

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of	:	
	:	
Stratus LLC	:	
	:	
Serial No. 88534320	:	Trademark Examining Attorney
	:	Alison Rebecca Keeley
Filing Date: July 24, 2019	:	
	:	Law Office 113
Mark: STRATUS (and design)	:	
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RESPONSE TO OFFICE ACTION

The following is responsive to the trademark examining attorney's Office action mailed on October 21, 2019.

I. Amended recitation of services.

The trademark examining attorney has required the applicant to identify the services set forth in the application with greater specificity. Applicant adopts the following amended recitation services pursuant thereto:

“Liquidity services directed to holders of fixed income streams and long-term payments, namely, converting fixed income streams and long-term payments into present value based lump sum payments for others” in Class 35.

II. Trademark Act § 2(d) refusal.

The trademark examining attorney has refused registration under Trademark Act § 2(d) on grounds that applicant's mark, when used in connection with applicant's services, so resembles the following registered mark as to be likely to cause confusion, to cause mistake, or to deceive:

STRATOS WEALTH PARTNERS, for “advice relating to investments; advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities; advisory services relating to credit and debit control, investment, grants and financing of loans; brokerage services for capital investments; brokerage services in the field of securities and commodities investing; capital investment; capital investment consulting; capital investment services; consultancy of capital investment; equity capital investment; financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others; financial investment brokerage; financial investment brokerage services. legal services” in Class 36, owned by Jeffrey Concepcion DBA Stratos Wealth Partners. Registration No. 4898095.

STRATOS WEALTH PARTNERS ELEVATING FINANCIAL STRATEGIES (and design), for “advice relating to investments; advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities; advisory services relating to credit and debit control, investment, grants and financing of loans; brokerage services for capital investments; brokerage services in the field of securities and commodities investing; capital investment; capital investment consulting; capital investment services; consultancy of capital investment; equity capital investment; financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others; financial consultation in the field of environmental management, namely, advising business and individuals on issues of portfolio planning and investment planning; financial investment analysis and stock research; financial investment brokerage; financial investment brokerage services; financial planning and investment advisory services; financial services in the nature of an investment security” in Class 36, owned by Concepcion, Jeffrey DBA Stratos Wealth Partners. Registration No. 4901208.

Applicant would request that the trademark examining attorney reconsider this refusal to register. A brief analysis of the following Dupont factors indicates that confusion is improbable:

- (1) The relatedness of the services.

(2) The similarity or dissimilarity of established, likely-to-continue trade channels.

(3) The conditions under which and buyers to whom sales are made, i.e., “impulse” vs. careful, sophisticated purchasing.

See In re E. I. du Pont de Nemours & Co., 177 USPQ 563 (C.C.P.A. 1973).

Please consider the following with respect to these Dupont factors.

A. The services are not related.

All of the cited registered marks are owned by Jeffrey Concepcion, DBA Stratos Wealth Partners. The marks are registered for services in the field of investment, and consist primarily of brokerage and support services offered to a network of independent financial advisors. On its website, the registrant provides the following description of its services:

Jeffrey Concepcion, Founder and CEO, launched Stratos Wealth Partners in November of 2008 to fulfill a growing need among experienced, sophisticated advisors and their accomplished clients. Jeff, like many others, had become increasingly dissatisfied with existing brokerage models that made it more and more difficult for advisors to place their clients' interests first.

Stratos Wealth Partners provides advisors and their clients with a distinctly different wealth management experience. One that effectively elevates all aspects of the financial and investment management experience for clients seeking more personalized concierge level service and innovative thought leadership. Stratos' advisors provide access to a wide range of financial products and strategies available in the marketplace today without the restrictions and objectives commonly found in most large brokerage firms and investment banks.

Stratos provides advisors the infrastructure, resources, and support necessary to allow financial advisors to focus on their core competency—advising their clients. And that, in turn, allows their clients to focus more time and energy on their own passions in life.

Today, Stratos has a national network of distinguished, experienced financial advisors and financial planning practitioners spread throughout the country, all powered by LPL Financial, member FINRA/SIPC.

See Exhibit 1 (screenshot from “about” section of the registrant’s website).

The applicant’s liquidity services are not investment services. In fact, applicant’s services might be characterized as the opposite. The applicant’s services consist of allowing individuals who are entitled to future income streams – such as annuity payments or payments from structured settlements – to convert future payments into ready cash by purchasing the right to receive those payments for a lump sum. See Exhibit 2 (printouts from the applicant’s website).

The only real commonality between applicant’s services and the registrant’s services is that both concern money. In all other respects, the services are unrelated for purposes of determining whether there is a likelihood of confusion as to source.

B. The channels of trade for the services are dissimilar.

As indicated by the registrant, the class of customers for registrant’s services in the field of investment consists of primarily of investment professionals who are independent financial advisors. The applicant’s services, by way of contrast, are directed to individuals outside of the financial community who wish to convert guaranteed future personal income to immediate cash in the form of a lump sum payment. There is no commonality between the channels of trade or classes of purchasers for the applicant’s services and the registrant’s services whatsoever – and no likelihood of confusion as the result.

C. Careful purchasing.

To fulfill their fiduciary duties to their clients, the financial advisors who comprise the primary customers for the registrant’s services must necessarily purchase those services with a reasonable degree of care - including care to determine the source of the services. It is also reasonable to assume that the individuals who are customers for applicant’s liquidity services will exercise a relatively high degree of care in the decision to part with guaranteed future payments, and perhaps shop several different sources of liquidity services to obtain the best deal.

For both the services of applicant and registrant, careful purchasing suggests that purchaser confusion as to source is unlikely.

D. Conclusion.

It is well settled that “if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely.” See TMEP § 1207.01(a)(i). In the present case, the services at issue are neither related, marketed through the same channels of trade, or marketed to the same classes of purchasers. Confusion as to source is unlikely as the result. The trademark examining attorney may withdraw the refusal to register accordingly.

III. Earlier-filed applications.

The trademark examining attorney has asserted that there may be likelihood of confusion between applicant’s mark and the marks set forth in the following earlier-filed pending applications:

STRATOS WEALTH, for “advice relating to investments; advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities; advisory services relating to credit and debit control, investment, grants and financing of loans; brokerage services for capital investments; brokerage services in the field of securities and commodities investing; capital investment; capital investment consulting; capital investment services; consultancy of capital investment; equity capital investment; financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others; financial investment brokerage; financial investment brokerage services” owned by Stratos Wealth Partners, Ltd. Application Serial No. 88371528.

STRATOS WEALTH ALLIANCE, for “advice relating to investments; advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities; advisory services relating to credit and debit control, investment, grants and financing of loans; brokerage services for capital

investments; brokerage services in the field of securities and commodities investing; capital investment; capital investment consulting; capital investment services; consultancy of capital investment; equity capital investment; financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others; financial investment brokerage; financial investment brokerage services” in Class 36, owned by Stratos Wealth Partners, Ltd. . Application Serial No. 88371511 (now Registration No. 5924948).

STRATOS WEALTH MANAGEMENT for “advice relating to investments; advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities; advisory services relating to credit and debit control, investment, grants and financing of loans; brokerage services for capital investments; brokerage services in the field of securities and commodities investing; capital investment; capital investment consulting; capital investment services; consultancy of capital investment; equity capital investment; financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others; financial investment brokerage; financial investment brokerage services” in Class 36, in Class 36, owned by Stratos Wealth Partners, Ltd. Application Serial No. 88371492.

STRATOS WEALTH ENTERPRISES for “advice relating to investments; advising others concerning investments in intellectual property assets and intangible business assets, both directly and indirectly through other entities; advisory services relating to credit and debit control, investment, grants and financing of loans; brokerage services for capital investments; brokerage services in the field of securities and commodities investing; capital investment; capital investment consulting; capital investment services; consultancy of capital investment; equity capital investment; financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others; financial investment brokerage; financial investment

brokerage services” in Class 36, owned by Stratos Wealth Partners, Ltd. Application Serial No. 88371443.

STRATUS ANALYTICS, for “analytical computer software for use in analyzing and evaluating the potential return and the risk characteristics associated with an aircraft-related investment, the acquisition, financing, and disposition of aircraft, whether aircraft should be leased or purchased, and in analyzing historical return and risk characteristics of aircraft selection, aircraft investment structuring, and aircraft risk diversification alternatives applied retrospectively to the historical world aircraft fleet” in Class 9, “consultation services in the field of procurement, namely, purchasing for others aircraft, aviation, and transportation equipment in the nature of airframes and engines; Aircraft, aviation, and transportation related acquisition and merger consultation; Aircraft, aviation, and transportation equipment business management, planning, and supervision consulting services” in Class 35, and “consultation services in the field of aircraft, aviation, and transportation related financing services, namely, project financings, asset backed financings, leveraged leases, sale leasebacks, leased asset portfolio, and secured debt financings; consultation in the field of aircraft, aviation, and transportation related individual asset acquisitions, management, integration, development, and sales; consultation services in the field of aircraft, aviation, and transportation related corporate debt and equity; aircraft, aviation, and transportation related investment banking and financing services, namely, asset backed financings, project financings, financing of leveraged leases, sale leasebacks, and leased asset portfolios, individual asset acquisition and management, secured debt financings, and general corporate debt and equity financings; financial asset management services, namely, financial management of aircraft, aviation, and transportation equipment portfolios and individual assets; financial investment in the field of aviation, aerospace, and transportation related companies” in Class 36, owned by Stratus Analytics, LLC. Application Serial No. 87699043.

Four of the earlier-filed, pending applications referenced by the trademark examining attorney are owned by Stratos Wealth Partners, Ltd., and cover the same services identified in the cited registrations. As discussed above, the applicant’s services are unrelated to those practiced by Stratos Wealth Partners, and the channels of trade and class of purchasers for those services differ according.

The fifth earlier-filed, pending application cited by the trademark examining attorney is owned by Stratus Analytics, LLC, and covers financial consultation and investment services in

the aviation, aerospace and transportation industries. Again, the applicant's services are entirely unrelated to those offered by Stratus Analytics, LLC, and there are no commonalities between the channels of trade or class of purchasers therefor.

Plainly, there is no likelihood of confusion between applicant's mark and the marks set forth in any of the earlier-filed pending, applications. The trademark examining attorney may withdraw reference to the earlier-filed applications as potential obstacles to registration accordingly.

In view of the foregoing submissions, the applicant believes that the referenced application is in condition for approval for publication. Approval for publication is requested accordingly. Should the trademark examining attorney believe that a telephone conference may expedite prosecution of the referenced application, the examining attorney is invited to call the counsel for applicant at her convenience.

Respectfully submitted,

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