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THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lockwood Advisors, Inc.

Serial No. 78337126

Allison Z. Gifford of Duane Morris LLP for Lockwood Advisors,
Inc.

Elizabeth A. Hughitt, Trademark Examining Attorney, Law Office
111 (Craig D. Taylor, Managing Attorney).

Before Seeherman, Holtzman and Bergsman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, Lockwood Advisors, Inc., has filed an application
to register the mark LOCKWOOD MANAGED ACCOUNT ADVISOR (in
standard character form) for the following services:¹

Financial management and investment services, namely,
financial planning services, investment brokerage
services, investment advisory services, investment
management services, and individually managed account
services for financial advisors.

¹ Serial No. 78337126, filed December 5, 2003, based on an allegation
of a bona fide intention to use the mark in commerce.

The trademark examining attorney initially refused registration under Section 2(e)(4) of the Trademark Act on the ground that LOCKWOOD MANAGED ACCOUNT ADVISOR is primarily merely a surname. At the same time, the examining attorney required a disclaimer of MANAGED ACCOUNT ADVISOR under Section 6 of the Act on the ground that the wording is at least merely descriptive of applicant's services. In response to the Section 2(e)(4) refusal, applicant amended the application to seek registration under Section 2(f) of the Act, in part, as to the word LOCKWOOD, and the examining attorney accepted the amendment. Applicant also submitted a disclaimer, but only of the wording MANAGED ACCOUNT. The examining attorney ultimately issued a final refusal in view of applicant's failure to comply with the requirement for a disclaimer of ADVISOR. It is from this refusal that applicant has appealed.

We affirm the refusal to register.

As provided in Section 6(a) of the Trademark Act, the Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. A component of a mark is unregistrable if, when used in connection with an applicant's goods or services, it is merely descriptive of the goods or services under Section 2(e)(1) of the Trademark Act.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality,

characteristic, function, feature, purpose or use of the goods or services with which it is used or intended to be used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought. See In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986).

As we noted, applicant does not dispute the descriptive meaning of MANAGED ACCOUNT in the mark LOCKWOOD MANAGED ACCOUNT ADVISOR and indeed that term is descriptive, if not generic, for the financial management and investment services identified in the application. A "managed account" is a type of investment account. We take judicial notice of the definition of "managed account" in Wall Street Words (2003 Houghton Mifflin Company) as meaning "An investment account that is managed by a broker or other professional. Managed accounts are designed for investors lacking the time or expertise to make their own decisions."² We find that the word ADVISOR is merely descriptive of applicant's services both as part of the phrase MANAGED ACCOUNT ADVISOR and also as a separate component of the mark which when combined with

² This source was retrieved from the website credreference.com. The Board may take judicial notice of dictionary definitions, including online dictionaries, which exist in printed format. See In re CyberFinancial.Net Inc., 65 USPQ2d 1789, 1791 n.3 (TTAB 2002).

MANAGED ACCOUNT does not change the descriptive meaning of the term.

Applicant's identification expressly states that its financial management and investment services include "investment advisory services" and "individually managed account services for financial advisors." Based on the identification of services alone, there is no question that the word ADVISOR is merely descriptive of the services. The term describes a significant function of applicant's "investment advisory services," namely that applicant provides advice about investment accounts including managed accounts. ADVISOR also describes a significant feature or characteristic applicant's "managed account services for financial advisors" in that the financial "advisor" is the intended user of the managed account service. See *In re Planalytics Inc.*, 70 USPQ2d 1453, 1454 (TTAB 2004) ("A mark can be descriptive if it describes the intended users of the goods or services.").

In addition to the identification itself, the other evidence of record amply demonstrates the descriptive meaning of ADVISOR. The record includes a definition of "advisor" from The American Heritage Dictionary of the English Language (Third Edition 1992) as follows:

1. One that advises, such as a person or firm that offers official or professional advice to clients.

The plain meaning of "advisor," as defined in the dictionary, applies to applicant's investment advisory services and its managed account services for advisors. Applicant is acting in the capacity of an advisor, providing "professional advice" to its customers about investments in managed accounts, and the professional advisor is also the recipient of applicant's services. In other words, applicant's services involving managed accounts are offered by, as well as to, professional advisors.

Applicant's own promotional materials show descriptive use of ADVISOR in the context of the phrase MANAGED ACCOUNT ADVISOR. The examining attorney has submitted a brochure about applicant's services (from deltaequity.com) describing applicant's program of "Private Wealth Management." In the section of the brochure entitled "Sophisticated Account Types" and "Managed Accounts," applicant directs the investment professional to

Offer an all-inclusive-fee managed account program called Managed Account Advisor to wealthy clients and give them access to customized investment strategies using mutual funds, separately managed accounts, and multi-style accounts called Overlay Separate Account Portfolios.

The brochure goes on to describe the benefits of offering the managed account program to clients:

Not only will you strengthen client relationships with this tailored program, your investment professionals will appreciate the annuity-like revenue stream that increases as account assets grow.

This evidence confirms that applicant is providing the services of a professional advisor, offering a "tailored program" featuring "customized investment strategies" to applicant's investor clients. Applicant's own highly descriptive usage of ADVISOR is strong evidence of its descriptive nature. See *In re Educational Communications, Inc.*, 231 USPQ 787, 790 (TTAB 1986).

The record also includes numerous use-based, third-party registrations for the same or similar investment advisory services. The word ADVISOR(S) is disclaimed in each of the registrations. One of these registrations, which according to the record is owned by applicant's parent company, is Registration No. 2213524 for the mark LOCKWOOD ADVISORS, INC. for "investment advisory services." This mark is registered on the Supplemental Register, and even then with a disclaimer of ADVISORS, INC., indicating an acknowledgement by applicant that ADVISORS INC. is merely descriptive, if not generic, for such services. Examples of the other registrations of record are Registration No. 2906168 for the mark LYDIAN CAPITAL ADVISORS for "investment advisory services," CAPITAL ADVISORS disclaimed; Registration No. 2866757 for the mark FINANCIAL FREEDOM ADVISOR for "providing financial advice for others," FINANCIAL and ADVISOR disclaimed; and Registration No. 2917289 for the mark BOSTON ADVISORS, INC. for "financial advisory services" and

"financial counseling services, investment advisory and consulting services," ADVISORS, INC. disclaimed.

This evidence clearly suggests that when used in the context of the phrase MANAGED ACCOUNT ADVISOR, the term ADVISOR has a descriptive meaning and would be perceived by purchasers as a descriptive term. See *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006) ("the term 'SOLUTIONS' has been regarded as merely descriptive in a number of third-party marks, the registrations of which include disclaimers of the term 'SOLUTIONS.'").

The examining attorney has also submitted the results of a Google search which produced at least two uses of the phrase "managed account advisor" in a generic manner to identify a type of financial advisor (emphasis added):³

Kiplinger.com Community - Managed Accounts
...Should we go with a **managed account advisor** at Fidelity, where we have our brokerage accounts and pay 1.1% annually, or just subscribe to a financial newsletter... forums.kiplinger.com

Registered Rep: The Calm After the Storm
The most important concern of any **managed account advisor** should be maintaining a specific investment

³ Applicant states that its own Google search for "managed account advisor" (and we note that the search was not conducted with the phrase enclosed in quotation marks) produced no reference to the phrase on "the first two pages of the search results." (Response dated July 29, 2005.) This indicates, according to applicant, that the term is only suggestive of its services. Applicant's reasoning and arguments are unpersuasive for a number of reasons, not the least of which is the fact that the examining attorney has demonstrated use by others of the phrase as a whole as noted above.

policy that features complementary managers...
findarticles.com

It is clear based on the services as identified in the application, the plain meaning of "advisor" as shown in the dictionary listing and by the third-party registrations and websites, and as described in applicant's literature, that the term ADVISOR is highly descriptive of applicant's financial management and investment services.

Applicant acknowledges that its services are "essentially a managed account program for its customers." (Brief, p. 4.) Applicant argues, however, that its financial management and investment services provided under the mark "are not traditional financial advisory and investment advisory services *per se*." (Id., italics in original.) Instead, according to applicant, its services are "more of a tool for [applicant's] broker/dealer clients for investment and financial management" and "a whole program designed to manage investments and determine available investment vehicles for broker/dealer clients." Applicant concludes that the term "advisor" therefore is used to suggest to its customers and clients "that [applicant's] platform will provide guidance, education, and management tools."

Applicant's arguments are not persuasive. First, applicant's services, as identified, are broad enough to include any and all types of "investment advisory services" including

"traditional" investment advisory services. We must presume applicant is providing such "traditional" investment advisory services under the mark and that the mark will be viewed as including those services. See *In re Allen Electric and Equipment Company*, 458 F.2d 1404, 173 USPQ 689, 690 (CCPA 1972) (descriptiveness must be decided on the basis of the identification of the goods or services as set forth in the application).

Furthermore, it is clear from applicant's "Private Wealth Management" brochure that applicant's MANAGED ACCOUNT ADVISOR is a program offered not only to its broker/dealer clients, as applicant claims, but also to its investor clients. In addition, while applicant's services may be "a tool" for its broker/dealer clients, those clients are themselves "advisors" and the "tool" is intended for, and used by, the advisors in rendering the investment advisory services and the managed account services.

We are similarly unpersuaded by applicant's argument that its clients are necessarily sophisticated and "would understand that applicant's managed account program and related services are not traditional advisory services." (Brief, p. 4.) As previously stated, applicant's "investment advisory services," as identified, are not limited to the specific managed account program that applicant is currently offering. Thus, when applicant's mark is viewed in relation to applicant's identified

investment services, applicant's clients and customers, sophisticated or not, will immediately understand, without any guesswork or the exercise of any imagination, the ordinary, descriptive, meaning of ADVISOR in the context of the mark. This is a descriptive term that competitors of applicant should be free to use in connection with their own services in that field.

Decision: The requirement for a disclaimer of ADVISOR is affirmed. However, in the event that applicant submits the required disclaimer within thirty days from the mailing date of this decision, the refusal to register will be set aside and the application will proceed to publication.⁴ See Trademark Rule 2.142(g).

⁴ A proper disclaimer would read: "No claim is made to the exclusive right to use MANAGED ACCOUNT ADVISOR apart from the mark as shown."