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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IRONHAWK TECHNOLOGIES, INC.,)	Case No. CV 18-01481 DDP (JEMx)
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING DEFENDANT'S MOTION
)	FOR SUMMARY JUDGMENT
DROPBOX, INC.,)	
)	
Defendants.)	[Dkt 91]
)	

Presently before the court is Defendant Dropbox, Inc. ("Dropbox")'s Motion for Summary Judgment. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

I. Background

Plaintiff Ironhawk Technologies, Inc., ("Ironhawk") developed software that uses compression and replication to transfer data efficiently in "bandwidth-challenged environments." (Declaration of David Gomes in Support of Opposition, ¶¶ 2-3.) Since 2004, Ironhawk has marketed this software under the name "SmartSync." (Id. ¶ 5.) Ironhawk obtained a trademark registration for SmartSync in 2007. (Id. ¶ 7.)

1 Dropbox provides cloud-based file storage and synchronization
2 services that allow users to access files from anywhere on any
3 device. (Declaration of Genevieve Sheehan, ¶ 2.) In 2017, Dropbox
4 launched a feature it dubbed "Smart Sync." (Id. ¶ 3.) Dropbox's
5 Smart Sync feature allows users to choose whether files are stored
6 locally or, in the interest of saving hard drive space, online
7 only. (Id. ¶ 3.) Dropbox's Smart Sync is not a stand-alone
8 product, but rather a feature of certain paid prescription plans.
9 (Id. ¶ 4.)

10 Ironhawk's Complaint alleges that Dropbox's use of the name
11 "Smart Sync" intentionally infringes upon Ironhawk's "SmartSync"
12 trademark, is likely to cause confusion among consumers as to the
13 affiliation of Dropbox's product with Ironhawk, and has actually
14 confused Ironhawk's customers as to the relationship between
15 Ironhawk and Dropbox's product. (Complaint ¶¶ 38, 40-41.) Dropbox
16 now moves for summary judgment.

17 **II. Legal Standard**

18 Summary judgment is appropriate where the pleadings,
19 depositions, answers to interrogatories, and admissions on file,
20 together with the affidavits, if any, show "that there is no
21 genuine dispute as to any material fact and the movant is entitled
22 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
23 seeking summary judgment bears the initial burden of informing the
24 court of the basis for its motion and of identifying those portions
25 of the pleadings and discovery responses that demonstrate the
26 absence of a genuine issue of material fact. See Celotex Corp. v.
27 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
28 the evidence must be drawn in favor of the nonmoving party. See

1 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the
2 moving party does not bear the burden of proof at trial, it is
3 entitled to summary judgment if it can demonstrate that "there is
4 an absence of evidence to support the nonmoving party's case."
5 Celotex, 477 U.S. at 323.

6 Once the moving party meets its burden, the burden shifts to
7 the nonmoving party opposing the motion, who must "set forth
8 specific facts showing that there is a genuine issue for trial."
9 Anderson, 477 U.S. at 256. Summary judgment is warranted if a
10 party "fails to make a showing sufficient to establish the
11 existence of an element essential to that party's case, and on
12 which that party will bear the burden of proof at trial." Celotex,
13 477 U.S. at 322. A genuine issue exists if "the evidence is such
14 that a reasonable jury could return a verdict for the nonmoving
15 party," and material facts are those "that might affect the outcome
16 of the suit under the governing law." Anderson, 477 U.S. at 248.
17 There is no genuine issue of fact "[w]here the record taken as a
18 whole could not lead a rational trier of fact to find for the
19 nonmoving party." Matsushita Elec. Indus. Co. v. Zenith Radio
20 Corp., 475 U.S. 574, 587 (1986).

21 It is not the court's task "to scour the record in search of a
22 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,
23 1278 (9th Cir. 1996). Counsel have an obligation to lay out their
24 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d
25 1026, 1031 (9th Cir. 2001). The court "need not examine the entire
26 file for evidence establishing a genuine issue of fact, where the
27 evidence is not set forth in the opposition papers with adequate
28 references so that it could conveniently be found." Id.

1 **III. Discussion**

2 A. Likelihood of Confusion

3 A plaintiff alleging trademark infringement must demonstrate
4 (1) an ownership interest in a mark and (2) that the defendant's
5 use of the mark is likely to cause consumer confusion. Dep't of
6 Parks and Recreation v. Bazaar Del Mundo, Inc., 448 F.3d 1118, 1124
7 (9th Cir. 2006). "The core element of trademark infringement is
8 the likelihood of confusion, i.e., whether the similarity of the
9 marks is likely to confuse customers about the source of the
10 products." Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp., 174
11 F.3d 1036, 1053 (9th Cir. 1999). Likelihood of confusion may turn
12 on factors including, but not limited to, the strength of the mark,
13 the similarity of the marks, the relatedness of the parties'
14 products, marketing channels used, the degree of care consumers are
15 likely to use in purchasing goods, the defendant's intent in
16 selecting its mark, evidence of actual confusion, and the
17 likelihood of expansion in product lines (collectively, the
18 "Sleekcraft factors"). Id. at 1053-54 (citing AMF Inc. v.
19 Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979).

20 1. Strength of Ironhawk's SmartSync mark

21 a. Conceptual Strength

22 The level of protection afforded to a particular trademark is
23 dependent upon the mark's conceptual and commercial strength, with
24 stronger marks receiving more protection. JL Beverage Co., LLC v.
25 Jim Beam Brands Co., 828 F.3d 1098, 1107 (9th Cir. 2016). The
26 spectrum of strength, and concomitant trademark protection, ranges
27 from generic marks, at the very low end, through descriptive,
28 suggestive, fanciful, and, at the high end, arbitrary marks. Id.

1 Arbitrary and fanciful marks have no obvious connection to the
2 related products, and are thus deserving of the highest degree of
3 protection. Surfvivor Media, Inc., v. Survivor Productions, 406
4 F.3d 625, 631-32 (9th Cir. 2005). Generic and descriptive marks do
5 no more than define a product, either in whole or in part, and are
6 therefore entitled to no trademark protection. Id. at 632.
7 Suggestive marks, which require some “mental leap” from the mark to
8 the product in question, enjoy some trademark protection, but are
9 presumptively weak. Brookfield, 174 F.3d at 1058. A “mental leap”
10 that is “almost instantaneous,” however, is indicative of
11 descriptiveness rather than suggestiveness. Self-Realization
12 Fellowship Church v. Ananda Church of Self-Realization, 59 F.3d
13 902, 911 (9th Cir. 1995). A suggestive mark may nevertheless
14 warrant protection “if the infringing mark is quite similar and the
15 goods or services [the two marks] connote are closely related.”
16 Nutri/Sys., Inc. v. Con-Stan Indus., Inc., 809 F.2d 601, 605 (9th
17 Cir. 1987).

18 Here, Ironhawk’s “SmartSync” mark appears to be descriptive.
19 “Descriptive marks define qualities or characteristics of a product
20 in a straightforward way that requires no exercise of the
21 imagination to be understood.” Kendall-Jackson Winery, Ltd. v. E.
22 & J. Gallo Winery, 150 F.3d 1042, 1047 n.8 (9th Cir. 1998); see
23 also Brookfield, 174 F.3d at 1058, n.19 (“Descriptive terms
24 directly describe the quality or features of the product.”).
25 Ironhawk’s CEO and person most knowledgeable testified that
26 Ironhawk’s SmartSync software performs “synchronization,
27 replication, and distribution” of data, and that it does so in a
28 “bandwidth-efficient” manner “by intelligently meeting three

1 fundamental capabilities . . .: [t]ransport, content repository,
2 (sync implied) [sic] and compression.” (Ray Decl., Ex. 4 at 138;
3 Ex. 7 at 157-58.) The term “SmartSync,” therefore, appears to
4 describe at least some of the characteristics of Ironhawk’s
5 product, namely synchronization and “intelligent” transport,
6 compression, and synchronization. Accordingly, Ironhawk’s mark is
7 entitled to no protection.¹

8 Even if Ironhawk’s Smartsync mark were suggestive rather than
9 descriptive, the mark would still be weak.² A suggestive mark is
10 presumptively weak. Brookfield, 174 F.3d at 1058. Ironhawk
11 attempts to rebut this presumption with evidence that, according to
12 Ironhawk, demonstrates that the SmartSync mark “enjoys commercial
13 strength at the very least within its historical niche market of
14 United States military software.” (Opp. at 13:16-17.) Indeed,
15 commercial strength, or actual marketplace recognition, may
16 transform an otherwise weak suggestive mark into a strong mark. JL
17 Beverage, 828 F.3d at 1107. Ironhawk has not, however, put forth

18
19 ¹ Even descriptive marks may be protectable if they have
20 acquired “secondary meaning,” such that consumers begin to
21 associate the mark with a single source. See, e.g. Filipino Yellow
22 Pages, Inc. v. Asian Journal Publications, Inc., 198 F.3d 1143,
1147 (9th Cir. 1999). Here, however, there appears to be no
dispute that Ironhawk’s mark has not gained secondary meaning in
the minds of consumers.

23 ² A trier of fact could, perhaps, conclude that the isolated
24 term “smart,” even to the extent it refers to “intelligent”
25 features of Ironhawk’s product, is nevertheless sufficiently vague
26 to require a “mental leap” to Ironhawk’s software. Indeed, Dropbox
27 itself has submitted evidence that the term “Smart Sync” is used
28 with reference to a wide variety of products, including non-
technological applications such as skin cream, and the word is
commonly used in connection with products ranging from automobiles
to audio speakers. (Ray Decl., Ex 8 at 88.) Marks must, however,
be considered in their entirety. Nutri/System Inc., 809 F.2d at
605. The evidence that Ironhawk’s SmartSync software synchronizes
data is unavoidable.

1 any evidence of such recognition within the market (niche or
2 otherwise) for military software. Evidence of Ironhawk's total
3 aggregate revenue over a 15-year period, for example, does little
4 to establish market visibility in the absence of any evidence of
5 the size of the market or Ironhawk's share of the market. See,
6 e.g., Aurora World, Inc. v. Ty Inc., 719 F. Supp. 2d 1115, 1159
7 (C.D. Cal. 2009); c.f. Troy Healthcare, LLC v. Nutraceutical Corp.,
8 No. C11-844-RSM, 2011 WL 13127843, at *8 (W.D. Wash. June 6, 2011).
9 Nor could a reasonable finder of fact conclude that Ironhawk's
10 SmartSync is recognized in the marketplace based upon Ironhawk's
11 CEO's vague references to "countless face to face meetings with
12 United States military officials and trade shows," "countless hours
13 of sweat equity," the "development of a website [and] employment of
14 salespeople," of whom only two are named, including the CEO
15 himself, and a marketing budget that averages only \$16,000 per
16 year. (Gomes Decl. ¶ 9.) Because Ironhawk has put forth no
17 evidentiary basis sufficient to rebut a presumption of weakness,
18 Ironhawk's SmartSync mark warrants little to no trademark
19 protection.

20 b. Conceptual Strength of Dropbox's Smart Sync
21 name

22 Ironhawk has alleged both forward and reverse confusion
23 theories of trademark infringement. In reverse confusion cases, a
24 junior user's infringing use of a mark may mislead the senior
25 user's customers into believing they are doing business with the
26 junior user. See JL Beverage, 828 F.3d at 1107. Although palming
27 off is not the concern in a reverse confusion case, the less well-
28 known senior user may nevertheless lose its goodwill when an

1 infringing junior user saturates the market. M2 Software, Inc. v.
2 Madacy Entm't, 421 F.3d 1073, 1089 (9th Cir. 2005) (citing
3 Dreamwerks Prod. Grp., Inc. v. SKG Studio, 142 F.3d 1127, 1130 n.5
4 (9th Cir. 1998).) Whether a junior user has, in fact, saturated
5 the market will depend on the commercial strength of the alleged
6 infringer's use of a mark in comparison to the conceptual strength
7 of the senior user's mark.
8 JL Beverage Co., 828 F.3d at 1107; Moose Creek, Inc. v. Abercrombie
9 & Fitch Co., 331 F. Supp. 2d 1214, 1224 (C.D. Cal. 2004) (citing
10 Glow Indus., Inc. v. Lopez, 252 F.Supp.2d 962, 987 n. 112 (C.D.Cal.
11 2002). Of course, where a mark is conceptually weak, it is less
12 likely that consumers will associate it with any source, even a
13 commercially strong junior user. See, e.g., Glow Indus., 252
14 F.Supp.2d at 292. Thus, "[a]bsent a conceptually strong senior
15 mark, the reverse confusion plaintiff will be unable to establish a
16 likelihood of confusion, even if the junior user's commercial
17 strength is likely to overwhelm the plaintiff in the marketplace."
18 Instant Media, Inc. v. Microsoft Corp., No. C 07-02639 SBA, 2007 WL
19 2318948, at *12 (N.D. Cal. Aug. 13, 2007).

20 Here, as discussed above, Ironhawk's SmartSync mark is
21 conceptually weak. The commercial strength of Dropbox's Smart Sync
22 name is, therefore, of little import. Furthermore, a reasonable
23 jury could not conclude that Dropbox has flooded the marketplace
24 with the term "Smart Sync," such that consumers associate that term
25 or mark with Dropbox. Although Ironhawk points to evidence that
26 Dropbox allocates \$7,000 per month to Google keyword advertising
27 related to "Smart Sync," there is no evidentiary support for
28 Ironhawk's assertion that Dropbox's effort "has resulted in a

1 strong association between Dropbox and 'Smart Sync.'"³ (Opp. at
2 14:3-4.)

3 Because Ironhawk's SmartSync mark is conceptually weak, and
4 for the additional reason that there is no evidence that Dropbox's
5 use of "Smart Sync" is commercially strong, the strength factor
6 weighs heavily against a likelihood of confusion.

7 2. Similarity of the Parties' Products

8 The less similar the parties' products, the less likely it is
9 that consumers will confuse the parties' marks. Dropbox has
10 produced evidence that its Smart Sync product is designed to help
11 users conserve computer hard drive space by allowing files to be
12 stored solely online. Dropbox markets its product to individuals
13 and businesses. Ironhawk's SmartSync, in contrast, "allow[s] for
14 efficient data transfer by using compression and replication" in
15 "limited bandwidth environments." (Gomes Decl. ¶¶ 2-3.) It is
16 undisputed that the United States Navy is the only user of
17 Ironhawk's product. Nevertheless, Ironhawk argues that the
18 parties' products are similar because "both Dropbox's and
19 Ironhawk's data management software facilitate access to files by
20 multiple users in multiple locations." (Opp. at 17:4-5.) Ironhawk
21 cannot establish meaningful similarity at such a high level of
22 abstraction. Indeed, ZIP files, USB drives, e-mail attachments,
23 and a plethora of other products "facilitate access to files by
24 multiple users in multiple locations," but are hardly similar to

25
26 ³ Ironhawk's attempt to use Dropbox's expert reports to
27 establish an association in consumers' minds between "Smart Sync"
28 and Dropbox is not sufficient to establish a triable issue where
those experts did not examine the term in isolation, but rather
alongside references to Dropbox.

1 either product at issue here. The mere fact that both products deal
2 in some manner with the transfer of electronic data is not enough
3 to render the products similar for purposes of a trademark
4 analysis. The dissimilarity of the parties' products weighs
5 against a likelihood of confusion.

6 3. Similarity of the Marks

7 There can be no dispute that Dropbox's "Smart Sync" feature
8 bears a name almost identical to Ironhawk's "SmartSync" product.
9 Notwithstanding the close proximity of the two marks, however,
10 "their similarity must be considered in light of the way the marks
11 are encountered in the marketplace and the circumstances
12 surrounding the purchase" Lindy Pen Co. v. Bic Pen Corp.,
13 725 F.2d 1240, 1245 (9th Cir. 1984). Dropbox argues that its
14 "Smart Sync" feature name is only "superficially" similar to
15 Ironhawk's "SmartSync" mark because neither Dropbox nor Ironhawk
16 uses its respective mark in isolation. Rather, each party
17 consistently includes its business name or house mark alongside its
18 version of the disputed mark.

19 Dropbox looks to Cohn v. Petsmart, Inc., 281 F.3d 837 (9th
20 Cir. 2002) to support its argument. In Cohn, a pet supply store
21 called Petsmart and a veterinary clinic called the Critter Clinic
22 both used the trademarked tagline, "Where pets are family." Cohn,
23 281 F.3d at 837. As here, neither party used the tagline in
24 isolation, and both always placed their respective business names
25 before the trademarked term. In determining that there was no
26 likelihood of confusion, the Ninth Circuit observed that the two
27 users "present[ed] distinct commercial identities by placing their
28 greatest emphasis on their unique business names." Cohn v.

1 Petsmart, Inc., 281 F.3d 837, 843 (9th Cir. 2002). The court
2 further stated that “[t]he emphasis on [the parties’ respective]
3 housemarks has the potential to reduce or eliminate likelihood of
4 confusion.” Id. at 842 (internal quotation marks omitted) (citing
5 Norm Thompson Outfitters, Inc. v. Gen. Motors Corp., 448 F.2d 1293,
6 1298 (9th Cir. 1971).

7 The same logic applies here. Although the trademarked term is
8 not a slogan or tagline, as in Cohn or Norm Thompson Outfitters,
9 the names of the parties “invariably accompan[y]” the marks. Norm
10 Thompson Outfitters, 448 F.2d at 1298. Indeed, Dropbox’s Smart
11 Sync is not a freestanding offering, and the term is only
12 encountered in the marketplace in conjunction with the Dropbox
13 products of which it is a component part. Accordingly, the
14 similarity of the marks factor weighs against likelihood of
15 confusion.

16 4. Actual Confusion

17 “Evidence that use of the two marks has already led to
18 confusion is persuasive proof that future confusion is likely.”
19 Sleekcraft, 599 F.2d at 352. Dropbox argues that Ironhawk has
20 produced no evidence of actual confusion.⁴ As an initial matter,
21 the Ninth Circuit has rejected Dropbox’s argument that evidence of
22 confusion must come from “purchasing consumers.” In Rearden LLC v.
23 Rearden Commerce, Inc., the court explained that courts must take
24 “relevant non-consumer confusion” into account. Rearden, 683 F.3d
25

26 ⁴ Dropbox also cites to its own expert’s opinion to support
27 the argument that there is no confusion. In light of Ironhawk’s
28 criticisms of the validity of that study, however, the survey issue
would be better suited to a separate motion or to determination by
a trier of fact.

1 1190, 1213 (9th Cir. 2012). Although the focus of a trademark
2 analysis is indeed the likelihood of confusion among actual
3 consumers, non-consumer confusion may be relevant where it could

4
5 (1) turn into actual consumer confusion (i.e., potential
6 consumers); (2) serve as an adequate proxy or substitute
7 for evidence of actual consumer confusion (i.e.,
8 non-consumers whose confusion could create an inference
9 of consumer confusion); or (3) otherwise contribute to
10 confusion on the part of the consumers themselves (i.e.,
11 non-consumers whose confusion could influence consumer
12 perceptions and decision-making).

13 Rearden, 683 F.3d at 1216.

14 Here, Ironhawk references e-mails from two of its resellers
15 expressing some degree of concern about the possibility of
16 confusion. It is undisputed that Ironhawk's CEO drafted both e-
17 mails, which the re-sellers then sent back to Ironhawk. Although
18 Dropbox suggests that no jury could credit those messages because
19 they were not independently drafted, Ironhawk has introduced
20 evidence that its CEO drafted the messages at the re-sellers'
21 request. In any event, however, both re-sellers later testified
22 that they were unaware of any instances of consumer confusion
23 between Dropbox's Smart Sync feature and Ironhawk's SmartSync
24 software. Accordingly, the evidence of actual confusion factor
25 weighs against likelihood of confusion or is, at best, neutral.

26 5. Marketing Channels

27 Dropbox argues that the parties' disparate marketing efforts
28 also weigh against a likelihood of confusion. Dropbox markets via
the internet to customers who self-register on Dropbox's website,
while Ironhawk attends military trade shows and obtains contracts
through military bidding processes. Ironhawk responds that both
parties "utilize sales people" and "maintain websites," and thus

1 the marketing channels are the same. (Opp. at 20:26-27, 21:2-3.)
2 Ironhawk's arguments fail. "Today, it would be the rare commercial
3 retailer that did not advertise online, and the shared use of a
4 ubiquitous marketing channel does not shed much light on the
5 likelihood of consumer confusion." Network Automation, Inc. v.
6 Advanced Sys. Concepts, Inc., 638 F.3d 1137, 1151 (9th Cir. 2011).
7 Nor could any reasonable trier of fact rely upon the mere fact that
8 both parties employ a sales staff to conclude that the parties'
9 similar marketing channels increase the chance of confusion. This
10 factor weighs against such a likelihood.

11 6. Sophistication of Consumers

12 It is undisputed that the only user of Ironhawk's product is
13 the United States Navy, and that it takes years for the Navy to
14 approve Ironhawk's proposals, and only then after numerous meetings
15 with technical crews. It is also undisputed that some of
16 Ironhawk's SmartSync licenses cost thousands and tens of thousands
17 of dollars. Although the cost of Dropbox services is much more
18 modest, the high degree of care exercised by the Navy, particularly
19 for such expensive products as Ironhawk SmartSync licenses, weighs
20 heavily against likelihood of confusion.

21 7. Intent

22 It is undisputed that Dropbox was not aware of Ironhawk when
23 the former chose the name Smart Sync. Nor is it disputed that
24 Dropbox and its trademark counsel were aware of Ironhawk and its
25 SmartSync product by the time Dropbox launched its Smart Sync
26 feature. There is no evidence, however, that in going forward with
27 the feature under the name Smart Sync, Dropbox had any intention of
28 capitalizing on Ironhawk's goodwill. See M2 Software, Inc. v.

1 Madacy Entm't, 421 F.3d 1073, 1085 (9th Cir. 2005) (finding no
2 evidence of bad intent where alleged infringer had notice of
3 similar mark but chose to proceed with independently-derived name
4 in belief that use was non-infringing).

5 An intent analysis is slightly different in the reverse
6 confusion context, where neither party seeks to capitalize on the
7 goodwill of the other. Marketquest Grp., Inc. v. BIC Corp., 862
8 F.3d 927, 934 (9th Cir. 2017). In such a case, bad intent can “be
9 shown by evidence that, for example, the defendant knew of the
10 mark, should have known of the mark, intended to copy the
11 plaintiff, failed to conduct a reasonably adequate trademark
12 search, or otherwise culpably disregarded the risk of reverse
13 confusion.” Id. at 934-35. On this record, a jury could find
14 improper intent with respect to reverse confusion. Thus, the
15 intent factor weighs against likelihood of confusion on Ironhawk’s
16 forward confusion theory, but slightly in favor of likelihood of
17 reverse confusion.

18 8. Expansion of Product Lines

19 “[A] ‘strong possibility’ that either party may expand his
20 business to compete with the other will weigh in favor of finding
21 that the present use is infringing.” Sleekcraft, 599 F.2d at 354.
22 It is undisputed that Dropbox has no intention to expand into the
23 military market. Although Ironhawk is not currently used by any
24 commercial customers, it did have a commercial customer in 2013.
25 Ironhawk also argues that it plans to expand beyond the military
26 market and re-enter the consumer market, and Ironhawk’s CEO states
27 that he has engaged in discussions with non-military clients
28 regarding SmartSync. Given Ironhawk’s lack of success in obtaining

1 non-military clients and the lack of detail regarding recent
2 discussions, however, this court cannot conclude that Ironhawk has
3 presented evidence of a "strong possibility" of expansion into the
4 consumer market. The expansion factor is, therefore, neutral.

5 9. Balance of the Sleekcraft Factors

6 The overwhelming balance of the Sleekcraft factors weighs
7 against a likelihood of confusion between Ironhawk's SmartSync mark
8 and Dropbox's Smart Sync. Ironhawk's weak mark is entitled to
9 little or no protection. Although the marks are similar, the
10 consistent use of the parties' respective business names alongside
11 the marks weighs against a likelihood of confusion. The parties'
12 products are significantly different, and Ironhawk's sophisticated
13 single user exercises a high degree of care in its SmartSync
14 purchases. The lack of any evidence of actual confusion and the
15 significant difference in the parties' marketing channels further
16 weigh against a likelihood of confusion. Although the intent
17 factor may weigh somewhat in favor of a likelihood of confusion in
18 the reverse confusion context, it is not sufficient to offset the
19 combined weight of the remaining factors, particularly in light of
20 the conceptual weakness of the Ironhawk mark. On this record, a
21 reasonable trier of fact could not conclude that Dropbox's use of
22 Smart Sync is likely to cause consumer confusion. Ironhawk cannot,
23 therefore, prevail on its infringement claims.

24 **IV. Conclusion**

25 For the reasons stated above, Dropbox's Motion for Summary
26 Judgment is GRANTED.

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28 IT IS SO ORDERED.

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Dated: 10-24, 2019



DEAN D. PREGERSON
United States District Judge