

ESTTA Tracking number: **ESTTA363939**

Filing date: **08/18/2010**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Caring Hearts of Sedona, LLC
Granted to Date of previous extension	08/18/2010
Address	6050 Highway 179, Suite 3 Sedona, AZ 85012 UNITED STATES

Attorney information	Christopher J. Day Law Office of Christopher Day 301 East Bethany Home Road, Suite A-213 Phoenix, AZ 85012 UNITED STATES chris@daylawfirm.com
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Applicant Information

Application No	77799901	Publication date	04/20/2010
Opposition Filing Date	08/18/2010	Opposition Period Ends	08/18/2010
Applicant	H.H. Franchising Systems, Inc. Suite 300 10700 Montgomery Road Cincinnati, OH 45242 UNITED STATES		

Goods/Services Affected by Opposition

Class 045. First Use: 2009/07/31 First Use In Commerce: 2009/07/31 All goods and services in the class are opposed, namely: Personal support and household affairs management services for individuals at their residences, namely, companionship services for ill, elderly, handicapped, and homebound individuals; Personal support and household affairs management services for individuals at their residences, namely, personal care assistance of activities of daily living, namely, bathing, dressing, medication reminders; Providing non-medical assisted living services for personal purposes in the nature of running errands, mail sorting, mail handling and mail receiving
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77886337	Application Date	12/04/2009
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	CARING HEARTS OF SEDONA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 045. First use: First Use: 2003/07/00 First Use In Commerce: 2003/07/00 Providing non-medical in-home care for others in the nature of grooming, bathing, shopping, cooking, cleaning, companionship, personal mobility, coordination of schedules		

Attachments	77886337#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (4 pages)(96650 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher J. Day/
Name	Christopher J. Day
Date	08/18/2010

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

In re:

Applicant's Mark: CARING HEARTS
Application Serial No: 77799901
Date of Publication: April 20, 2010
Extension Granted to: August 18, 2010

Caring Hearts of Sedona, LLC,

Opposer,

v.

**H.H. Franchising Systems, Inc. DBA
Home Helpers,**

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Caring Hearts of Sedona, LLC, a limited liability company organized under the laws of Arizona with a business address of 6050 Highway 179, Suite 3, Sedona, AZ 86351, believes that it is or will be damaged by Application Serial No. 77799901 and hereby opposes same.

As grounds of this Opposition, it is alleged that:

1. Applicant's application for the mark CARING HEARTS was filed on a 1(a) basis on August 7, 2009.
2. Applicant is alleging a first use anywhere date of 07/31/2009, and a first use in commerce date of 07/31/2009.
3. Applicant's mark was published for opposition on April 20, 2010. On May 7, 2010, Opposer sought a ninety day extension of time to file an opposition. The Board granted the extension to August 18, 2010.
4. Applicant's CARING HEARTS mark was filed for "personal support and household affairs management services for individuals at their residences, namely, companionship services for ill, elderly, handicapped, and homebound individuals; personal support and household affairs management services for individuals at their residences, namely, personal care assistance of activities of daily living, namely, bathing, dressing, medication reminders; providing non-medical assisted living services for personal purposes in the nature of running errands, mail sorting, mail handling and mail receiving" in International Class 045.
5. Since at least as early as July 2003, and before the date that Applicant filed its application, Opposer has used "CARING HEARTS" and "CARING HEARTS OF SEDONA" as a trade name and trademark in connection with non-medical in-home care for others in the nature of grooming, bathing, shopping, cooking, cleaning, companionship, personal mobility, coordination of schedules.
6. On March 19, 2003, and before any date which Applicant can claim priority in the mark, Oppositioner filed articles of incorporation with the Arizona Secretary of State under the name of "Caring Hearts of Sedona, LLC" See Exhibit A, attached.

7. On December 4, 2009, Opposer filed App. Ser. No. 77886337 to register CARING HEARTS OF SEDONA for “providing non-medical in-home care for others in the nature of grooming, bathing, shopping, cooking, cleaning, companionship, personal mobility, coordination of schedules.”
8. Opposer alleges that Opposer’s continued and legal use of Opposer’s CARING HEARTS and CARING HEARTS OF SEDONA marks will be impaired by the continued application of said mark of Applicant.
9. Opposer alleges that Applicant's use of the mark in Registration Number 77799901 creates a "likelihood of confusion" within the meaning of Section 2(d) of the Lanham Act and is inimical to Opposer's prior rights in the mark.

WHEREFORE, Opposer prays that Registration Nos. 77799901 be cancelled and that this Notice of Opposition be sustained in favor of Opposer.

Dated this 18th day of August, 2010.

/Christopher J Day/

Christopher J. Day, Attorney for Opposer
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Phoenix, AZ 85012
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CERTIFICATE OF SERVICE

I hereby certify that this document is being deposited on August 18, 2010, in the U.S.

mail, first class postage pre-paid, addressed to Applicant at the following address:

Jeffrey D. Siehl, Esq.
H.H. Franchising Systems, Inc. DBA Home Helpers
10700 Montgomery Road, Suite 300
Cincinnati, OH 45242

/Christopher J Day/

Christopher J. Day