

This Opinion is Not a
Precedent of the TTAB

Mailed: April 1, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re SV Life Sciences Managers LLP
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Serial No. 79207107
—

Alexander Lazouski of Lazouski IP LLC, for SV Life Sciences Managers LLP.

Steven M. Perez, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

—
Before Taylor, Larkin, and Johnson,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

SV Life Sciences Managers LLP (“Applicant”) seeks registration on the Principal Register, through extension of the protection of International Registration No. 1343604 to the United States, of the wording DEMENTIA DISCOVERY FUND (in standard characters and with DEMENTIA and FUND disclaimed) for the following goods and services:

- “Pharmaceutical and medical preparations and substances for the prevention and treatment of dementia; sanitary preparations for medical purposes; pharmaceutical preparations, all for use in the treatment or prevention of brain diseases and degenerative dementia disorders; antiseptic preparations; prescription pharmaceuticals for humans for the prevention and treatment of dementia; veterinary and sanitary products,

namely, antibiotics; dietary food supplements; health food supplements; vitamins; dietetic substances adapted for medical use, namely, sugar substitutes; food for babies; foods for medical purposes, namely, food for enteral feeding for teens adults and elders; homeopathic pharmaceuticals for use in the treatment of dementia; medicinal drinks; anti-diabetic drugs; hypertension medications; steroid hormones; non-steroidal anti-inflammatory drugs; chemicals in the nature of medical diagnostic reagents for use in medical and veterinary diagnosis of dementia disorders,” in International Class 5;

- “Insurance, namely, insurance brokerage; financial affairs, namely, financial information, management and analysis services; monetary affairs, namely, monetary exchange and monetary strategic consultation and research; real estate affairs, namely, leasing of real estate, real estate brokerage and real estate appraisal services; financing services in relation to medical research; humanitarian aid and development, namely, charitable fundraising and financial support services for research in dementia; charitable fundraising for dementia research; charitable fundraising for the purchase of food, clothing and medical items for those in need; financial sponsorship of medical research in the field of dementia; financial management and administration of charitable funds for dementia research; distribution and allocation of charitable funds, namely, accepting and administering monetary charitable contributions to fund medical research; credit card and charge card payment processing services; providing of financial information regarding corporate donations and payroll donations by employees; financial information, advisory, and consultancy services in relation to the aforesaid services,” in International Class 36;
- “Scientific and technological services, namely, research and design in the field of pharmaceutical development; scientific and technological services, namely, medical research and product development in the field of dementia; industrial analysis and research services in the field of computer hardware; design and development of computer hardware and software; design and development of computer hardware and software connected with dementia; Laboratory analysis in the field of pharmaceuticals and clinical trials in the pharmaceutical, biotechnology and medical device fields; laboratory research in the field of pharmaceuticals and clinical trials in the pharmaceutical, biotechnology and medical device fields; laboratory testing services in the field of pharmaceutical product testing; medical research laboratory services; medical research services in relation to the causes, symptoms, diagnosis, treatment and prevention of dementia; scientific genetic research in the field of dementia; provision of scientific research facilities in the nature of laboratories; medical research in relation to medicines and pharmaceuticals; medical research services; design and

development of mobile device software applications; design and development of computer programs,” in International Class 42; and

- “Medical services; the provision of medical information, online via the Internet, on the subject of all aspects of dementia diseases and the prevention of all types dementia diseases; medical services relating to the science of nutrition and the use of medical and pharmaceutical preparations and substances; medical services in relation to the recommendation and prescribing of medicaments and medical products of all kinds; medical services concerning dementia, namely physician, nursing, midwifery and hospital services; diagnostic and laboratory services, namely, medical testing for diagnostic or treatment purposes; hygienic and beauty care for human beings; agricultural services, namely, agricultural advice; dentistry services; medical analysis for the diagnosis and treatment of individuals and groups of people with dementia including x-ray examinations and taking blood samples; pharmaceutical advice; medical clinic services; medical treatment services; medical analysis services; medical information services; nursing services; information, advisory and consultancy services relating to all the aforesaid, including information provided on-line from a computer database, intranets, extranets and the Internet,” in International Class 44.¹

The Examining Attorney refused registration of Applicant’s proposed mark in all four classes under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that DEMENTIA DISCOVERY FUND is merely descriptive of a characteristic or purpose of one or more of the goods and services in each class.

When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, which was denied. Applicant and the Examining Attorney have filed briefs.² We affirm the refusal to register.

¹ Application Serial No. 79207107 was filed on July 14, 2016 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), on the basis of International Registration No. 1343604.

² Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *Turdin v. Tribolite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page number(s) of the docket entry where the cited materials appear.

I. Record on Appeal³

The record on appeal includes the following:

- Dictionary definitions of “dementia,” “discover,” “discovery,” and “fund,” made of record by the Examining Attorney,⁴ and dictionary definitions of “discovery,” made of record by Applicant;⁵
- Webpages of medical schools, colleges and universities, and other entities, and related materials, displaying the terms “Discovery Fund(s),” “Dementia Discovery,” or “discovery” in proximity to “dementia,” in connection with medical or scientific research, made of record by the Examining Attorney;⁶
- Pages from Applicant’s website at theddfund.com, made of record by the Examining Attorney;⁷

³ Citations in this opinion to the application record, and the request for reconsideration and its denial, are to pages in the Trademark Status & Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”).

⁴ May 28, 2017 Office Action at TSDR 2-16; September 5, 2018 at TSDR 27-58.

⁵ December 11, 2017 Response to Office Action at TSDR 8-22.

⁶ May 28, 2017 Office Action at TSDR 17-33; February 2, 2018 Office Action at TSDR 2-99, 102-103; September 5, 2018 Final Office Action at TSDR 2-26; July 26, 2019 Denial of Request for Reconsideration at TSDR 17-43. The “Discovery Fund” webpages include pages from the website of the University of British Columbia in Vancouver, Canada, February 2, 2018 Office Action at TSDR 100-101, as well as pages referring to the Centre for Addiction and Mental Health in Toronto, Canada. September 5, 2018 Final Office Action at TSDR 2-5, 59-60, while some of the “Dementia Discovery” webpages are from the website of the UK Dementia Research Institute. July 26, 2019 Denial of Request for Reconsideration at TSDR 24-31, 35-43. The webpages pertaining to the Centre for Addiction and Mental Health are on the website of a United States publication, September 5, 2018 Final Office Action at 2-5, but in the absence of evidence of exposure of the University of British Columbia and UK Dementia Research Institute websites to consumers in the United States, we have given them no consideration. *Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1491 n.92 (TTAB 2017).

⁷ May 28, 2017 Office Action at TSDR 33-38; July 26, 2019 Denial of Request for Reconsideration at TSDR 2-16.

- Webpages from the European Union Intellectual Property Office website regarding Applicant’s European Union Registration No. 1343604 for the mark DEMENTIA DISCOVERY FUND, made of record by Applicant;⁸ and
- Third-party registrations of DISCOVERY-formative marks for goods and services in the medical and pharmaceutical research fields in which DIISCOVERY has not been disclaimed, made of record by Applicant.⁹

II. Mere Descriptiveness Refusal

A. Applicable Law

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them,” unless the mark has been shown to have acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f).¹⁰ A mark is “merely descriptive” within the meaning of § 2(e)(1) “if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought.” *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017) (citing *In re Bayer Aktiengesellschaft*,

⁸ December 11, 2017 Response to Office Action at TSDR 23-28.

⁹ August 2, 2018 Response to Office Action at TSDR 19-77. Applicant attached the registrations and dictionary definitions of “discovery” to its appeal brief. 13 TTABVUE 24-97. “Parties to Board cases occasionally seem to be under the impression that attaching previously-filed evidence to a brief and citing to the attachments, rather than to the original submission is a courtesy or a convenience to the Board. It is neither.” *In re Michalko*, 110 USPQ2d 1949, 1950 (TTAB 2014). Citation to the record is sufficient, as it obviates the need to determine whether materials attached to briefs are properly of record. *Id.* at 1950-51.

¹⁰ Applicant does not claim that if the proposed mark is found to be merely descriptive, it is registrable because it has acquired distinctiveness.

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