting of reports from the Federal Deposit Insurance Corporation (“FDIC”). We

- “[C]redit unions are generally much smaller institutions than bank.”⁶¹
- “In weighing its trademark enforcement efforts, Opposer considers the relevant size and scope of the institution and also accounts for this trend of consolidation and closure because, as discussed above, many banks and credit unions cease to do business in relatively short periods of time.”⁶²
- Four third-party ASPIRE marks that Applicant disclosed during discovery and on summary judgment “ceased to exist in the relatively short time since disclosure.”⁶³

Given the nature of the banking and financing industry, Opposer’s enforcement strategy seems reasonable in theory, but in practice, it has resulted in a number of third-party ASPIRE marks for “credit card services” and in-part identical and otherwise substantially similar “banking and financing services” co-existing in the marketplace. 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11.91 (5th ed. March 2026 update) (“It has been observed that an active program of prosecution of infringers, resulting in elimination of others’ uses of similar marks, enhances the distinctiveness and strength of a mark: ‘since no one else uses a similar sounding name, plaintiff’s name looks and sounds all the more unique.’”) (quoting *Dictaphone Corp. v. Dictamatic Corp.*, 1978 WL 21441 (D. Or. 1978)).

take judicial notice of the contents of the FDIC reports. See *Nieves & Nieves*, 2015 WL 496132, at *3.

⁶¹ Stone Rebuttal Declaration, 51 TTABVUE 8, ¶ 24.

⁶² Stone Rebuttal Declaration, 51 TTABVUE 8, ¶ 26.

⁶³ Stone Rebuttal Declaration, 51 TTABVUE 9-10, 69-70, 139-65, ¶¶ 27-31 and Exhibits 12, 24-30.

As to conceptual weakness, the third-party uses and registrations show that the word ASPIRE has been extensively adopted, registered and used as a trademark for credit, banking and financing services, and thus has significance in the industry. Even though we must presume that Opposer's ASPIRE mark is an inherently distinctive mark, 15 U.S.C. § 1057(b), we find that it is highly suggestive that consumers of Opposer's credit card services "aspire" to reach financial goals.⁶⁴ Cf. *In re Planalytics, Inc.*, No. 76322156, 2004 WL 715031, at *4 (TTAB 2004) ("Clearly, applicant's mark [GASBUYER] describes a feature or characteristic of the services to the extent that it immediately conveys that its services are intended for individuals who purchase natural gas.").

In sum, we find under the sixth *DuPont* factor that Opposer's ASPIRE mark is commercially and conceptually quite weak as the evidence shows it is common for third parties to adopt and use marks comprised of the first term ASPIRE coupled with a generic word, e.g. ASPIRE CHECKING, ASPIRE SAVINGS, ASPIRE LENDING. See *Juice Generation*, 794 F.3d at 1338-39 (explaining that "evidence of third-party use bears on the strength or weakness of an opposer's mark" and that "highly suggestive [marks] are entitled to a narrower scope of protection, *i.e.*, are less likely to generate confusion over source identification, than their more fanciful counterparts.").

⁶⁴ See, e.g., Applicant's Notice of Reliance, 42 TTABVUE 536-40 (Exhibit 79) (third party Spero Financial promoting its ASPIRE CHECKING account services with the tagline "Reach Your Financial Hopes and Aspirations").

B. Similarity or Dissimilarity of the Marks

As explained above, the Court vacated that portion of the Prior Decision addressing the first *DuPont* factor because comparing the marks “focuses on overall commercial impression” and “reconsideration of the sixth *DuPont* factor may result in a different determination of the mark’s commercial strength or weakness and affect the overall commercial impression.” *Apex Bank*, 156 F.4th at 1236.

We reconsider under the first *DuPont* factor the “similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *DuPont*, 476 F.2d at 1361. We are mindful that the issue 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 services offered under the respective marks is likely to result. *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007-08 (CCPA 1971); *L’Oreal S.A. v. Marcon*, No. 91184456, 2012 WL 1267956, at *5 (TTAB 2012).

We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entirety. *Stone Lion Cap. Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 1321 (Fed. Cir. 2014); *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in

determining likelihood of confusion.”). It is settled, however, that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the mark’s commercial impression. *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (“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. Indeed, this type of analysis appears to be unavoidable.”).

In terms of appearance, we find that the word ASPIRE is the dominant literal element of Applicant’s marks because it is the first word in the mark and much larger in size than the word BANK, which is generic for Applicant’s services and has been disclaimed. *See, e.g., Nat’l Data*, 753 F.2d at 1058 (“That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark ...”); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, No. 91074797, 1988 WL 252340, at *3 (TTAB 1988) (first word “most likely to be impressed upon the mind of a purchaser and remembered”). Given our finding under the sixth *DuPont* factor that consumers have had some opportunity to distinguish among third-party ASPIRE marks for “credit card” and substantially similar “banking and financing” services based on minute differences, we give the generic word BANK and mountain peak designs in Applicant’s marks a little more weight than we did in the Prior Decision. Still, we find that the marks in their entireties appear similar.

Turning to sound, we find that the added word BANK and the mountain peak design in Applicant's marks do not aurally distinguish Applicant's marks in any significant way. Consumers are unlikely to verbalize the mountain peak design in Applicant's marks and, as explained in the Prior Decision, we find it likely that consumers will shorten Applicant's marks to ASPIRE when asking for or referring to its services. *See, e.g., In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 WL 1620989, at *7 (TTAB 2018) (“[C]onsumers often have a propensity to shorten marks” when verbally asking for the identified goods or services and “[t]he verbal portion of a word and design mark likely will appear alone when used in text and will be spoken when requested by consumers.”) (internal quotation marks omitted); *In re Bay State Brewing Co.*, No. 85826258, 2016 WL 1045677, at *3 (TTAB 2016) (consumers may drop the highly descriptive term BLONDE when calling for TIME TRAVELER BLONDE beer); *L.C. Licensing, Inc. v. Berman*, No. 78320850, 2008 WL 835278, at *3 (TTAB 2008) (“[I]t is well settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods.”). To the extent consumers pronounce both literal elements in Applicant's marks, we find the marks still sound similar because the first word ASPIRE in Applicant's marks is the entirety of Opposer's mark.

Turning to connotation and commercial impression, we take into account our finding under the sixth *DuPont* factor that Opposer's ASPIRE mark is quite weak commercially and conceptually because of the number of third parties using marks comprised of the first term ASPIRE, coupled with a generic word, e.g. ASPIRE

CHECKING, ASPIRE SAVINGS, ASPIRE LENDING, for credit, banking and/or financing services. *Apex Bank*, 156 F.4th at 1236 (“[b]ecause commercial impression informs the analysis under the first *DuPont* factor, ... reconsideration of the sixth *DuPont* factor may result in a different determination of the mark’s commercial strength or weakness and affect the overall commercial impression.”).

With respect to connotation, one meaning of the word ASPIRE is “to ascend,”⁶⁵ and one meaning of “ascend” is “[t]o move upward upon or along; climb: ascended the mountain.”⁶⁶ We find that the combination of the word ASPIRE with the mountain peak design in Applicant’s marks, is likely to create a connotation and commercial impression of ascending a mountain, which is slightly different from Opposer’s ASPIRE mark that more generally means to ascend, soar or to seek, attain or accomplish a particular goal. The generic word BANK in Applicant’s marks merely emphasizes the nature of Applicant’s services. When we consider the marks as a whole, the meanings and commercial impressions are not identical, but they are overall similar. That said, because a number of third-party ASPIRE marks coexist in the marketplace for credit, banking and financing services (including marks comprised of ASPIRE + a generic term), the term BANK and the mountain peak

⁶⁵ We take judicial notice of this meaning of the word “aspire.” MERRIAM-WEBSTER DICTIONARY, www.merriam-webster.com/dictionary/aspire (last visited July 9, 2026). *See, e.g., In re Nextgen Mgmt., LLC*, No. 88098031, 2023 WL 111145, at *4 n.5 (TTAB 2023) (“The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format or have fixed regular editions.”).

⁶⁶ We take judicial notice that one meaning of the word “ascend” is “[t]o move upward upon or along; climb: ascended the mountain[.]” THE AMERICAN HERITAGE DICTIONARY, www.ahdictionary.com/word/search.html?q=ascend (last visited July 9, 2026).

design in Applicant's marks may make more of a commercial impression on consumers than if Opposer's mark was not one of many in a crowded field.

Overall, we find the parties' marks in their entirety are similar in appearance, sound, connotation and commercial impression. However, taking into account the significant weakness of the shared term ASPIRE, we find that consumers are likely to notice and rely on the minor differences between the marks to distinguish them.

C. Weighing the *DuPont* Factors

Our final task is to weigh the *DuPont* factors for which there has been evidence and argument and to "explain the results of that weighing." *Charger Ventures*, 64 F.4th at 1384.

As explained above, our findings under the second, third, fourth and fifth *DuPont* factors remain unchanged and are incorporated by reference herein. The second and third *DuPont* factors weigh heavily in favor of finding a likelihood of confusion because the goods, trade channels and consumers are in part identical.⁶⁷ The fourth and fifth *DuPont* factors remain neutral, and they do not affect our weighing.⁶⁸

We have reconsidered the evidence under the first and sixth *DuPont* factors and make different findings from those in the Prior Decision. We now find that Opposer's ASPIRE mark is both commercially and conceptually quite weak. The sixth *DuPont* factor thus weighs heavily against finding a likelihood of confusion. Indeed, we find that the heavy weight of the sixth factor is the dominant consideration in this case

⁶⁷ Prior Decision, 59 TTABVue 35.

⁶⁸ *Id.* at 40, 62.

and “affect[s] the overall commercial impression” of the parties’ marks under the first factor. *Apex Bank*, 156 F.4th at 1236. That is, although the parties’ marks are similar under the first factor, consumers are likely to rely on the minor differences between the parties’ marks (i.e. the addition of the generic word BANK and mountain peak design in Applicant’s marks) to distinguish them in the crowded field of ASPIRE marks. The first factor therefore also weighs against finding a likelihood of confusion. *Juice Generation*, 794 F.3d at 1338 (an “applicant’s mark can come closer” to a weak mark “without causing a likelihood of confusion and ... invading what amounts to its comparatively narrower range of protection”); *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 353 (Fed. Cir. 1992) (“[W]here a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights.”).

In sum, we find that the first *DuPont* factor and the dominant sixth factor outweigh the second and third factors. We therefore find no likelihood of confusion between Opposer’s mark ASPIRE for “credit card services” and Applicant’s marks

 for “banking and financing services.”⁶⁹

Decision: The opposition is dismissed under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

⁶⁹ To be clear, we would reach this same conclusion even if we had not considered the third-party marks for retirement and financial planning and wealth management services.