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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Medical Risk Management Associates, LLC

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Serial No. 75/799,561

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James C. Wray for applicant.

Janice L. McMorrow, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

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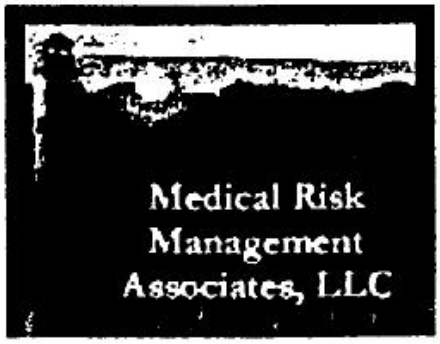
Before Hanak, Hairston and Chapman, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

On August 18, 2000, Medical Risk Management Associates, LLC applied to register the mark reproduced below,



on the Principal Register for the following services in International Class 41:

> Consulting and training services in the fields of sentinel event policy, root cause analysis, action planning and training for avoiding and reducing incidences and likelihood of significant adverse event occurrences for hospitals, clinics, medical insurance companies, and health maintenance organizations.[1]

In the first Office action, the Examining Attorney maintained that the recitation of services, and in particular the wording "sentinel event policy," was indefinite.[2] The Examining Attorney required applicant to amend the recitation of services to indicate the nature of the services and their particular field. Also, the Examining Attorney noted that the drawing did not reproduce satisfactorily and required a new drawing. Further, the Examining Attorney required a description of the mark and suggested the following: "The mark consists in part of a

[1] Serial No. 75/799,561, alleging a date of first use and date of first use in commerce of October 1998.
[2] The present Examining Attorney was not the original Examining Attorney in this case.

lighthouse and a rising sun." Finally, the Examining Attorney stated that the phrase MEDICAL RISK MANAGEMENT ASSOCIATES, LLC was descriptive of applicant's services; required a disclaimer of the phrase apart from the mark as shown; and refused to register the mark in the absence of a disclaimer.

In its response to the Office action, applicant proposed to amend the recitation of services by substituting the word "significant" for "sentinel". In addition, applicant submitted a new drawing. However, applicant stated "[t]he drawing is intentionally fuzzy" because "[i]t is intended to depict a lighthouse in the fog." Applicant, however, did not submit a description of the mark and made no specific reference to the Examining Attorney's requirement in this regard. Further, Applicant argued against the requirement for a disclaimer, maintaining that the phrase MEDICAL RISK MANAGEMENT ASSOCIATES, LLC was at most suggestive of applicant's services.

With respect to the proposed amendment to the recitation of services, the Examining Attorney found that the substitution of "significant" for "sentinel" would impermissibly broaden the scope of the recitation of the services. Also, the Examining Attorney continued to

maintain that the recitation of services was indefinite. Further, the Examining Attorney did not find the new drawing acceptable and maintained that a description of the mark was still needed. Finally, the Examining Attorney was not persuaded by applicant's argument that the phrase MEDICAL RISK MANAGEMENT ASSOCIATES, LLC was not descriptive and that a disclaimer was not necessary. Each requirement was made final and the Examining Attorney finally refused to register the mark absent compliance with the disclaimer requirement.

Applicant filed a notice of appeal, followed by its appeal brief. Thereafter, the Examining Attorney submitted a request to remand, which the Board granted.[3] The Examining Attorney made of record printouts from the Nexis and X-Search databases in support of her position that the phrase MEDICAL RISK MANAGEMENT ASSOCIATES, LLC is merely descriptive of applicant's services, and that it therefore must be disclaimed. All of the requirements contained in the final refusal were continued and again made final.

Applicant was allowed time in which to file a supplemental brief, but it did not do so. Thereafter, the

[3] The present Examining Attorney requested that the case be remanded and has handled the case from that point.

Examining Attorney submitted her brief. No oral hearing was requested.

This appeal involves four requirements, which we will discuss in turn.

Requirement to Amend the Recitation of Services

Inasmuch as applicant's proposed amendment to the recitation of services was not accepted, the recitation reads as originally filed:

> Consulting and training services in the fields of sentinel event policy, root cause analysis, action planning and training for avoiding and reducing incidences and likelihood of significant adverse event occurrences for hospitals, clinics, medical insurance companies, and health maintenance organizations.

According to the Examining Attorney, the recitation of services is "overbroad and indefinite." (Brief, p. 5). In particular, the Examining Attorney maintains that consulting services in the recitation of services could refer to consultation in several different International classes and that the underlying field in which the consulting services are rendered must be specified in order for proper classification. In addition, the Examining Attorney contends that a recitation of services must set forth common names, using terminology that is generally understood, and that the wording "sentinel event policy,

root cause analysis and action planning" does not meet this requirement.

Because applicant makes no argument in its appeal brief with respect to the requirement to amend the recitation of services, we consider applicant to have conceded this requirement.[4] We should point out, however, that at the very least, we agree with the Examining Attorney's position that the wording "sentinel event policy, root cause analysis and action planning" in the recitation of services is indefinite.

New Drawing Requirement

It is the Examining Attorney's position that the substitute drawing submitted by applicant cannot be reproduced properly and therefore a proper drawing must be submitted. Applicant, in its brief, at page 1, states "[a]pplicant will submit a proper drawing when a decision is reached on Applicant's mark." (Brief, p. 1). In view of applicant's statement, we consider applicant to have conceded this requirement as well. We should point that we agree with the Examining Attorney that the drawing does not

[4] We are perplexed by applicant's failure to address this requirement and the requirement for a description of the mark discussed infra. Applicant is advised that it may not seek a remand after this Board's decision for consideration of either a further amendment to its recitation of services or a description of its mark, as the Board has no authority to allow such actions. Similarly, with respect to the requirement for a new drawing discussed infra, the applicant may not seek a remand after our decision in order to submit a new drawing.

reproduce properly as is evidenced from the reproduction of the mark on page 2 of this decision.

Requirement for a Description of the Mark

The Examining Attorney has required that applicant provide a description of the mark. As noted previously, applicant made no mention of this requirement in its response to the Examining Attorney's first Office action. Similarly, applicant made no mention of this requirement in its appeal brief. Thus, we consider applicant to have conceded this requirement. Again, we should point out that we agree with the Examining Attorney's requirement for a description of the mark, particularly in view of the intentionally "fuzzy" nature of the drawing.

Disclaimer Requirement

The Examining Attorney maintains that the phrase MEDICAL RISK MANAGEMENT ASSOCIATES, LLC is merely descriptive of applicant's services and has required that applicant disclaim the phrase apart from the mark as shown. Applicant, in its brief on the case, argues that the phrase is at most suggestive of applicant's services. We note that at the time applicant filed its appeal brief, the evidence of record in support of the Examining Attorney's mere descriptiveness argument consisted of dictionary definitions of the individual words "medical", "risk",

"management", and "associate" along with six third-party registrations of marks wherein the entity designation "LLC" is disclaimed. After the case was remanded, the Examining Attorney made of record articles taken from the Nexis database wherein the phrase "medical risk management" is used and third-party registrations of marks taken from the X-Search database wherein the wording "ASSOCIATES LLC is disclaimed.

The dictionary definitions are taken from The American Heritage Dictionary of the English Language (3d ed. 1992)(electronic version licensed by INSO). Set forth below are the definitions the Examining Attorney considered most pertinent in this case:

> **medical** *adjective*:
> **1.** Of or relating to the practice of medicine.
>
> **risk** *noun*:
> **3. a.** The danger or probability of loss to an insurer.
> Often used to modify another noun: *risk factors; risk management.*
>
> **management** *noun*
> **1.** The act, manner, or practice of managing; handling, supervision, or control.
>
> **associate** *verb*
> **1.** To join as a partner, ally, or friend.

In addition, the following are representative excerpts

of the Nexis articles wherein the phrase "**medical risk management**" is used:

> A **medical risk-management company**, FutureHealth provides a service to insurance companies and self-insured employers that help them identify the highest risk portions of their populations and manage their compliance with medical treatment.
> (*The Daily Record*, Baltimore, Md., May 2, 2000);
>
> Building a sustainable, competitive edge requires considerable expenditures of time and money to develop the needed array of core competencies, including integrated **medical risk management**, information technology based business solutions, regulatory compliance . . .
> (*Healthcare Financial Management*, October 1, 1999);
>
> MIS provides companies with absence management, medical advisory, health and safety compliance, medical referral, **medical risk management**, occupational health and screening services.
> (*The Regulatory News*, May 21, 1998); and
>
> Hartford Health's former PPO, MedSpan, received approval for its HMO license in May 1996 and has announced a strategy aimed at reducing employer/ payer costs by supporting provider partnerships, **medical risk management** and cost-effective administrative services.
> (*Medical Industry Today*, May 27, 1997).

In determining whether the evidence of record is sufficient to establish that the phrase MEDICAL RISK MANAGEMENT ASSOCIATES, LLC is merely descriptive of applicant's recited services, and therefore must be disclaimed, we apply the following legal principles. A term or phrase is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the

Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

We have carefully considered the evidence of record and the arguments made by applicant and the Examining Attorney, and we conclude that MEDICAL RISK MANAGEMENT ASSOCIATES, LLC is merely descriptive as used in connection with applicant's services, and that it therefore must be disclaimed.

It is clear from the dictionary definitions and Nexis evidence that MEDICAL RISK MANAGEMENT identifies a feature of applicant's consulting and training services, namely, managing risk in the field of medicine. Also, the terms ASSOCIATES and LLC are recognized entity designations, with

no source-identifying function. They merely indicate that applicant is a group of partners operating as a limited liability company (LLC). As evidenced by the third-party registrations, the Office has considered these types of entity designations to be merely descriptive. The relevant purchasers of applicant's consulting and training services would immediately understand, when the phrase MEDICAL RISK MANAGEMENT ASSOCIATES, LLC is used in connection therewith, that applicant is a limited liability company that renders consulting and training services for managing risk in the field of medicine.

Decision: Each of the foregoing requirements, and the refusal to register based on applicant's failure to comply with the requirements, is affirmed.