

[IP Law Daily, TRADEMARK—Fed. Cir.: Mixed appellate ruling over TTAB decision sustaining opposition to ‘ASPIRE BANK’ marks , \(Sept. 25, 2025\)](#)

IP Law Daily

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TTAB erred by limiting its analysis of third-party use of “Aspire”-formative marks too narrowly; properly determined that applicant and opposer’s services are highly similar.

The U.S. Court of Appeals for the Federal Circuit partly affirmed, partly vacated, and remanded a Trademark Trial and Appeal Board decision sustaining CC Serve Corp.’s opposition to Apex Bank’s registration of ASPIRE BANK marks. While the court agreed that the parties’ financial services are legally identical in part, it faulted the TTAB’s analysis of the first and sixth *DuPont* factors, requiring reconsideration of the number and nature of similar marks and the overall commercial impression ([Apex Bank v. CC Serve Corp.](#), No. 23-2143 (Fed. Cir. Sept. 25, 2025)).

Background. The appellant, Apex Bank, is a Tennessee-chartered retail bank with 18 branch locations offering deposit accounts, mortgages, and consumer and business loans. It does not issue credit cards. The appellee, CC Serve Corp., operates in the credit card services sector. Through partnerships with banks, it manages ASPIRE-branded credit cards and accounts.

Apex filed intent-to-use applications in 2019 to register the word and design marks “ASPIRE BANK” for “banking and financing services.” After Apex’s marks were published for opposition, CC Serve filed a notice of opposition in February 2020, alleging likelihood of confusion under § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with its word mark ASPIRE registered in 1998 with a priority date of October 17, 1996. The TTAB [sustained](#) the opposition, concluding that consumers would likely confuse Apex’s ASPIRE BANK marks with CC Serve’s ASPIRE mark. Apex appealed.

Standard of Review. The appellate court explained that its review of TTAB decisions is two-fold. Under *Bose Corp. v. QSC Audio Products, Inc.*, 293 F.3d 1367, 1370 (Fed. Cir. 2002), factual findings on the thirteen factors outlined in *Application of E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1360–61 (C.C.P.A. 1973), are reviewed for substantial evidence. By contrast, as clarified in *M2 Software, Inc. v. M2 Communications, Inc.*, 450 F.3d 1378, 1381–82 (Fed. Cir. 2006), the Board’s legal conclusions are reviewed de novo.

Similarity of services. The Federal Circuit affirmed the TTAB’s finding that Apex’s banking and financing services and CC Serve’s credit card services are highly similar. The Board reasoned that “credit card services” encompass issuing cards, processing payments, managing accounts, and providing access to credit—all activities within the ambit of “banking and financing services.” It also cited dictionary definitions linking “bank” and “finance” to credit issuance, and third-party registrations combining both services. Apex argued that CC Serve only manages credit card programs in partnership with banks and therefore does not itself provide banking services, but the court found this unpersuasive. Citing *Coach Services, Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012), the court confirmed that services need not be identical but merely related enough to cause mistaken consumer belief. Substantial evidence thus supported the TTAB’s finding.

Third-party use. The Federal Circuit vacated the TTAB’s analysis of the sixth *DuPont* factor, which considers the number and nature of similar marks in use on related goods. Apex introduced evidence of more than 40 “Aspire”-formative marks across the financial industry. The TTAB limited its analysis to marks used solely for credit card

services, concluding that nine such uses did not demonstrate widespread weakness.

The Federal Circuit found this definition of similarity to be too narrow. Because the TTAB had already found banking and credit card services "highly similar," its exclusion of Aspire marks used for broader financial services was inconsistent. The court emphasized that similarity under the sixth factor does not require identical goods, citing *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 204 (Fed. Cir. 1992); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015); and *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015). Because third-party use can weaken a mark's conceptual and commercial strength, the TTAB was required to consider ASPIRE marks used in all closely related financial services, not just credit cards. The panel remanded for reconsideration.

Similarity of marks. The Federal Circuit also vacated the TTAB's findings under the first *DuPont* factor, which evaluates similarity in appearance, sound, connotation, and commercial impression. It explained that commercial impression is affected by the conceptual and commercial strength of the cited mark. Because the sixth factor analysis may alter the perceived strength of CC Serve's ASPIRE mark, the first factor also required reconsideration. The court cited *In re I.AM.Symbolic, LLC*, 866 F.3d 1315, 1323 (Fed. Cir. 2017), reaffirming that the overall commercial impression governs the likelihood-of-confusion inquiry.

Conclusion. Accordingly, the Federal Circuit affirmed the TTAB's finding that the parties' services are highly similar, but vacated its conclusions on the number and nature of similar marks and the similarity of the marks themselves. The case was remanded for further proceedings consistent with the appellate court's opinion, with costs being awarded to the appellant.

The Case is [No. 23-2143](#).

Judge: Hughes, T.

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Companies: Apex Bank; CC Serve Corp.

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