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

Proceeding	88767550
Applicant	Patzik, Frank & Samotny Ltd.
Applied for Mark	STRAIGHT TALK EFFECTIVE SOLUTIONS
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Submission	Appeal Brief
Attachments	1000-1054 Appeal Brief.pdf(128074 bytes ) Exhibit 1 Straight Talk Straight From the Heart.pdf(784757 bytes ) Exhibit 2 Straight Talk No Chaser.pdf(182629 bytes ) Exhibit 3 Straight Talk. Sound Advicve.pdf(448775 bytes ) Exhibit 4 Straight Talk. Experience.pdf(527019 bytes ) Exhibit 5 Straight Talk and Strong Advocacy.pdf(1218691 bytes ) Exhibit 6 Straight Talk for Difficult Situations.pdf(105071 bytes ) Exhibit 7 Straight Talk.pdf(787534 bytes ) Exhibit 8 Straight Talk.pdf(2243455 bytes ) Exhibit 9 Straight Talk Sound Counsel Practical Solutions_.pdf(389733 bytes ) Exhibit 10 Straight Talk Honest Answers 24 7.pdf(162760 bytes ) Exhibit 11 Straight Talk.pdf(1212474 bytes ) Exhibit 12 Straight Talk Practical Solutions_.pdf(441667 bytes ) Exhibit 13 Sound Counsel. Straight Talk.pdf(820306 bytes ) Exhibit 14 Fast Action and Straight Talk From Professionals.pdf(255025 bytes ) Exhibit 15 Results Driven Straight Talk.pdf(898028 bytes )
Appealed class	Class 045. First Use: 0 First Use In Commerce: 0 All goods and services in the class are appealed, namely: Legal services
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Date	03/24/2021

**APPEAL TO THE TRADEMARK  
TRIAL AND APPEAL BOARD**

In The United States Patent and Trademark Office  
Before the Trademark Trial and Appeal Board

**IN REAPPLICATION OF:** Patzik, Frank & Samotny Ltd.  
**ATTORNEY DOCKET NO.:** 1000-1054  
**SER. NO.:** 88/767,550  
**FILING DATE:** January 21, 2020  
**MARK:** STRAIGHT TALK EFFECTIVE SOLUTIONS

Trademark Trial and Appeal Board  
P. O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT'S APPEAL BRIEF**

The Appellant, Patzik Frank & Samotny, Ltd., respectfully appeals the final refusal to register the mark STRAIGHT TALK EFFECTIVE SOLUTIONS in association with legal services. Registration has been refused on the basis of a purported likelihood of confusion with U.S. Reg. No. 2861151 on STRAIGHT TALK IS GOOD FOR BUSINESS in association with legal services (the "cited registration").

As demonstrated below, the Examining Attorney has: (1) failed to give adequate consideration to compelling evidence demonstrating that the STRAIGHT TALK component of each mark is in widespread use in association with legal services, and is hence a weak formative; and (2) improperly focused on an impermissible factor, namely a specimen of use submitted during the application resulting in the cited registration, in determining that STRAIGHT TALK is the dominant portion of the cited registration.

**I. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPELLANT’S MARK AND THE MARK IN THE CITED REGISTRATION.**

Under *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (CCPA 1973), a likelihood of confusion for purposes of Section 2(d) exists only when the purchasing public would be confused, mistaken, or materially deceived with regard to Appellant’s mark. In the present case, and as set forth in more detail below, because of the differences in the marks and the weakness of the cited mark, confusion in the marketplace is unlikely.

**A. “STRAIGHT TALK” is in Widespread Third-Party Trademark Use.**

In Appellant’s Office Action response of August 26, 2020, Appellant demonstrated that the “STRAIGHT TALK” formative, which forms the only common portion of both Appellant’s mark and the cited registration, is in widespread use as a component for trademarks associated with legal services. Accordingly, consumers of legal services, accustomed to encountering “STRAIGHT TALK” as a component of trademarks for legal services, are able to readily distinguish among those trademarks even where, unlike here, the overall differences between the trademarks are small.

In particular, Appellant’s August 26, 2020 response included evidence in the form of the following fifteen (15) examples of the widespread third-party use of STRAIGHT TALK-formative trademarks in association with legal services. Each of Exhibits 1-15 identified in the table below and previously submitted in Appellant’s August 27, 2020 response as Exhibits 1-15 thereto was captured on August 25, 2020:

<b>Exhibit No.</b>	<b>Trademark</b>	<b>Legal Services Provider</b>	<b>URL</b>
1	STRAIGHT TALK, STRAIGHT FROM THE HEART	Dittrich Law Firm, P.A.	<a href="https://www.dittrichlawoffice.com/contact/">https://www.dittrichlawoffice.com/contact/</a>
2	STRAIGHT TALK-NO CHASER	Law Offices of Elizabeth A. Douglas PLLC	<a href="https://edouglaslaw.com/edouglas/family-law-straight-talk-art/">https://edouglaslaw.com/edouglas/family-law-straight-talk-art/</a>
3	STRAIGHT TALK. SOUND ADVICE. PERSONAL ATTENTION	Rouner Law Office LLC	<a href="http://rounerlawoffice.com/">http://rounerlawoffice.com/</a>
4	STRAIGHT TALK. EXPERIENCE. RESULTS.	LePley Law Firm	<a href="https://www.lepleylawfirm.com/">https://www.lepleylawfirm.com/</a>
5	STRAIGHT TALK AND STRONG ADVOCACY.	Greenwood Law	<a href="https://www.dwg-law.com/">https://www.dwg-law.com/</a>
6	STRAIGHT TALK FOR DIFFICULT SITUATIONS	Jaspers, Moriarty & Wetherille, P.A.	<a href="https://www.jmwlaw.com/family/">https://www.jmwlaw.com/family/</a>
7	STRAIGHT TALK. SOUND ADVICE.	Law Offices of Randy L. Smith	<a href="https://www.randysmithlaw.com/">https://www.randysmithlaw.com/</a>
8	STRAIGHT TALK. PRACTICAL SOLUTIONS.	Allen & Baughman Attorneys at Law	<a href="https://ab-lawoffices.com/">https://ab-lawoffices.com/</a>
9	STRAIGHT TALK, SOUND COUNSEL, PRACTICAL SOLUTIONS.	Fabrizio Law Offices	<a href="https://www.fabriziolaw.com/contact%20us.html">https://www.fabriziolaw.com/contact%20us.html</a>
10	STRAIGHT TALK, HONEST ANSWERS. 24/7	Law Offices of Eugene G. Bruno, PC	<a href="https://www.caraccidentlawyer-sandiego.com/">https://www.caraccidentlawyer-sandiego.com/</a>
11	STRAIGHT TALK. NO BULL.	Solheim Law Firm	<a href="https://www.solheimlaw.com/">https://www.solheimlaw.com/</a>
12	STRAIGHT TALK, PRACTICAL SOLUTIONS.	Springer & Lyle, LLP	<a href="https://springer-lyle.com/practice-areas/business-litigation/">https://springer-lyle.com/practice-areas/business-litigation/</a>
13	SOUND COUNSEL. STRAIGHT TALK. SENSIBLE SOLUTIONS.	Bailey, Johnson & Peck, PC	<a href="https://www.baileyjohnson.com/albany-personal-injury-law-office/">https://www.baileyjohnson.com/albany-personal-injury-law-office/</a>
14	FAST ACTION AND STRAIGHT TALK FROM PROFESSIONALS	McVan & Weidenburner	<a href="http://www.mcvanlaw.com/aboutus.html">http://www.mcvanlaw.com/aboutus.html</a>
15	RESULTS DRIVEN. STRAIGHT TALK.	Mike J. Demers, PLLC	<a href="https://mikedemerslaw.com/">https://mikedemerslaw.com/</a>

In particular, as set forth in the TMEP, “[i]f the evidence establishes that the consuming public is exposed to third-party use of similar marks on similar goods, this evidence ‘is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.’” TMEP Section 1207.01(d)(iii) citing *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1373, 73 U.S.P.Q.2d 1689, 1693 (Fed. Cir. 2005). In other words, the phrase STRAIGHT TALK is fairly dilute in the field of Appellant’s services, such that the relevant purchasers are able to distinguish among those marks based upon small distinctions in the marks. See, e.g., *In re Angel Computer Network Services, Inc.*, Serial No. 77438719 (TTAB January 25, 2013) [not precedential].

Here, the evidence clearly establishes that STRAIGHT TALK, the only similarity between Appellant’s mark and the cited registration, is quite weak in the legal services field. As such, consumers of legal services will readily draw a distinction between Appellant’s mark and the cited registration, and will naturally presume that they are associated with different sources.

In the final Office Action of September 17, 2020, the Examining Attorney failed to give any consideration whatsoever, let alone adequate consideration, to this evidence of widespread third party usage of STRAIGHT TALK in association with identical services to those of Appellant and the cited registration. Instead, the Examining Attorney focused solely upon the cited registration, stating on page 3: “*However, the cited registered mark is the only mark on the Register that contains the wording “STRAIGHT TALK” and relates to legal services.*” By impermissibly focusing solely upon registered marks, and ignoring evidence of unregistered third party use, Examining Attorney failed to properly consider and address the weakness of the “STRAIGHT TALK” formative, and to recognize that relevant consumers would thus readily distinguish

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