

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
October 24, 2008

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Capital Financial Advisors, Inc.

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Serial No. 76661472

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Thomas I. Rozsa of the Rozsa Law Group LC for Capital  
Financial Advisors, Inc.

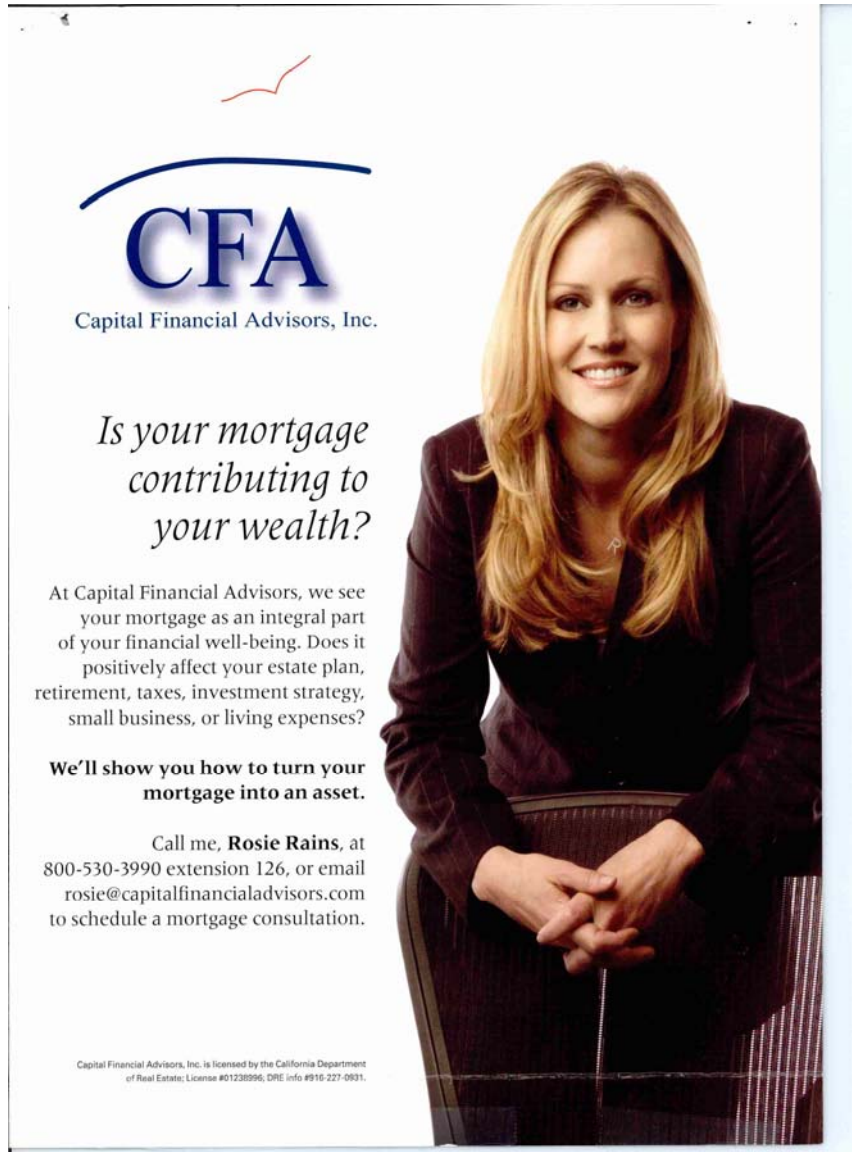
Lindsey H. Rubin, Trademark Examining Attorney, Law Office  
108 (Andrew Lawrence, Managing Attorney).


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Before Grendel, Drost and Bergsman, Administrative  
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Capital Financial Advisors, Inc. ("applicant") filed a  
use-based application for the phrase IS YOUR MORTGAGE  
CONTRIBUTING TO YOUR WEALTH? (in standard character format)  
for "mortgage brokerage services," in Class 36. Applicant  
submitted the print advertisement shown below as its  
specimen of use.



  
Capital Financial Advisors, Inc.

*Is your mortgage  
contributing to  
your wealth?*

At Capital Financial Advisors, we see your mortgage as an integral part of your financial well-being. Does it positively affect your estate plan, retirement, taxes, investment strategy, small business, or living expenses?

**We'll show you how to turn your mortgage into an asset.**

Call me, **Rosie Rains**, at 800-530-3990 extension 126, or email [rosie@capitalfinancialadvisors.com](mailto:rosie@capitalfinancialadvisors.com) to schedule a mortgage consultation.

Capital Financial Advisors, Inc. is licensed by the California Department of Real Estate; License #01238996; DRE info #916-227-0831.

The Examining Attorney refused registration on the ground that "the proposed mark, as used on the specimen of record, conveys purely informational matter relating to applicant's services. Thus, the proposed mark does not function as a service mark to indicate the source of applicant's services. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051, 1052, 1053 and 1127."

Specifically, the specimen of record consists of an advertisement for applicant's services, which shows the proposed mark used as a common question used to grab the attention of potential consumers seeking financial advice, in particular, those seeking advice about mortgages.<sup>1</sup>

In response to the refusal, the applicant submitted excerpts from its website as a substitute specimen. The relevant portion of that specimen displaying the subject matter sought to be registered is shown below.<sup>2</sup>



The refusal was made final and applicant appealed.

In its brief, applicant argues, in essence, that because the specimens show IS YOUR MORTGAGE CONTRIBUTING TO YOUR WEALTH? used in connection with mortgage brokerage services, it functions as a service mark to identify those

<sup>1</sup> November 20, 2006 Office Action.

<sup>2</sup> Subsequently, applicant submitted a second copy of the print advertisement submitted as original specimen.

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services. In other words, the term at issue "is clearly used in conjunction with the specific services . . . which is appropriate service mark use."<sup>3</sup> In its reply brief, applicant emphasized that IS YOUR MORTGAGE CONTRIBUTING TO YOUR WEALTH? functions as a service mark because it was separately displayed and used in conjunction with mortgage brokerage services.

The issue before us is whether the phrase IS YOUR MORTGAGE CONTRIBUTING TO YOUR WEALTH?, as displayed in the specimens, used as a service mark.

A service mark is "a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others." Section 45 of the Trademark Act of 1946, 15 U.S.C. §1127. Not every word, phrase, or slogan that appears in advertising, marketing and other sales materials function as a service mark. *In re Morganroth*, 208 USPQ 284, 287 (TTAB 1980). Thus, the mere fact that the subject matter sought to be registered appears as a distinct phrase or slogan, separate and apart from other matter, does not make it a service mark. To be a mark, the word, phrase or slogan at issue, must be used in a manner calculated to project to purchasers or potential purchasers a single

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<sup>3</sup> Applicant's Brief, pp. 2-3.

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source or origin of the services. The mere intent that the term, phrase or slogan function as a service mark is not enough in and of itself. *In re Morganroth*, 208 USPQ at 287. See also *In re Volvo Cars of North America Inc.*, 48 USPQ2d 1455, 1459 (TTAB 1998); *In re Remington Products Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987).

The critical question in determining whether applicant's phrase is a service mark is the commercial impression it makes on the relevant public (*i.e.*, whether it would be perceived as mark or merely as an informational phrase). *In re Volvo Cars of North America Inc.*, 48 USPQ2d at 1459; *In re Remington Products Inc.*, 3 USPQ2d at 1715; *In re Morganroth*, 208 USPQ at 287. Unfortunately, there is no evidence bearing on the reaction of the purchasing public to applicant's use of its phrase IS YOUR MORTGAGE CONTRIBUTING TO YOUR WEALTH? Accordingly, we must look to the specimens to determine how consumers would perceive the subject matter sought to be registered. *In re The Signal Companies, Inc.*, 228 USPQ 956, 957 (TTAB 1986); *In re Wakefern Food Corp*, 222 USPQ 76, 77 (TTAB 1984).

We find that the primary significance of the phrase IS YOUR MORTGAGE CONTRIBUTING TO YOUR WEALTH?, as used by applicant, is likely to be perceived as advertising copy or a promotional tool to grab the consumer's attention, but it

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would not be perceived as indicating the source of any services. Our conclusion is not based on a finding that applicant's phrase is not prominently displayed or that it is not used in connection with mortgage brokerage services. "[I]t is not enough that the services be identified in the same advertising piece on which the matter sought to be registered appears. There must also be a direct association between that matter and [applicant] as the source of the indicated services." *In re The Signal Companies, Inc.*, 228 USPQ at 958.

In this case, we find that the phrase IS YOUR MORTGAGE CONTRIBUTING TO YOUR WEALTH? would not be perceived by persons reading the advertisement any differently from the way they would perceive any other information or advertising about the mortgage brokerage services. The phrase provides a framework for potential clients to analyze their mortgage requirements. In the original specimen, applicant's phrase is analogous to other statements that appear with it such as:

- Q. Is your mortgaging contributing to your wealth?
- A. At Capital Financial Advisors, we see your mortgage as an integral part of financial well-being.
- Q. Does it positively affect your estate plan, retirement, taxes,

investment strategy, small  
business, or living expenses?

- A. We'll show you how to turn your  
mortgage into an asset.

In the substitute specimen, it appears as a quotation  
by the mortgage broker to get the potential client to  
consider whether he/she is getting the most out of his/her  
mortgage.

As the subject matter sought to be registered is  
presented in the specimens, consumers would not attribute  
any service mark significance to it (*i.e.*, that the phrase  
identifies a brand of mortgage services). *See In re Manco  
Inc.*, 24 USPQ2d 1938, 1942 (TTAB 1992) (THINK GREEN and  
design conveys ecological concerns, not source); *In re  
Melville Corporation*, 228 USPQ 970, 971 (TTAB 1986)  
(consumer's will be view BRAND NAMES FOR LESS as a  
merchandising slogan conveying information about  
applicant's services); *In re Wakefern Food Corp*, 222 USPQ  
at 78 (WHY PAY MORE! would be perceived as a familiar  
phrase suggesting that applicant's stores offer lower  
prices); *In re Tilton Warren, Inc.*, 221 USPQ 86, 88 (TTAB  
1984) (WATCH THAT CHILD is a familiar safety slogan and  
would not be perceived as a trademark); *In re European-  
American Bank & Trust Co.*, 201 USPQ 788, 790 (TTAB 1979)

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(consumers will identify THINK ABOUT as a familiar expression and would perceive its ordinary meaning).

Accordingly, we are of the opinion that the phrase IS YOUR MORTGAGE CONTRIBUTING TO YOUR WEALTH?, as used by applicant, does not function as a service mark to identify and distinguish mortgage brokerage services.

Decision: The refusal to register is affirmed.