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Mailed: April 22, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Fidelity & Guaranty Life Insurance Company*

Serial No. 97239785

Jon A. Schiffrin of Schiffrin & Longo, P.C.,
for Fidelity & Guaranty Life Insurance Company.

Christina Bellotti, Trademark Examining Attorney, Law Office 103,
Stacy Wahlberg, Managing Attorney.

Before Heasley, Coggins, and Brock,
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Fidelity & Guaranty Life Insurance Company ("Applicant") seeks registration on the Principal Register of the mark **HINDSIGHT 20/20** (in standard characters) for services ultimately identified as "insurance services, namely, administration of life insurance; administration of annuities" in International Class 36.[1] Applicant appeals the Examining Attorney's final refusal to register the mark under Trademark Act

[1] Application Serial No. 97239785 was filed January 26, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

Sections 1 and 45, 15 U.S.C. §§ 1051 and 1127, on the ground that Applicant's specimen does not show a direct association between the mark and the services.

Applicant and the Examining Attorney have filed briefs. For the reasons discussed below, we reverse the refusal to register.

## I. Relevant Prosecution History

Applicant filed the subject application based on an intention to use the mark HINDSIGHT 20/20 in commerce under Section 1(b) for "insurance services, namely, underwriting, issuing and administration of life insurance; underwriting, issuance and administration of annuities."[2] A notice of allowance issued,[3] and, after obtaining two extensions of time, Applicant filed a Statement of Use alleging that it used HINDSIGHT 20/20 in commerce in connection with all of the originally recited services at least as early as February 6, 2024.[4]

As specimens of use for the identified services, Applicant attached to its Statement of Use what it described as two "[p]ages from Applicant's website with mark and discussion of administration services under the mark."[5] Excerpts from the specimens submitted by Applicant are reproduced below:[6]

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[2] January 26, 2022 Application. Citations to the prosecution record refer to the .pdf version of the TSDR system.

[3] February 7, 2023 Notice of Allowance.

[4] February 7, 2024 Statement of Use at 1.

[5] *Id.* at 2. The specimens more accurately may be described as screenshots of a portion of two pages from a .pdf document available at Applicant's website.

[6] *See* February 7, 2024 Specimen. The excerpts comprise the bulk and substance of the specimens; excised material is just ancillary browser and screen user interface (e.g., address bar and system tray from the user's computer screen).



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After reviewing these specimens, the Examining Attorney issued a refusal under Trademark Act Sections 1 and 45, asserting that they did not show a direct association between the mark and the services. The Examining Attorney explained that HINDSIGHT 20/20 appeared to be used in connection with "a method and/or strategy for investing funds" rather than for the identified insurance services (i.e., underwriting, issuing, or administration of life insurance or annuities), and there was "nothing in the submitted specimen that would create in the minds of potential consumers a sufficient nexus, much less a direct association between the applied-for mark and the services."[7]

In response, Applicant amended the identification to delete reference to the "underwriting" and "issuing" services, leaving only the administration of life insurance and annuities, and argued that the Examining Attorney had taken an unnecessarily strict and narrow view of "administration" services when she should have employed a more flexible approach in reviewing the specimens.[8] In support of its original specimens, Applicant submitted various material about administration and strategies, as well as "new materials discussing the mark" and "[a]dditional evidence of how the mark is used in connection with administration services," but Applicant did not submit a new specimen.[9]

[7] March 22, 2024 Office Action at 2.

[8] May 6, 2024 Response to Office Action at 1-2, 6.

[9] *Id.* at 3, 6, 72 (unnumbered Exhibit I). The "additional evidence" appears to be a later edited, more complete view (i.e., less cropped screen shot) of the first of Applicant's two pages submitted as the original specimen. The document and page numbers are identical, but the new evidence indicates that the document was revised May 2024, after the specimen was filed, and, indeed, there is at least one difference on this page from the portion of the page

The Examining Attorney maintained that the specimens fell short of demonstrating use of the mark in connection with administration of life insurance or annuities, arguing that the mark instead appeared to be used in connection with "a strategy for investment services" and "a method and/or strategy for investing funds."[10] The Examining Attorney explained that there was "nothing in the submitted specimen that would create in the minds of potential consumers a sufficient nexus, much less a direct association between [HINDSIGHT 20/20] and the [administration of life insurance or annuities]."[11] The Examining Attorney accordingly made final the refusal to register, after which Applicant appealed to this Board.

## II. Applicable Law

"The Lanham Act provides for registration of a mark based on use of the mark in commerce." *In re Siny Corp.*, 920 F.3d 1331, 1335 (Fed. Cir. 2019).[12] Although Section 1(b) of the Trademark Act permits an applicant to begin the registration process having only a "bona fide intention" to use a mark in commerce, 15 U.S.C. § 1051(b), the Act ultimately requires an applicant "to show that the mark is being used in

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shown in original specimen (e.g., the addition of the wording "exclusively available with F&G"). The additional evidence was not offered as a substitute specimen, nor can we accept it as such because there is no supporting affidavit. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") § 904.05 (Nov. 2024). We may, however, otherwise consider the additional material. *E.g., In re Signal Cos.*, 1986 TTAB LEXIS 167, at *3 (TTAB 1986).

[10] November 15, 2024 Final Office Action at 3.

[11] *Id.*

[12] As part of an internal Board pilot program, this opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals as they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). Board decisions are cited to the Lexis legal database and are all precedents. Practitioners should adhere to the practice set forth in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 101.03 *et seq*. (2024).

commerce before obtaining a registration on the mark." *M.Z. Berger & Co. v. Swatch AG*, 787 F.3d 1368, 1375 (Fed. Cir. 2015). To prove such use, an applicant must, on filing a statement of use under Section 1(d), include one or more specimens showing the mark as actually used in connection with the goods or services identified in the application. 15 U.S.C. § 1051(d); Trademark Rules 2.56, 2.88, 37 C.F.R. §§ 2.56, 2.88. *See In re Fallon*, 2020 TTAB LEXIS 464, at *8 (TTAB 2020); TMEP § 904.07(a).

Under Trademark Rule 2.56(b)(2), 37 C.F.R. § 2.56(b)(2), "[a] service mark specimen must show the mark as used in the sale of the services, including use in the performance or rendering of the services, or in the advertising of the services. The specimen must show a direct association between the mark and the services." While the specimen "need not explicitly refer to those services in order to establish the requisite direct association between the mark and the services, . . . 'there must be something which creates in the mind of the purchaser an association between the mark and the service activity.'" *In re WAY Media, Inc.*, 2016 TTAB LEXIS 201, at *4 (TTAB 2016) (quoting *In re Johnson Controls, Inc.*, 1994 TTAB LEXIS 25, at *7 (TTAB 1994)).

"To determine whether a mark is used in connection with the services described in the [application], a key consideration is the perception of the user." *In re JobDiva, Inc.*, 843 F.3d 936, 941 (Fed. Cir. 2016) (citing *Lens.com, Inc. v. 1-800 Contacts, Inc.*, 686 F.3d 1376, 1381-82 (Fed. Cir. 2012)). "Both precedent and examination guidance make clear that in assessing the specimens, consideration must be given not only to the information provided by the specimen itself, but also to any explanations offered

by Applicant clarifying the nature, content, or context of use of the specimen that are consistent with what the specimen itself shows." *In re Cardio Grp., LLC*, 2019 TTAB LEXIS 153, at *6 (TTAB 2019); *see also In re Int'l Env't Corp.*, 1986 TTAB LEXIS 150, at *8-10 (TTAB 1986) (applicant's explanation, which was of record, that specimens were directed to potential customers, was probative).

## III. Analysis

The issue presented in this case is whether Applicant's specimen and related literature show **HINDSIGHT 20/20** as a service mark for "insurance services, namely, administration of life insurance; administration of annuities." An annuity is "[a] contract or agreement by which one receives fixed payments on an investment for a lifetime or for a specified number of years."[13] "Annuities are financial products sold by insurance companies that help retirees generate a guaranteed stream of lifetime income. . . . An indexed annuity is tied to the performance of an equity-based index like the S&P 500."[14]

The "[E]xamining [A]ttorney does not dispute that [A]pplicant provides administration services as identified in the application record[.]" She contends

[13] AMERICAN HERITAGE DICTIONARY, ahdictionary.com/word/search.html?q=annuity (accessed April 16, 2025). The Board may take judicial notice of dictionary definitions and information from encyclopedias. *See, e.g., In re White Jasmine LLC*, 2013 TTAB LEXIS 9, at *20 n.23, 24 (TTAB 2013); *see also B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 728 (Fed. Cir. 1988) ("dictionaries and encyclopedias may be consulted").

[14] ENCYCLOPEDIA BRITANNICA, britannica.com/money/deferred-vs-immediate-annuities (accessed April 16, 2025).

instead that the specimen of record shows use of the mark "in connection with an investment strategy rather than" for insurance administration services.[15]

Applicant argues that "administration" services involve "the arrangements and tasks needed to control the operation of a[n annuity] plan," and such tasks include "the determination of what index is used in issuing a particular annuity[.]" Applicant contends that "[a]lthough the word 'strategy' is used in Applicant's specimen," it is clear from the specimen that Applicant "administers the arrangement and tasks used to select a particular annuity[.]"[16] Applicant explains that "['a]dministration[']' involves strategy analysis and management . . . , and even though the word 'administration' is not used in the specimen, it is clear that administration encompasses strategy planning."[17] "Without Applicant's administration of this strategy, consumers would have nothing to choose; . . . the specimens refer to an 'innovative approach' that obviously refers to an [annuity] program administered by Applicant."[18] "Consumers would not be able to [select the correct annuity by index] without Applicant administering the consumer's life insurance and annuity portfolio."[19]

[15] 6 TTABVUE 3. Citations to the briefs in the appeal record refer to the TTABVUE docket system.

[16] 4 TTABVUE 7; and citing the CAMBRIDGE DICTIONARY definition of "administration" attached to the May 6, 2024 Response to Office action at 12-25.

[17] 4 TTABVUE 10; and citing Exhibits B-D attached to the May 6, 2024 Response to Office action at Applicant's May 6 Response to Office Action at 26-47.

[18] 4 TTABVUE 11.

[19] 4 TTABVUE 10-11.

"Direct association is the minimum the specimen must show, and it may be established textually, contextually, or logically." TMEP § 1301.04(f)(ii) (quoting *In re Universal Oil Prods. Co.*, 476 F.2d 653, 655 (CCPA 1973). In this case, Applicant provided multiple exhibits to explain the context of its administration services, including one article relevant to Applicant's indexed annuity, stating that "administration is usually performed by a portfolio administrator, on behalf of an investor client. . . . Passive administration is geared toward enabling an investment strategy wherein you set the trades in place and then let them develop. Often, passive administration of the portfolio involves investing into index funds, which can be optimized for high returns."[20]

The specimen of record mentions life insurance, premiums, and investment options. Because the specimen contains "Fidelity & Guaranty Life Insurance Company" apart from other text,[21] consumers know the advertisement is from a life insurance company. The specimen specifically informs consumers that Applicant offers "[i]ndexes tailored to your investment approach," and they "have the flexibility to allocate [their] premium across our four flagship index options or **chose our new Hindsight 20/20℠ strategy** for all or part of your allocation."[22] The Hindsight 20/20 "strategy" is listed after four other indexes (i.e., S&P 500, Russell 2000, Nasdaq-100, and MSCI EAFE). Consumers are also informed that "while it is not possible to

[20] *Portfolio Administration, Portfolio Rebalancing and Investments*, ANGEL ONE (March 22, 2024, 1:45 PM), www.angelone.in/blog (May 6, 2024 Response to Office Action at 27-28).

[21] February 7, 2024 Specimen at 1.

[22] February 7, 2024 Specimen at 2 (bold in original).

directly invest in an index, allocating amounts to an index-linked interest strategy exposes you indirectly to the associated investment risks. As part of our commitment to offering a diverse range of options, we provide you with a selection of 27 index-linked interest strategies."[23] All of this is in accord with the definition of an annuity as referenced above (i.e., fixed payments on an investment sold by insurance companies, to generate a stream of income, and, if indexed, tied to the performance of an equity-based index like the S&P 500), and with the explanatory literature submitted by Applicant (i.e., passive administration involving index funds).

We do not find that the repeated word "strategy" or the word "approach" associated with the mark in the specimen limits the mark and bends the consumer's perception as far as the Examining Attorney suggests. The literature submitted by Applicant indicates that relevant consumers would perceive the mark as indicating a passive administration option as part of Applicant's offering of annuities. The "minimum requirement [we are looking for in this appeal] is some direct association between the offer of services and the mark sought to be registered[.]" *In re Universal Oil Prods.*, 476 F.2d at 655. While the specimen does not explicitly refer to an "annuity," it does explicitly mention "life insurance," "premiums," and "index-linked" investment options, enough to create in the mind of potential purchasers an association between the mark HINDSIGHT 20/20 and the administration of annuities. *See In re WAY Media*, 2016 TTAB LEXIS 201, at *4 (explicit reference to the services not required, just something to create an association between the mark

[23] February 7, 2024 Specimen at 2.

and the service activity); *see also In re Pitney Bowes, Inc.*, 2018 TTAB LEXIS 2, at *5 (TTAB 2018) (while examining attorney reasonably found the specimen unclear, applicant's explanation of the specimen and how applicant provides the services referenced on the specimen resolved the ambiguity); TMEP § 1301.04(f)(ii) (noting that "direct association may be indicated by the context or environment in which the services are rendered, or may be inferred based on the consumer's general knowledge of how certain services are provided or from the consumer's prior experience in receiving the services.").

## IV. Decision

The refusal to register Applicant's mark HINDSIGHT 20/20 under Trademark Act Sections 1 and 45 is reversed.