

CLIENT ALERTS

Federal Circuit Sends TTAB Back to the Drawing Board on Trademark Confusion Analysis

Client Alert

9.29.2025

If your business is navigating trademark registration or opposition, a recent decision from the Federal Circuit could impact how the strength and similarity of marks are evaluated, especially when it comes to financial services.

What Happened?

On September 25, 2025, in *Apex Bank v. CC Serve Corp.*, the US Court of Appeals for the Federal Circuit reviewed a Trademark Trial and Appeal Board (TTAB) decision that blocked Apex Bank's attempt to register "ASPIRE BANK" for financial services. The TTAB sided with CC Serve, which owns the "ASPIRE" mark for credit card services, citing a likelihood of confusion.

But the Federal Circuit was not convinced the TTAB got it right, at least not entirely.

1. The Core Issue: Inconsistent Use of DuPont Factors

Trademark disputes often hinge on the **DuPont factors**, a 13-part test used to assess whether two marks are confusingly similar. The TTAB focused on three:

- **Similarity of the marks**
- **Relatedness of the services**
- **Third-party use of similar marks**

While the court agreed that banking and credit card services are closely related, it flagged a problem: the TTAB applied the third-party use factor too narrowly.

2. The Court's Clarification

Related People

Maya Smith
Associate

Mitchell Zajac
Shareholder

Daniel G. Vivarelli, Jr.
Shareholder

Related Services

Intellectual Property

CLIENT ALERTS

The TTAB had only considered third-party marks used for **credit card services**, ignoring similar marks used more broadly in **financial services**. The Federal Circuit said this was inconsistent, especially since the Board had taken a broader view when evaluating the relatedness of services.

When assessing third-party use, the TTAB must look at **similar marks used on similar, not necessarily identical, services**. This broader lens could affect how strong a mark is perceived and whether confusion is likely.

3. What's Next?

The Federal Circuit vacated the TTAB's findings on two key factors and sent the case back for reconsideration. This means the fate of the "ASPIRE BANK" mark is still undecided, but the decision sets a precedent for how trademark disputes should be analyzed going forward.

What This Means for You

If you are:

- **Registering a new mark**
- **Opposing a competitor's application**
- **Assessing brand risk in the financial sector**

This decision reinforces the need for a strategic, well-rounded approach to trademark disputes.

Need Help Navigating Trademark Strategy?

Our Intellectual Property Law Team can help you evaluate the strength of your mark, prepare for TTAB proceedings, and develop a registration strategy that anticipates potential challenges.

Contact Butzel to learn more, including if you would like to discuss how this decision might affect your portfolio or upcoming filings.

Maya Smith

313.983.7495

smithmaya@butzel.com

Mitchell Zajac

313.225.7059

zajac@butzel.com

Daniel Vivarelli

202.454.2841

vivarelli@butzel.com