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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Great Western Air, LLC d/b/a Cirrus
Aviation Services, LLC,

Plaintiff/Counter-
Defendant,

v.

Cirrus Design Corporation,

Defendant/Counter-
Claimant.

Case No. 2:16-cv-02656-DJA

**Findings of Fact, Conclusions of Law,
and Judgment Following Bench Trial**

This is a trademark infringement case arising out of a dispute between a high-end airplane charter company—Great Western Air, LLC dba Cirrus Aviation Services, LLC (“Cirrus Aviation”)—and a personal airplane manufacturer—Cirrus Design Corporation (“Cirrus Aircraft”)—that share the same name. Cirrus Aviation sues Cirrus Aircraft for declaratory relief that its name does not infringe on Cirrus Aircraft’s trademark of the single word CIRRUS and that it has not engaged in unfair competition.

Cirrus Aircraft counterclaims, arguing that Cirrus Aviation has infringed on its trademark and engaged in unfair competition under federal, state, and common law. Cirrus Aircraft also asks the Court to impose a permanent injunction to keep Cirrus Aviation from using the name, to disgorge Cirrus Aviation of profits attributable to its use of the name, and to require Cirrus Aviation to pay Cirrus Aircraft’s attorneys’ fees. The parties engaged in a four-day bench trial and, based on the testimony presented, the exhibits, and briefing, the Court finds that Cirrus Aircraft has not met its burden of proving its claims by a preponderance of the evidence and thus has not shown it is entitled to damages or injunctive relief. The Court enters judgment in favor of Cirrus Aviation and against Cirrus Aircraft and closes this case.

Findings of Fact

1
2 Cirrus Aviation is a charter airline catering to “the one percent of the one percent.”¹
3 Passengers aboard a Cirrus Aviation flight experience the lofty luxury of picking when they
4 would like to fly, avoiding the lines and traffic of commercial airlines, having the plane all to
5 themselves, and taking advantage of opulent onboard amenities.² Prices are, fittingly, sky high.
6 Passengers can expect to pay between \$8,000 and \$340,000 per trip.³ Cirrus Aviation even offers
7 to help customers purchase their own plane to keep in Cirrus Aviation’s fleet.⁴ Cirrus Aviation
8 provides the pilot, maintenance, management, and storage.⁵ And when the owner is not using the
9 plane, Cirrus Aviation uses it to fly other customers and the owner earns money in return.⁶

10 Cirrus Aircraft is a successful plane manufacturer. It makes planes for people who love to
11 fly, not as passengers, but as pilots.⁷ It builds three models: the SR20, the SR22, and the Vision
12 Jet.⁸ Its planes seat between four and seven people, cost between \$1 million and over \$3 million,
13 and are the only planes in the industry to include a parachute for the entire plane.⁹ Since their
14 introduction, Cirrus Aircraft’s planes have soared in popularity. The SR series has been the most
15 popular single engine aircraft for twenty years and the Vision Jet has been the most-delivered
16 business jet for three years.¹⁰ To encourage non-pilots to consider plane ownership, Cirrus
17 Aviation has created programs through which it finds pilots to fly the owners’ planes and teach
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20 ¹ ECF No. 173 at 61:23-62:13.

21 ² *Id.* at 62:16-25, 91:20-92:17, 94:4-96:11.

22 ³ *Id.*

23 ⁴ *Id.* at 63:1-68:8.

24 ⁵ *Id.*

25 ⁶ *Id.*

26 ⁷ ECF No. 175 at 190:6-19.

27 ⁸ ECF No. 108 at 3.

28 ⁹ ECF No. 175 at 229:15-21; ECF No. 174 at 64:13-69:12, 73:16-20, 117:20-121:14, 161:18-20;
ECF No. 108 at 3.

¹⁰ ECF No. 174 at 125:14-19, 126:11-22.

1 the owners how to fly.¹¹ It also offers plane management, maintenance, and storage solutions to
2 make plane ownership a breeze.¹²

3 The trouble is, both companies have practically the same name. Their shared name—
4 cirrus—is a type of cloud. A high-altitude, wispy looking cloud. The appearance of which
5 indicates calm skies and excellent flying weather. But the little cloud has led to a turbulent
6 relationship between Cirrus Aviation and Cirrus Aircraft.

7 **I. Cirrus Aircraft's history**

8 Midwestern-raised brothers, Alan and Dale Klapmeier, grew up around aviation. Their
9 grandfather owned planes and their uncle was a pilot.¹³ Older brother Alan first caught the
10 aviation bug, and his younger brother Dale followed suit.¹⁴ The brothers' parents even got their
11 own pilots' licenses, deciding that they would not let their sons fly until they knew how to do it
12 first.¹⁵ The brothers learned to fly in their family's plane and eventually began fixing up their
13 own.¹⁶ They later graduated to building kit planes, which are sold unassembled so enthusiasts
14 can put them together themselves.¹⁷

15 One year, while the brothers were on break from college, they decided to fly from their
16 family farm in Wisconsin to see their grandparents in Chicago.¹⁸ They called the flight service
17 for a weather update and were disappointed to learn that storms were expected, and flying was not
18 recommended.¹⁹ Their disappointment only grew when, as they were driving to Chicago, they

21 ¹¹ ECF No. 175 at 204:4-205:15; ECF No. 174 at 85:12-88:12, 140:24-142:10, 162:3-15, 175:18-
176:14; Exs. 63, 67-76, 78.

22 ¹² ECF No. 174 at 140:24-142:10, 162:3-15, 173:5-14.

23 ¹³ *Id.* at 49:11-50:18.

24 ¹⁴ *Id.* at 50:1-14.

25 ¹⁵ *Id.*

26 ¹⁶ *Id.* at 50:20-25, 53:3-22.

27 ¹⁷ *Id.* at 50:20-25, 53:3-22, 55:2-12.

28 ¹⁸ *Id.* at 56:9-57:8.

¹⁹ *Id.*

1 looked up not to see storm clouds, but feathery cirrus clouds against a blue sky.²⁰ It was excellent
2 flying weather. During that begrudging drive, the two decided to create their own aviation
3 company, and to name it after the cirrus clouds that mocked them as they drove.²¹

4 At the 1987 Oshkosh Air Show, the Klapmeier brothers unveiled their first Cirrus plane: a
5 kit plane that bragged to be the fastest, biggest, and coolest kit plane on the market.²² But the pair
6 quickly learned that, while people loved the design of the plane, not everyone wanted to build
7 their own.²³ So the brothers found a financial backer and began designing their first ready-made
8 airplanes.²⁴ As part of that process, in 1994, Alan applied for a trademark of the name CIRRUS
9 for use in aircraft and structural parts.²⁵ Later, the company would expand the mark for use in
10 avionics, aircraft inspection and repair, flight instruction and training, aircraft financing, aircraft
11 sales and acquisition, aircraft maintenance, aircraft insurance, and aircraft management, amongst
12 others.²⁶

13 In 1993, the brothers began marketing their new planes in teaser-style advertisements that
14 hinted at the “Mystery of Hangar X.”²⁷ And at the July 1994 Oshkosh Airshow, they unveiled
15 their ready-made planes, including the mystery plane: the SR20.²⁸ By about 2000, the SR series
16 was a bestseller.²⁹ By 2011, a foreign entity purchased the company.³⁰ And by about 2019, the
17 Vision Jet became the most-delivered turbo jet.³¹ Cirrus Aircraft had taken off.

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19 ²⁰ *Id.*

20 ²¹ *Id.*

21 ²² *Id.* at 57:10-58:8.

22 ²³ *Id.* at 60:8-17.

23 ²⁴ *Id.* at 60:8-63:5.

24 ²⁵ Ex. 1 at 001.

25 ²⁶ Exs. 1, 2; ECF No. 176 at 31:4-14, 32:1-10.

26 ²⁷ ECF No. 174 at 61:5-63:20.

27 ²⁸ *Id.* at 63:2-64:12.

28 ²⁹ *Id.* at 125:12-20.

³⁰ *Id.* at 106:1-3.

³¹ *Id.* at 125:12-20.

1 II. Cirrus Aircraft discovers Cirrus Aviation

2 Years later, in 2014, Cirrus Aircraft was surprised to learn that another company was
3 using its name. Todd Simmons—Cirrus Aircraft’s executive vice president of sales, marketing,
4 and support—had stumbled across Cirrus Aviation’s website, cirrusav.com.³² Concerned, he sent
5 the website link to others in the company, asking them to investigate.³³

6 This was not the first time another company had used the name Cirrus. But certain of the
7 other companies were less concerning to Cirrus Aircraft because of their limited offerings and
8 limited geographic presences.³⁴ Cirrus Flight Operations, a Minnesota corporation, had been
9 using the name even before Cirrus Aircraft.³⁵ It offered a variety of aviation services from a
10 small airport in Blaine, Minnesota—including operating charter flights—starting in 1978.³⁶
11 Currently, it offers charter broker services in which it acts as a middleman, connecting charter
12 clients with charter operators.³⁷ Cirrus Aviation, Inc.—with locations in New Jersey and
13 Arizona—buys and sells turbine engines and related equipment.³⁸ Cirrus Aviation,
14 Incorporated—based in Florida—operates a flight training company and pilot shop.³⁹ And an
15 entity in Oregon once called Alan Klapmeier to discuss using the name Cirrus for a flight
16 school.⁴⁰

21 ³² Ex. 82; ECF No. 174 at 185:9-22.

22 ³³ Ex. 82; ECF No. 174 at 185:9-22.

23 ³⁴ ECF No. 176 at 41:8-43:23.

24 ³⁵ ECF No. 175 at 125:25-126:7.

25 ³⁶ *Id.* at 125:17-139:21.

26 ³⁷ ECF No. 173 at 53:22-55:4; ECF No. 175 at 125:25-126:3.

27 ³⁸ Ex. 1208-B at 40:8-11, 42:8-20.

28 ³⁹ Ex. 1208-A at 9:13-15, 10:2-18, 30:9-11.

⁴⁰ ECF No. 175 at 214:15-215:8.

1 Unlike these entities, Cirrus Aviation's use of the name troubled Cirrus Aircraft.⁴¹ So,
2 shortly after discovering its website, Cirrus Aircraft sent a cease-and-desist letter to Cirrus
3 Aviation, asking it to cease using the Cirrus name.⁴² Cirrus Aviation refused.

4 **III. Cirrus Aviation's history**

5 Cirrus Aviation insists that its use of the Cirrus name began organically and much in the
6 same way that Cirrus Aircraft's did: a fondness for the little cloud that promises good flying
7 weather. The company is family-owned by Milt Woods and his sons, Greg and Mark.⁴³ Milt had
8 been a commercial pilot since the sixties and, in 1994, decided to start his own aircraft
9 management company.⁴⁴ He named his company Cirrus Aviation Services, Inc. after the wispy,
10 promising cloud with which he was no doubt familiar through his commercial piloting career.⁴⁵
11 At this point, neither Milt, Greg, nor Mark knew about Cirrus Aircraft.⁴⁶

12 Milt used the company to engage in the charter market a few different ways between 1994
13 and 2010. He started by operating a Canadian charter company, then became part owner of a Las
14 Vegas-based charter company in the early 2000s.⁴⁷ Neither company operated under the Cirrus
15 name.

16 Eventually, Milt switched gears and, through Cirrus Aviation Services, Inc., began
17 brokering charter flights.⁴⁸ But brokering charter flights is not the same as offering them.
18 Eventually, joined by his sons, Milt set his sights higher: on becoming a charter operation.⁴⁹

21 ⁴¹ ECF No. 176 at 41:8-43:23, 51:22-52:13.

22 ⁴² Ex. 1015.

23 ⁴³ Ex. 1000.

24 ⁴⁴ ECF No. 173 at 47:8-16.

25 ⁴⁵ *Id.*

26 ⁴⁶ Ex. 164-A at 41:16-42:21; Ex. 165-A at 51:6-14; ECF No. 173 at 134:11-16.

27 ⁴⁷ ECF No. 173 at 47:8-48:5, 53:6-14, 131:14-22, 209:6-22.

28 ⁴⁸ *Id.* at 53:20-54:2.

⁴⁹ *Id.* at 55:5-7.

1 Obtaining the certificate—called a Part 135 certificate—required by the Federal Aviation
2 Agency (“FAA”) to operate charter flights is no simple task.⁵⁰ To simplify the process, in 2010,
3 the Woods family decided to purchase a company that already had its Part 135 certificate.⁵¹ The
4 company—named Great Western Air, LLC—was owned by an individual who had multiple
5 companies under the same name.⁵² Because he still had his other companies, Great Western Air’s
6 owner asked the Woods family to choose a different name, to which they agreed.⁵³ The family
7 decided to name the company Cirrus Aviation Services, LLC because Milt was proud of the
8 name, liked the cloud, and wanted to keep it to maintain his customer base.⁵⁴

9 Before making that decision, Greg looked through the Air Charter Guide to see if any
10 other Part 135 airlines were using the name but did not check whether the name was
11 trademarked.⁵⁵ Greg did not find any other uses of Cirrus by Part 135 operators.⁵⁶ But by 2010,
12 the Woods family was already aware of Cirrus Aircraft.⁵⁷ They simply did not think Cirrus
13 Aircraft’s use of the name was a concern because Cirrus Aircraft made small piston airplanes,
14 rather than the commercial aircraft in which the Woods family was interested.⁵⁸

15 Having settled on a name, Cirrus Aviation offered its first charter flight in February of
16 2010.⁵⁹ In 2014, it received Cirrus Aircraft’s cease-and-desist letter. And in 2016, Cirrus
17 Aviation sued Cirrus Aircraft, asking the Court to enter declaratory judgment that its name does
18 not infringe on Cirrus Aircraft’s mark and that it had not engaged in unfair competition.⁶⁰

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20 ⁵⁰ *Id.* at 56:9-18.

21 ⁵¹ *Id.* at 55:12-15.

22 ⁵² *Id.* at 57:19-25.

23 ⁵³ *Id.* at 57:22-58:21.

24 ⁵⁴ *Id.* at 57:22-58:21, 208:11-14.

25 ⁵⁵ *Id.* at 57:22-58:21.

26 ⁵⁶ *Id.* at 207:11-21.

27 ⁵⁷ *Id.*

28 ⁵⁸ *Id.*

⁵⁹ *Id.* at 133:24-134:1.

⁶⁰ ECF No. 1.

Conclusions of Law

I. Theories of liability

Cirrus Aviation asks the Court to issue a declaration that it has not infringed on Cirrus Aircraft's trademark of the word CIRRUS and that Cirrus Aviation's use of that name is not unfair competition. Cirrus Aircraft asks the Court to find that Cirrus Aviation infringed on its trademark and engaged in unfair competition under the Lanham Act, the Nevada Deceptive Trade Practices Act, and common law. The analysis for each theory is the same.⁶¹

The test asks: (1) whether the plaintiff has a protectable ownership interest in the mark; and (2) whether the defendant's use of the mark is likely to cause consumer confusion.⁶² Here, the parties do not dispute Cirrus Aircraft's protectable interest in the mark. They dispute whether Cirrus Aviation's use of that mark is likely to cause consumer confusion.

Likelihood of confusion in the Ninth Circuit depends on eight factors: (1) strength of the mark; (2) proximity of the goods; (3) similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) type of goods and the degree of care likely to be exercised by the purchaser; (7) defendant's intent in selecting the mark; and (8) likelihood of expansion of the product lines.⁶³ Not every factor carries equal weight.⁶⁴ The Ninth Circuit has explained that courts should consider the factors together to decide if, under a totality of the circumstances, a likelihood of confusion exists.⁶⁵

⁶¹ See *M2 Software, Inc. v. Madacy Entertainment*, 421 F.3d 1073, 1080 (9th Cir. 2005); see *New West Corp. v. NYM Co. of Calif., Inc.*, 595 F.2d 1194, 1201 (9th Cir. 1979); see *Mayweather v. Wine Bistro*, No. 2:13-cv-210-JAD-VCF, 2014 WL 6882300, at *6 (D. Nev. Dec. 4, 2014).

⁶² See *Ironhawk Technologies, Inc. v. Dropbox, Inc.*, 2 F.4th 1150, 1159 (9th Cir. 2021).

⁶³ See *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979).

⁶⁴ See *Thane Int'l Inc. v. Trek Bicycle Corp.*, 305 F.3d 894, 901 (9th Cir. 2002).

⁶⁵ See *Ironhawk*, 2 F.4th at 1161.

1 Using these factors, Cirrus Aircraft must prove by a preponderance of the evidence that
2 Cirrus Aviation’s use of the mark is likely to cause confusion.⁶⁶ The Court finds that Cirrus
3 Aircraft has not met this burden of proof. It thus enters judgment in favor of Cirrus Aviation.

4 **A. Strength of the mark**

5 Trademark law offers greater protection to marks that are “strong,” meaning,
6 “distinctive.”⁶⁷ Courts in the Ninth Circuit analyze a mark’s strength in terms of conceptual
7 strength and commercial strength.⁶⁸ Conceptual strength depends on the obviousness of a mark’s
8 connection to the good or service to which it refers.⁶⁹ Commercial strength is based on actual
9 marketplace recognition.⁷⁰

10 **1. Conceptual strength**

11 Conceptual strength exists along a spectrum of five categories ranging from strongest to
12 weakest.⁷¹ Generic marks—like “Light Beer”—are not eligible for trademark protection.⁷²
13 Descriptive marks—like “speedy,” “friendly,” or “green”—are not entitled to trademark
14 protection unless they have acquired secondary meaning.⁷³ Suggestive marks—like “Roach
15 Motel” insect trap—suggest a product’s features and require consumers to exercise some
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17 ⁶⁶ See *Stone Creek Incorporated v. Omnia Italian Design Incorporated*, No. cv-13-00688-PHX-
18 DLR, 2018 WL 1784689, at *1, n.2 (D. Ariz. April 12, 2018) *aff’d*, 808 F. App’x 459 (9th Cir.
19 2020); NINTH CIRCUIT MANUAL OF MODEL OF CIVIL JURY INSTRUCTIONS § 15.6 (2020)
(addressing the elements and burden of proof for trademark infringement under 15 U.S.C.
§ 1114(1)).

20 ⁶⁷ *Ironhawk*, 2 F.4th at 1162.

21 ⁶⁸ *JL Beverage Company, LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1106-1107 (9th Cir.
22 2015).

23 ⁶⁹ *Id.*

24 ⁷⁰ *Id.*

25 ⁷¹ *Id.*

26 ⁷² See *Brookfield Communications, Inc. v. West Coast Entertainment Corp*, 174 F.3d 1036, 1058
n. 19 (9th Cir. 1999); see *Miller Brewing Co. v. G. Heileman Brewing Co.*, 561 F.2d 75 (7th Cir.
1977).

27 ⁷³ See *Zobmondo Entertainment, LLC v. Falls Media, LLC*, 602 F.3d 1108, 1114 (9th Cir. 2010);
28 see *Union Nat’l Bank of Tex., Laredo, Tex. v. Union Nat’l Bank of Tex., Austin, Tex.*, 909 F.2d
839, 845 (5th Cir. 1990).

1 imagination to associate the suggestive mark with the product.⁷⁴ They are thus often entitled to
2 trademark protection.⁷⁵ Arbitrary marks—like “Black and White” scotch whiskey—are made up
3 of words commonly used in the English language but are entitled to federal trademark protection
4 because they serve to identify a particular source of a product.⁷⁶ Fanciful marks—like
5 “Clorox”—are made up terms and are automatically entitled to trademark protection.⁷⁷

6 In *American Home Products Corp. v. Johnson Chemical Co., Inc.*, the Second Circuit
7 Court of Appeals explained that “Roach Motel” is at least a suggestive mark because it invokes
8 the idea of a “fanciful abode for roaches.”⁷⁸ The image was significant in relation to the design of
9 the product, an open-ended box containing an attractant for bugs and a sticky adhesive to prevent
10 the bug from escaping.⁷⁹ The trap was shaped to prevent the bug from leaving—even if not stuck
11 on the adhesive—and used the slogan, “Roaches Check In...But They Don’t Check Out,” to
12 reinforce the “motel” theme.⁸⁰

13 The Ninth Circuit discussed the arbitrary nature of “Black & White” scotch whisky in
14 *Fleischmann Distilling Corp. v. Maier Brewing Co.*⁸¹ It explained that the term was not
15 descriptive of the whisky, nor did the whisky have anything to do with the qualities of black and
16 white.⁸² Having no relation to whisky, the court concluded that, used in the alcoholic beverage
17 industry, the name “Black and White” had come to mean a particular brand of whisky.⁸³

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19 ⁷⁴ See *Brookfield Comm.*, 174 F.3d at 1058 n. 19; see *American Home Prods. Corp. v. Johnson Chem. Co.*, 589 F.2d 103 (2d Cir. 1978).

20 ⁷⁵ See *Zobmondo*, 602 F.3d at 1113.

21 ⁷⁶ See *Brookfield Comm.*, 174 F.3d at 1058 n. 19; see *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 314 F.2d 149, 154 (9th Cir. 1963).

22 ⁷⁷ See *Zobmondo*, 602 F.3d at 1113; see *Clorox Chemical Co. v. Chlorit Mfg. Corporation*, 25 F.Supp. 702, 205 (E.D.N.Y. 1938).

23 ⁷⁸ See *American Home Prods.*, 589 F.2d at 107.

24 ⁷⁹ See *id.* at 104.

25 ⁸⁰ *Id.* at 104-105.

26 ⁸¹ See *Fleischmann Distilling Corp.*, 314 F.2d at 153-54.

27 ⁸² See *id.*

28 ⁸³ See *id.*

1 Here, the “Cirrus” mark is on the strong end of the spectrum, falling in between
2 suggestive and arbitrary. Cirrus Aircraft argues that its mark is arbitrary: a common word but
3 identifying a particular source of airplanes. Cirrus Aviation argues that the mark is suggestive:
4 requiring consumers to exercise their imagination to associate a cloud with air travel. The mark
5 falls somewhere in the middle.

6 The “Cirrus” mark is more than suggestive when compared with “Roach Motel.” “Roach
7 Motel” suggested a trap that bugs would enter through an opening, much as a person might enter
8 a motel through a doorway. The term suggested the single-opening feature of the trap. But
9 Cirrus Aircraft has provided no evidence that “Cirrus” suggests any features of Cirrus Aircraft’s
10 planes. While the term could suggest that the plane flies amongst cirrus clouds, that suggestion is
11 less obvious than “Roach Motel” insect traps, which were designed and marketed to invoke a
12 motel.

13 On the other hand, the “Cirrus” mark is not entirely arbitrary to airplanes like “Black &
14 White” is to whisky. While not descriptive of the plane itself, cirrus clouds are indicative of good
15 flying weather. The term “cirrus,” as used in the aviation industry, thus does not *only* mean a
16 particular brand of plane.

17 Despite falling between two of the spectrum’s guideposts, the mark still falls on the
18 stronger end of the spectrum. The mark is thus conceptually strong. But the Court must still
19 consider that strength in context of the market in which it is used.

20 **2. Commercial strength.**

21 Commercial strength refers to market presence and can be supported by evidence of
22 advertising expenditures, which increase that presence.⁸⁴ Evidence of commercial strength can
23 strengthen an otherwise conceptually weak mark.⁸⁵ But use of similar marks by third-party
24 companies in the relevant industry can weaken it.⁸⁶

26 ⁸⁴ See *JL Beverage*, 828 F.3d at 1107.

27 ⁸⁵ *Brookfield Comm.*, 174 F.3d at 1058.

28 ⁸⁶ *M2 Software, Inc.*, 421 F.3d at 1087-8.

1 Here, other uses of the “Cirrus” mark in the aviation industry broadly, and in the charter
2 industry specifically, weaken the mark in context. In support of its contention that it maintains a
3 strong market presence, Cirrus Aircraft introduced evidence of the awards it has won,⁸⁷ articles
4 about its success,⁸⁸ its advertisements,⁸⁹ its founders’ induction into the National Aviation Hall of
5 Fame,⁹⁰ and testimony from its president about how certain of its planes have been bestsellers in
6 their categories for years running.⁹¹ It also introduced evidence that it spends up to \$10 million a
7 year in marketing.⁹² But given the testimony at trial that charter flights and personal aircraft
8 attract different types of customers, the Court is not convinced that strength in the personal
9 aircraft market equates entirely to strength in the charter market. It is not clear that charter
10 customers would be interested in the success of a personal aircraft.⁹³ And although Cirrus
11 Aircraft introduced evidence that some charter companies have Cirrus Aircraft planes in their
12 fleets,⁹⁴ it did not offer evidence showing how much of the charter market its planes occupy or
13 what type of advertising it has done in that market.

14 Additionally, Cirrus Aviation has introduced evidence that three other companies in the
15 aviation market use the name Cirrus, one of which used it in charter.⁹⁵ Cirrus Aircraft described
16 these companies as geographically limited “mom-and-pop” operations and noted that it is not

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18 ⁸⁷ Ex. 29.

19 ⁸⁸ Ex. 30; Ex. 37.

20 ⁸⁹ Ex. 35; Ex. 39.

21 ⁹⁰ Ex. 36.

22 ⁹¹ ECF No. 174 at 125:12-126:24.

23 ⁹² ECF No. 176 at 87:22-25.

24 ⁹³ *Compare* ECF No. 173 at 62:9-25 (Greg Woods explaining that customers of their charter
25 flights choose to get into the back of an airplane and the efficiency for which they choose to take
26 charter as opposed to commercial flights) *with* ECF No. 175 at 190:6-19 (Alan Klapmeier
27 explaining that the concept of “owner flown” was part of the philosophy and market for Cirrus
28 Aircraft).

⁹⁴ Ex. 152; ECF No. 175 at 32:14-16.

⁹⁵ ECF No. 175 at 127:22-128:9 (Cirrus Flight Operations); *id.* at 214:15-215:8 (a Cirrus flight
school); Ex. 1208-B at 40:8-11, 42:8-20 (Cirrus Aviation, Inc.); Ex. 1208-A at 9:13-15, 10:2-18,
30:9-11 (Cirrus Aviation Incorporated).

1 required to litigate every use of its mark. Even so, evidence of these companies weakens the
2 Cirrus mark's commercial strength, albeit less so than if they were larger companies. Taking the
3 conceptual strength of the mark together with its commercial weakness, the Court finds that this
4 factor is neutral in the analysis.

5 **B. Proximity of the goods**

6 Goods and services are related when they are complementary, similar in use or function,
7 or sold to the same class of purchasers.⁹⁶ The plaintiff need not establish that the parties are
8 direct competitors.⁹⁷ Instead, the Ninth Circuit has adopted a flexible approach to the notion of
9 competition.⁹⁸ Under that approach, related goods or services are those which would reasonably
10 be thought by the buying public to come from the same source if sold under the same mark.⁹⁹
11 The proximity of the goods also becomes less important where consumers exercise a great deal of
12 care because, "rather than being misled, the consumer would merely be confronted with choices
13 among similar products."¹⁰⁰

14 Here, while Cirrus Aircraft's planes and Cirrus Aviation's flights are complementary and
15 similar in use and function, they are not sold to the same class of purchasers. Cirrus Aircraft has
16 produced evidence that its planes and Cirrus Aviation's flights are complementary by
17 demonstrating that other charter companies have Cirrus Aircraft's planes in their fleets.¹⁰¹ And
18 on the surface, Cirrus Aircraft's planes and Cirrus Aviation's flights are similar in use and
19 function: using aircraft to transport passengers.

20 But Cirrus Aircraft's planes and Cirrus Aviation's flights are sold to different classes of
21 purchasers. Of course, both classes of purchasers are presumably very wealthy. But Cirrus
22

23 ⁹⁶ *Ironhawk*, 2 F.4th at 1163.

24 ⁹⁷ *Id.*

25 ⁹⁸ *Rearden LLC v. Rearden Commerce, Inc.*, 683 F.3d 1190, 1212-13 (9th Cir. 2012).

26 ⁹⁹ *Rearden.*, 683 F.3d at 1212-13.

27 ¹⁰⁰ *Network Automation, Inc. v. Advanced Systems Concepts, Inc.*, 638 F.3d 1137, 1150 (9th Cir.
2011).

28 ¹⁰¹ Ex. 152 at 1-5.

1 Aircraft's purchasers largely want to be pilots.¹⁰² And Cirrus Aviation's purchasers largely want
2 to be passengers.¹⁰³

3 The difference between the two companies' class of purchasers weakens the
4 complementary nature of Cirrus Aircraft's planes and Cirrus Aviation's flights. Even when
5 Cirrus Aircraft's planes are part of charter fleets—and thus complementary to the charter service
6 Cirrus Aviation offers—Cirrus Aircraft's class of purchasers are charter companies, not
7 individuals. Other charter companies are not buying flights from Cirrus Aviation. They are its
8 direct competitors.

9 The difference between the two companies' class of purchasers also weakens the
10 similarity in use and function of Cirrus Aircraft's planes and Cirrus Aviation's flights. While on
11 the surface the two companies both offer a way to fly in a private or semi-private plane, the two
12 companies offer different experiences to purchasers. Cirrus Aviation's typical purchasers
13 prioritize the convenience of charter flights.¹⁰⁴ On the other hand, Cirrus Aircraft's typical
14 purchasers are pilots for whom plane ownership involves significantly more responsibilities, like
15 qualifying to fly the plane, maintaining it, and housing it in an appropriate hangar.¹⁰⁵

16 The difference between the classes of purchasers also weakens the similarity in use and
17 function of Cirrus Aviation and Cirrus Aircraft's ancillary services. Both companies offer
18 airplane acquisition, airplane maintenance, airplane management, and pilot training services.¹⁰⁶
19 But both companies only offer these services to existing customers (or in the case of Cirrus
20 Aviation's pilot training, to potential employees) not to the public.

21
22
23 ¹⁰² ECF No. 175 at 190:6-19, 194:5-12.

24 ¹⁰³ ECF No. 173 at 62:16-25.

25 ¹⁰⁴ *Id.*

26 ¹⁰⁵ ECF No. 174 at 31:2-19, 85:16-86:1; 141:11-142-10.

27 ¹⁰⁶ ECF No. 173 at 63:1-66:5 (Cirrus Aviation's aircraft acquisition, management, and
28 maintenance services); *id.* at 110:13-111:10 (Cirrus Aviation's pilot training program); ECF No.
174 at 85:15-86:4 (Cirrus Aircraft's pilot training program); *id.* at 141:3-142:25 (Cirrus Aircraft's
airplane management and maintenance program).

1 Because the two companies have different classes of purchasers, the complementary
2 nature of their respective planes and flights is lessened, and their use and function are more
3 dissimilar. Under the Ninth Circuit’s flexible approach, the Court cannot find that Cirrus
4 Aircraft’s planes and Cirrus Aviation’s flights would reasonably be thought by the buying public
5 to come from the same source. This factor weights in favor of Cirrus Aviation.

6 **C. Similarity of the marks**

7 Similarity of marks is judged by appearance, sounds, and meaning.¹⁰⁷ Similarities are
8 weighed more heavily than differences.¹⁰⁸ The marks must be considered in their entirety and as
9 they appear in the marketplace.¹⁰⁹

10 Here, the marks’ similarities outweigh their differences. The marks are nearly identical in
11 appearance and sound. As Cirrus Aircraft pointed out, the first word is entirely identical, while
12 the second is similar because both start with “a” and pertain to the aviation industry.¹¹⁰ They are
13 also similar in appearance and sound as they appear in the marketplace because Cirrus Aviation
14 often shortens its name on its website and promotional materials to “Cirrus.”¹¹¹

15 On the other hand, there are some differences. The articles about Cirrus Aviation which
16 Cirrus Aircraft uses as evidence of the company using the single word “Cirrus” show that the
17 articles use the term in context. They initially identify the company as “Cirrus Aviation” and then
18 use the single term “Cirrus” as a shorthand.¹¹² Cirrus Aviation also does not put its logos on or
19 anywhere inside its planes, unlike the way Cirrus Aircraft displays its mark.¹¹³ And while the
20 term “Cirrus” is identical between both companies, the terms that follow imply slight differences.
21 “Aircraft” implies the actual plane, while “aviation” implies something related to flying more
22

23 ¹⁰⁷ *Ironhawk*, 2 F.4th at 1164-65.

24 ¹⁰⁸ *Id.*

25 ¹⁰⁹ *Id.*

26 ¹¹⁰ ECF No. 175 at 65:25-66:24.

27 ¹¹¹ Ex. 159; Ex. 84; Ex. 136; Ex. 163; ECF No. 175 at 66:6-10.

28 ¹¹² Ex. 84; Ex. 136; Ex. 163.

¹¹³ ECF No. 173 at 84:12-86:2.

1 generally. Nonetheless, because similarities are weighed more than differences, and because the
2 differences are so slight, this factor weighs in favor of Cirrus Aircraft.

3 **D. Evidence of actual confusion**

4 Evidence of actual confusion is strong evidence of likelihood of confusion.¹¹⁴ Because
5 finding this evidence is hard, the failure to prove actual confusion is not dispositive.¹¹⁵ This
6 factor is heavily weighed only when there is evidence of past confusion or perhaps when the
7 particular circumstances indicate that evidence should have been available such as when two
8 similar marks have coexisted for some time.¹¹⁶ “The test for likelihood of confusion is whether a
9 reasonably prudent consumer in the marketplace is likely to be confused as to the origin of the
10 good or service bearing one of the marks...[t]rademark infringement protects only against
11 mistaken purchasing decisions and not against confusion generally.”¹¹⁷

12 The Ninth Circuit’s decision in *Rearden LLC v. Rearden Commerce, Inc.* stands for the
13 proposition that non-consumer confusion is relevant to the likelihood of confusion in three
14 scenarios: (1) if that confusion could turn into actual consumer confusion, like in the case of
15 potential customers; (2) if that confusion could create an inference of consumer confusion by
16 serving as a proxy or substitute for evidence of actual consumer confusion; or (3) if that
17 confusion could contribute to consumer confusion by influencing consumer perception and
18 decision making.¹¹⁸ In *Rearden*, a group of related entertainment, technology, and production
19 companies using “Rearden” in their name (the “Rearden Companies”) sued a concierge company
20 named “Rearden Commerce” for trademark infringement.¹¹⁹ The district court granted summary
21 judgment in favor of Rearden Commerce.¹²⁰ The Ninth Circuit remanded, finding that questions
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23 ¹¹⁴ *Ironhawk*, 2 F.4th at 1165-66.

24 ¹¹⁵ *Id.*

25 ¹¹⁶ *Id.*; see *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 842-43 (9th Cir. 2002).

26 ¹¹⁷ *Rearden*, 683 F.3d at 1213-19 (internal citations and quotations omitted).

27 ¹¹⁸ *Id.*

28 ¹¹⁹ *Id.* at 1195-97.

¹²⁰ *Id.* at 1202.

1 of fact remained, particularly regarding non-consumer evidence of confusion and the “very real
2 possibility that confusion on the part of at least certain non-consumers could” fall under the three
3 scenarios where that confusion is relevant.¹²¹

4 In analyzing the Rearden Companies’ confusion evidence, the court first acknowledged
5 the Rearden Companies’ evidence of consumer confusion.¹²² One instance involved a customer
6 expressing confusion as to which “Reardon” it was conducting business with.¹²³ Others involved
7 emails that Rearden Commerce’s customers accidentally sent to the Rearden Companies.¹²⁴

8 The court then analyzed non-consumer confusion which it asserted could fall into any one
9 of the three categories.¹²⁵ Trade publications had confused the two companies and one article
10 observed that “the main question in the conference hallways [at the PC Forum trade show] was
11 whether the company [Rearden Commerce] had any relationship with [one of the Rearden
12 Companies]...”¹²⁶ A Rearden Commerce employee admitted in his deposition that he was asked
13 “about a dozen times” in a trade show whether the companies were somehow affiliated.¹²⁷ While
14 the court explained that the evidence could fall under any one of the three non-consumer
15 confusion categories, “[i]n particular, it appears that the confusion of presumably knowledgeable
16 and experienced trade journalists and trade show organizers could very well influence the
17 purchasing decisions of consumers.”¹²⁸

18 Next, the court analyzed evidence of non-consumer confusion from individuals in a
19 position to influence consumers or serve as their proxy.¹²⁹ It noted that prospective employees

21 ¹²¹ *Id.* at 1216-17.

22 ¹²² *Id.* at 1217.

23 ¹²³ *Id.*

24 ¹²⁴ *Id.*

25 ¹²⁵ *Id.* at 1217-18.

26 ¹²⁶ *Id.*

27 ¹²⁷ *Id.*

28 ¹²⁸ *Id.*

¹²⁹ *Id.*

1 for the Rearden Companies, a vendor, and even an investor that had previously contracted with
2 Rearden Commerce and was later negotiating with the Rearden Companies had all expressed
3 confusion.¹³⁰ Additionally, sophisticated parties like the Rearden Companies’ auditors and even
4 their patent attorneys had demonstrated confusion.¹³¹ Rearden Commerce’s public relations
5 consultant had even written an email that the existence of the Rearden Companies “might confuse
6 folks in the beginning.”¹³² Ultimately, based on this evidence, the court found that genuine issues
7 of material fact existed with respect to the evidence of actual confusion factor.¹³³

8 Here, Cirrus Aircraft has not produced strong evidence of actual confusion, despite the
9 thirteen years the two companies have co-existed. And while Cirrus Aircraft has produced
10 evidence of actual confusion, nearly all of it consists of non-consumer confusion. It is not
11 apparent from this evidence that a reasonably prudent consumer in the marketplace is likely to be
12 confused about the origin of their charter flight or personal aircraft.

13 As a preliminary matter, unlike the Reardon Companies’ multiple pieces of evidence of
14 consumer confusion, Cirrus Aircraft has only offered two instances of confusion by a consumer,
15 one of which is not clearly confusion. One involved a Cirrus Aircraft customer calling Cirrus
16 Aviation looking for maintenance on their Cirrus Aircraft plane.¹³⁴ This is just like the
17 misdirected customer emails in *Rearden* and is straightforwardly consumer confusion.

18 The other, however, is not so straightforward. It involved a Cirrus Aircraft customer and
19 influential pilot—Lt. Col. Dan Rooney—posting a picture of his Cirrus Aircraft plane, but
20 tagging Cirrus Aviation’s Instagram handle, @cirrusav.¹³⁵ This is not straightforward confusion
21 because neither party submitted evidence showing whether Lt. Col. Rooney was actually
22 confused, made a typo, or intended to tag Cirrus Aviation. And while many of the other social
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24 ¹³⁰ *Id.*

25 ¹³¹ *Id.*

26 ¹³² *Id.*

27 ¹³³ *Id.* at 1218-19.

28 ¹³⁴ ECF No. 175 at 70:24-71:12.

¹³⁵ Ex. 101; ECF No. 176 at 115:8-117:2.

1 media posts Cirrus Aircraft entered into evidence appear to depict consumers, the Court received
2 no evidence confirming that.¹³⁶

3 The rest of Cirrus Aircraft’s confusion evidence is from non-consumers. But that
4 evidence is weaker than that in *Rearden*. One article included a disclaimer that Cirrus Aviation is
5 not the manufacturer of Cirrus Aircraft’s Vision Jet.¹³⁷ But this is weaker than the evidence of
6 trade publications that confused the two companies in *Rearden*. Although the disclaimer appears
7 intended to prevent confusion, the inference that Cirrus Aircraft asks the Court to draw—that
8 consumers would have been confused without it—is too attenuated. Comedian Rob Riggle
9 kicked off the National Business Aviation Association 2021 event and erroneously referred to
10 Cirrus Aviation as the company that flew him to the event, rather than Cirrus Aircraft.¹³⁸ But
11 while nearly all attendees likely heard this comedian’s jokes, the Court received no evidence that
12 the difference between Cirrus Aviation and Cirrus Aircraft then became “the main question in the
13 conference hallways” like the conferences in *Rearden*. And the Court has received no evidence
14 that Mr. Riggle is knowledgeable and experienced enough to influence the purchasing decision of
15 consumers like the trade show organizers and trade journalists were in *Rearden*.

16 Cirrus Aircraft’s remaining non-consumer confusion evidence could fall into the last two
17 categories—coming from those in a position to influence customers (social media posts) or serve
18 as their proxy (vendor emails)—but is still weak evidence. Cirrus Aircraft offered multiple social
19 media posts depicting its planes but tagging Cirrus Aviation’s social media handle—@cirrusav—
20 or including hashtags appearing to reference Cirrus Aviation—like #cirrusaviation.¹³⁹ But unlike
21 the court in *Rearden*, which had the benefit of knowing that prospective employees, a vendor, an
22 investor, auditors, and attorneys had expressed confusion, here, the Court lacks information about
23 the people making the social media posts. It is unclear what, if any, association these people have
24

25 ¹³⁶ Exs. 101-129, 131-133.

26 ¹³⁷ Ex. 137.

27 ¹³⁸ Ex. 139.

28 ¹³⁹ Exs. 101-129, 131-133.

1 with Cirrus Aircraft or if they are even people at all, as opposed to bots.¹⁴⁰ Without more
2 information about these people (or bots) and their intent in using the Cirrus Aviation handle and
3 hashtags, the Court cannot speculate that they were actually confused between the companies.
4 And while people viewing these posts might conceivably become confused, the Court again
5 would have to speculate about this because it has not received any evidence that this has
6 happened, let alone that it has happened to a consumer.

7 Finally, Cirrus Aircraft has offered evidence of vendor confusion. Keith Baulsir—senior
8 director of global partnerships for the Las Vegas Golden Knights—emailed Ben Kowalski—
9 senior vice president of sales and marketing for Cirrus Aircraft—believing him to be associated
10 with Cirrus Aviation.¹⁴¹ An account executive with Trustpilot also reached out to principals for
11 both companies on the same email, asking if Cirrus Aviation would be interested in using
12 Trustpilot to boost its web traffic.¹⁴² But these two emails, even with the social media posts, are
13 not as strong as the evidence of a vendor, an investor, auditors, and attorneys who were confused
14 in *Rearden*, particularly considering the thirteen years that Cirrus Aviation and Cirrus Aircraft
15 have co-existed. This factor weighs in favor of Cirrus Aviation.

16 **E. Marketing channels used**

17 This factor asks whether the parties’ marketing channels, consumer basis, and how they
18 advertise their products overlap.¹⁴³ The Ninth Circuit has recognized that similar webpages
19 might exacerbate the likelihood of confusion.¹⁴⁴ But on the other hand, “[i]t would be the rare
20 commercial retailer that did not advertise online, and the shared use of a ubiquitous marketing
21 channel does not shed much light on the likelihood of consumer confusion.”¹⁴⁵

22
23 ¹⁴⁰ A bot is short for “robot” and refers to a computer program that mimics the actions of a
24 person, often to perform malicious actions. *See Bot*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/bot> (last visited January 4, 2022).

25 ¹⁴¹ Ex. 14.

26 ¹⁴² Ex. 12.

27 ¹⁴³ *Ironhawk*, 2 F.4th at 1166.

28 ¹⁴⁴ *Brookfield Comm.*, 174 F.3d at 1057.

¹⁴⁵ *Network Automation, Inc.*, 638 F.3d at 1151.

1 Cirrus Aircraft and Cirrus Aviation’s marketing channels do not appear to significantly
2 overlap. While both parties presented evidence that certain of their marketing is the same type—
3 referrals and websites—the Court is not convinced that these constitute the same channels. Both
4 parties having websites is not enough to demonstrate that they use the same marketing channels,
5 especially because it is not clear that either party relies heavily on its site for sales. Over half of
6 Cirrus Aircraft’s sales are attributable to referrals.¹⁴⁶ About 70% of Cirrus Aviation’s flights are
7 sold to charter brokers while about 20% are sales controlled through business intermediaries.¹⁴⁷
8 Thus, while having similarly named and looking websites might result in a person going to the
9 wrong website, the Court is not convinced that the misdirection would result in a mistaken sale.
10 Additionally, given the different things each party offers—a plane ticket versus a plane itself—it
11 is not obvious that their referral networks would overlap. And the Court has not received
12 compelling evidence that they do. Although over a hundred of Cirrus Aircraft and Cirrus
13 Aviation’s customer’s names are similar, the Court has received no evidence that confirms that
14 the Michael Smith on Cirrus Aviation’s customer list is the same person as the Michael Smith on
15 Cirrus Aircraft’s.¹⁴⁸ This factor weighs in favor of Cirrus Aviation.

16 **F. Type of goods and the degree of care likely to be exercised by the purchaser**

17 The sixth *Sleekcraft* factor requires the court to assess the customers’ sophistication and
18 ask whether a reasonably prudent customer would take the time to distinguish between the two
19 product lines.¹⁴⁹ When the goods are expensive, the buyer can be expected to exercise greater
20 care in his purchases.¹⁵⁰ The same is true if the goods are marketed primarily to expert buyers.¹⁵¹

21 The Court finds this factor to weigh in Cirrus Aviation’s favor because Cirrus Aircraft’s
22 planes and Cirrus Aviation’s flights are both very expensive and marketed to expert buyers.

23 _____
24 ¹⁴⁶ ECF No. 176 at 122:8-17.

25 ¹⁴⁷ ECF No. 173 at 87:12-88:7.

26 ¹⁴⁸ Ex. 157 at 005.

27 ¹⁴⁹ *Ironhawk*, 2 F.4th at 1167.

28 ¹⁵⁰ *Id.* (internal citations and quotations omitted).

¹⁵¹ *Brookfield Comm.*, 174 F.3d at 1060.

1 Cirrus Aviation's flights range from about \$8,000 to about \$340,000 per flight.¹⁵² A Cirrus
2 Aircraft plane costs between \$1 million and over \$3 million.¹⁵³ It is unlikely a buyer—
3 particularly the charter brokers or plane enthusiasts to whom Cirrus Aviation and Cirrus Aircraft
4 market—would not second guess a \$3 million plane ticket or \$340,000 plane. People looking to
5 buy a plane—even if they are not experts or enthusiasts—must also consider training, storage,
6 and maintenance, making it unlikely that they would purchase a plane without researching it.
7 Similarly, the charter brokers and travel managers who make up the bulk of Cirrus Aviation's
8 sales have expertise in travel arrangements and often answer to discerning clients. It is difficult to
9 imagine that one of these brokers might accidentally buy their client a plane, instead of a flight.
10 This factor weighs in favor of Cirrus Aviation.

11 **G. Intent in selecting the mark**

12 This factor favors the plaintiff where the alleged infringer adopted his mark with
13 knowledge, actual or constructive, that it was another's trademark.¹⁵⁴ When an alleged infringer
14 knowingly adopts a mark like another's, courts will presume an intent to deceive the public.¹⁵⁵
15 Absence of malice is no defense.¹⁵⁶ In the case of forward confusion—where consumers believe
16 that goods or services bearing the junior mark came from or were sponsored by the senior mark
17 holder—the court asks whether the defendant, in adopting its mark, intended to capitalize on the
18 plaintiff's goodwill.¹⁵⁷

19 This factor favors Cirrus Aviation. Cirrus Aircraft asks the Court to narrowly focus on
20 2010, when the Woods family bought Great Western Air and began operating it under the new
21 entity and plaintiff in this matter, Cirrus Aviation Services, LLC.¹⁵⁸ By 2010, Cirrus Aircraft had
22

23 ¹⁵² ECF No. 173 at 91:20-92:17, 94:4-6.

24 ¹⁵³ ECF No. 174 at 161:13-20.

25 ¹⁵⁴ *Ironhawk*, 2 F.4th at 1167-68 (citing *JL Beverage*, 828 F.3d at 1111-12).

26 ¹⁵⁵ *JL Beverage*, 828 F.3d at 1111-12.

27 ¹⁵⁶ *Dreamwerks Production Group, Inc. v. SKG Studio*, 142 F.3d 1127, 1132 n.12 (9th Cir. 1998).

28 ¹⁵⁷ *Marketquest Group, Inc. v. BIC Corp.*, 862 F.3d 927, 932, 934 (9th Cir. 2017).

¹⁵⁸ ECF No. 173 at 204:5-205:22.

1 been producing its SR20 and SR22 planes for about ten years—which planes enjoyed significant
2 popularity—and had already announced its intent to develop the Vision Jet.¹⁵⁹ And by 2010, the
3 Woods family was aware of Cirrus Aircraft.¹⁶⁰

4 But Cirrus Aircraft oversimplifies the story. While Cirrus Aviation, LLC officially
5 adopted its name in 2010, Milt Woods had adopted the Cirrus name for his other company in
6 1994.¹⁶¹ This was before Cirrus Aircraft obtained its first FAA certification and before Cirrus
7 Aircraft’s trademark registration was approved.¹⁶² Milt, Mark, and Greg Woods each testified
8 that, when Milt Woods first began using the Cirrus name in 1994, none of them had heard of
9 Cirrus Aircraft.¹⁶³ Arguably, Cirrus Aviation adopted the Cirrus mark in 1994, without
10 knowledge of Cirrus Aircraft’s trademark.

11 But even if the Court accepts Cirrus Aircraft’s argument that the only adoption that counts
12 is when Cirrus Aviation adopted the name in 2010, Cirrus Aviation has advanced reasonable
13 arguments that it did not intend to capitalize on Cirrus Aircraft’s goodwill. Greg Woods
14 explained that his family picked the name because his father liked the name, was proud of it, and
15 wanted to keep using it.¹⁶⁴ Given the history of the Woods family’s use of the name, the Court
16 finds that explanation to be credible. And because Cirrus Aircraft only offered its SR20 and
17 SR22 models—single-engine propeller aircrafts with four or five seats¹⁶⁵—in 2010, it is not clear
18 to the Court that Cirrus Aviation’s fledgling charter operation would have benefited from being
19 associated with Cirrus Aircraft. This factor weighs in favor of Cirrus Aviation.

22 ¹⁵⁹ ECF No. 108 at 3; ECF No. 174 at 125:14-19.

23 ¹⁶⁰ ECF No. 173 at 207:14-21, 210:9-16; Ex. 164 at 41:16-42:21; Ex. 165 at 51:6-52:6.

24 ¹⁶¹ Ex. 1003.

25 ¹⁶² Ex. 164 at 41:16-42:21; Ex. 165 at 51:6-14; ECF No. 173 at 134:11-16; ECF No. 175 at 185:2-
13, 187:9-14; ECF No. 108 at 3.

26 ¹⁶³ Ex. 164 at 41:16-42:21, Ex. 165 at 51:6-14; ECF No. 173 at 134:11-16.

27 ¹⁶⁴ ECF No. 173 at 58:12-21.

28 ¹⁶⁵ ECF No. 108 at 3.

1 **H. Likelihood of expansion of the product lines**

2 In the context of non-competing goods, a “strong possibility” that either party may expand
3 his business to compete with the other will weigh in favor of finding that the present use is
4 infringing.¹⁶⁶ Concrete evidence of an expansion plan is relevant to this factor.¹⁶⁷ Expressing
5 interest in expanding is insufficient because “mere speculation is not evidence.”¹⁶⁸

6 As a preliminary matter, the Court does not find Cirrus Aircraft and Cirrus Aviation to be
7 competitors. As discussed more fully above, the companies sell to different classes of purchasers
8 and offer their ancillary services only to their customers. Cirrus Aircraft sells planes to people
9 who want to pilot their own planes. Cirrus Aviation sells plane tickets to people who want to be
10 passengers. And even though the two offer identical ancillary services of acquisition,
11 maintenance, management, and pilot training services, because neither company offers them to
12 the public, these services are not competitive.

13 The Court also is not convinced that either company will expand to compete with the
14 other. The Court has received no evidence that Cirrus Aviation intends to manufacture aircraft.
15 And Cirrus Aircraft, because of its foreign ownership, cannot legally hold the Part 135 certificate
16 required under FAA regulations to operate charter flights.¹⁶⁹

17 Cirrus Aircraft nonetheless argues that it has always had an interest in entering the charter
18 market, as evidenced by its on-demand pilot programs through which it connects Cirrus Aircraft
19 plane owners with a pilot.¹⁷⁰ But the contracts through which Cirrus Aircraft plane owners enter
20 into those programs explicitly state that the pilots may not fly as charter pilots under Part 135.¹⁷¹
21 Cirrus Aircraft also relies on the fact that certain Part 135 charter operations include its planes in
22

23 ¹⁶⁶ *Ironhawk*, 2 F.4th at 1168.

24 ¹⁶⁷ *Survivor Media, Inc. v. Survivor Production*, 406 F.3d 625, 634 (9th Cir. 2005).

25 ¹⁶⁸ *Id.*

26 ¹⁶⁹ ECF No. 174 at 104:21-106:3; 14 C.F.R. § 119.33 (providing that air carriers operating under
Part 135 must be citizens of the United States).

27 ¹⁷⁰ ECF No. 174 at 86:6-9, 135:14-136:15, 162:3-15; Exs. 20, 61-63, 66-67, 78.

28 ¹⁷¹ Exs. 62 at § 1.1; 63 at § 1.1; 78 at § 1.

1 their fleets to argue that it participates in the charter market.¹⁷² But selling planes to charter
2 companies is not the same as competing in the charter market. If it was, Cirrus Aircraft would
3 not sell its planes to a competitor.

4 Finally, Cirrus Aircraft has not offered concrete plans of expanding into charter. As
5 Cirrus Aviation points out, although no legal obstacle prevents Cirrus Aircraft from becoming a
6 charter broker, it has never brokered charter flights. And although it asserts that it is interested in
7 expanding into charter, absent more concrete evidence, Cirrus Aircraft's intent is speculative.
8 This factor weighs in favor of Cirrus Aviation.

9 **I. Weighing the factors together**

10 Weighing these factors together, the analysis weighs in favor of judgment for Cirrus
11 Aviation. While the Court finds the strength of the mark to be a neutral factor and the similarity
12 of the marks to favor Cirrus Aircraft, the remaining six factors weigh in favor of Cirrus Aviation,
13 even if slightly so. Cirrus Aircraft did not meet its burden of proving its claims by a
14 preponderance of the evidence. As a result, the Court finds that Cirrus Aviation has not infringed
15 on Cirrus Aircraft's trademark or engaged in unfair competition. The Court thus cannot award
16 Cirrus Aircraft its damages or injunctive relief.

17 **Conclusion**

18 Based on these findings of fact and conclusions of law, and with good cause appearing
19 and no reason for delay, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that **final**
20 **judgment is entered in favor of Plaintiff Great Western Air, LLC dba Cirrus Aviation**
21 **Services, LLC and against Defendant Cirrus Design Corporation.** The Clerk of Court is
22 kindly directed to ENTER FINAL JUDGMENT and CLOSE THIS CASE.

23 DATED: January 6, 2023

24 
25 _____
26 DANIEL J. ALBREGTS
27 UNITED STATES MAGISTRATE JUDGE

28 ¹⁷² Ex. 152 at 1-5.