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# Kluwer Trademark Blog

## Trademark case: Underwood v. Bank of America Corp., USA

Robert Margolis (Wolters Kluwer Legal & Regulatory US) · Friday, July 16th, 2021

In granting summary judgment, the district court incorrectly assumed that “actual use” of unregistered service mark requires actual sales and revenue generation.

A federal district court applied an incorrect legal standard for “actual use” by plaintiff Erik M. Underwood of his unregistered service mark E.R.I.C.A., the Tenth Circuit U.S. Court of Appeals in Denver has held, reversing the grant of summary judgment to Bank of America Corporation (BofA) on Underwood’s claim that BofA’s ERICA mark for its virtual banking assistant infringes his mark. The court affirmed summary judgment to BofA on its claim that Underwood’s Georgia registration for E.R.I.C.A should be cancelled because he did not use the mark prior to registration. It remanded back to the district court to consider the infringement claim under the proper standard (Underwood v. Bank of America Corp., April 30, 2021, Matheson, S.).

Case date: 30 April 2021

Case number: No. 19-1349

Court: United States Court of Appeals, Tenth Circuit

A full summary of this case has been published on [Kluwer IP Law](#).

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