

The Central District of California recently ruled on summary judgment that Ironhawk Technologies, Inc.'s, ("Ironhawk") "SmartSync" mark was descriptive and entitled to little or no protection. The District Court's analysis relied on the Ninth Circuit's *Sleekcraft* eight factor likelihood of confusion test¹ and particularly concluded that Ironhawk's "SmartSync" mark was conceptually weak and Ironhawk's products were not closely related to Dropbox Inc.'s ("Dropbox") products to result in a likelihood of confusion.

Ironhawk uses its "SmartSync" mark as the name of a software program that uses compression and replication to transfer data efficiently in "bandwidth-challenged environments." Dropbox uses its "Smart Sync" mark as a title for its cloud-based storage feature, which allows users to choose whether files are stored locally or online only. Dropbox's "Smart Sync" is not a stand-alone product, but rather a feature of certain paid prescription plans. Ironhawk filed a trademark infringement suit against Dropbox asserting likelihood of confusion between Ironhawk's "SmartSync" mark and Dropbox's "Smart Sync" mark. Dropbox moved for summary judgment.

In granting summary judgment, the District Court found Ironhawk's mark to be descriptive, and thus, "conceptually weak" and entitled to little or no protection, because the term "SmartSync," describes at least some of the characteristics of Ironhawk's product, namely "intelligent" transport, compression, and synchronization. And despite Ironhawk's 15 years' use, the District Court noted Ironhawk provided no evidence of "commercial strength, or actual marketplace recognition," outside of the market for military software. In regards to the similarity of the products, the District Court noted that although both are software involving the transfer of electronic data, the parties' products are not closely related enough to result in a likelihood of confusion. Dropbox's "Smart Sync" feature was aimed at individuals and businesses trying to save storage space on their computer's hard drive. Ironhawk's "SmartSync" software was aimed at efficient data transfer and was only used by the United States Navy.

This case is a good reminder that when selecting trademarks, businesses should be wary of choosing descriptive and thus conceptually weak marks. Oftentimes marketers desire a descriptive mark for a new product or service because it allows consumers to immediately identify the product or service being offered just by reading the mark itself. However, what works for marketing does not always work for legal protection. Although it may cost more

initially to select a suggestive or fanciful mark and build its brand awareness, selecting a descriptive mark often costs more down the line due to the time and money it can take to police and enforce such a mark.