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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77641462
Applicant	Powers Pyles Sutter & Verville PC
Applied for Mark	YOUR TRUSTED ADVISORS
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TABLE OF AUTHORITIES

Appeal Brief

The Applicant would like to thank the Trademark Trial and Appeal Board (TTAB) in advance for its careful review of Applicant's application for trademark registration for the mark YOUR TRUSTED ADVISORS. Applicant respectfully disagrees with the Examining Attorney's final refusal of registration, and Applicant submits the following arguments and evidence in support of its appeal.

Evidence

The Examining Attorney refused registration on the ground that there is a likelihood of confusion with the mark "Trusted Advisors." (Although the Examining Attorney did not identify the serial number of the allegedly similar mark, the Applicant assumes it is Serial Number 77283870). The allegedly similar mark is owned by a Texas-based law firm that provides solely for-profit business law advice.

The Applicant initially submitted several persuasive legal authorities in support of its Application. Rather than repeat all of those authorities again, Applicant hereby incorporates those authorities by reference, and in addition, adds further authorities below. In its request for reconsideration, Applicant submitted additional legal authorities and additional facts, many of which are repeated below. The Examining Attorney dismissed these additional authorities without offering any discussion, analysis, or counter-arguments.

The Examining Attorney's final refusal was based on two primary grounds. First, the Examining Attorney expressed her subjective belief that the use by the Applicant of a different initial word ("YOUR") would not create a more distinctive impression in the consumer. In reaching this conclusion, the Examining Attorney dismissed out-of-hand longstanding and persuasive legal authority cited by the Applicant establishing that consumers are more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions). Applicant therefore respectfully requests that the TTAB overrule the Examining Attorney's registration refusal in light of this legal authority.

Second, the Examining Attorney dismissed Applicant's argument that its services are significantly different from the owner of the mark "TRUSTED ADVISORS" and that Applicant's services are also based out of a different part of the country, thereby making it impossible for its sophisticated consumers to confuse the source of the two marks. The Examining Attorney argued that trademarks are presumed to be geographically unrestricted, which suggests that the Examining Attorney may have misunderstood the purpose of Applicant's argument and wrongly assumed that Applicant was making some type of geographic limitation with respect to its services. As discussed below, this is not the case.

What the Applicant was trying to establish by the facts regarding its services is that it serves a very specific type of very sophisticated consumer who is vastly different from the type of consumers who would be served by the owner of the mark "TRUSTED ADVISORS." This is critical because, as discussed below, the law is clear that sophisticated consumers are not likely to be confused by marks that may have some overlap in their content.

Specifically, Applicant's clients tend to be of two main types. One type of client is the large healthcare provider, such as major hospital systems and large physician groups. Many of these types of clients are multi-million dollar corporations that have their own in-house legal counsel and that seek the Applicant's legal advice in areas of highly complex healthcare law or seek Applicant's assistance in lobbying Congress and the Centers for Medicare and Medicaid Services (CMS). These clients specifically seek a D.C.-based specialty firm like the Applicant's firm because of its proximity to Congress and CMS, as well as Applicant's longstanding expertise in health law matters. The second type of client consists of colleges and universities, which again are large corporations that will sometimes have in-house counsel and which seek the Applicant's education law expertise and Applicant's ability to directly confer with officials in the Department of Education (DOE) and Congress. These clients also want a D.C.-based specialty firm for such services because of Applicant's proximity to DOE and Congress. Applicant is one of the very few firms in the entire country to specialize in its particular type of education law.

In addition to Applicant's high degree of specialization, it should be noted that the healthcare and education entities seeking Applicant's advice pay hourly rates for Applicant's senior attorneys that range from $400-$625 per hour. Consumers paying that kind of money for DC-based specialty legal advice know exactly who they are dealing with and are not going to confuse Applicant's mark and services with those of a Texas-based law firm that solely provides for-profit business law services.

The law is clear that likelihood of confusion is greatly reduced where the consumers reviewing the marks are sophisticated and exercise a high degree of care in their purchasing decisions, and that is the point that Applicant was trying to make with its geographic arguments. See, e.g., the authorities and arguments cited by the Trademark Trial and Appeal board in *In re Waterstone Capital Management, L.P. (*TTAB 2005 pertaining to Serial No. 78223503) and *In re Murray* (TTAB 2009 pertaining to Serial No. 77029078). (Applicant realizes that the foregoing TTAB decisions are not precedent, but Applicant nevertheless believes that the authorities cited in these decisions and the rationale of the TTAB stated in these decisions will be useful to the TTAB in analyzing Applicant's analogous case.)

Furthermore, neither Applicant's services, nor the services of the owner of "TRUSTED ADVISORS" are "impulse" purchases (see TMEP § 1207.01). Therefore, it is not credible that the sophisticated consumers that seek out Applicant's services would confuse those services for those of the owner of TRUSTED ADVISORS. Specifically, TMEP § 1207.01(a)(i) provides:

> Conversely, 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, e.g., Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 13 50 (Fed. Cir.

2004) (cooking classes and kitchen textiles not related); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990) (LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER and design for advertising services, namely the formulation and preparation of advertising copy and literature in the plumbing field); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable held not confusingly similar to QR for various products (*e.g.*, lamps, tubes) related to the photocopying field).

Thus, sophisticated healthcare entities and universities seeking information on highly technical areas of healthcare law and education law from a DC-based specialty firm would specifically seek out the Applicant and would readily know that Applicant's services and the use of Applicant's mark would not have been produced by a Texas-based firm dealing in general business law. (See also *Bennett Law Office, P.C. v. Burrus Intellectual Property Law Group* (TTAB 2009 pertaining to Opposition No. 91177164) (in which the TTAB noted in a non-precedential decision that "it is also clear that, based on the differences in the location of the services, there has been little if no opportunity for confusion" between two somewhat similar law firm trademarks.) Thus, the TTAB has taken the nonprecidential position that the different location of the services offered by two law firms with somewhat similar marks can be a factor in determining whether there is any risk of trademark confusion, and we ask the TTAB to do the same in this case as well.

Additionally, applicant has found multiple examples of the USPTO approving marks with the words "TRUSTED" and "ADVISORS," thereby demonstrating the willingness of the USPTO to register similar marks that contain these terms because they are inherently not confusingly similar. See, e.g., "Your Trusted Philanthropic Advisor" (Reg. No. 3406713), "The Trusted Advisor" (Reg. No. 3094466), and "Trusted Advisors to Trusted Advisors" (Reg. No. 2433459). The Examining Attorney did not address this argument at all.

In light of the foregoing, the Applicant respectfully requests that the Trademark Trial and Appeal Board reverse the Examining Attorney and order that Applicant's mark be approved for registration because there is no likelihood of confusion for sophisticated consumers seeking the narrow types of services offered by the Applicant.

Applicant does <u>not</u> request an oral hearing.