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

Proceeding	91206966
Party	Defendant Armada Health Care, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARMADACORP CAPITAL, LLC	)	
	)	
Opposer,	)	Opposition No. 91206966
	)	
v.	)	
	)	
ARMADA HEALTH CARE, LLC	)	
	)	
Applicant.	)	
	)	

REPLY TO OPPOSER'S RESPONSE IN OPPOSITION
TO MOTION FOR JUDGMENT ON THE PLEADINGS

Applicant, Armada Health Care, LLC hereby replies to Opposer's Response in Opposition to Motion for Judgment on the Pleadings ("Opposer's Response").

I. APPLICABLE LEGAL STANDARD

The undisputed facts in pleadings include the law applicable to those facts. As the decisions applying the law to the applicable facts clearly show, Opposer has no legally valid basis for its opposition.

II. THE PARTIES' SERVICES

The Opposer's Services

The specific services covered by Opposer's registered marks are set forth on pages 1-4 of the Applicant's Brief in Support of Applicant's Motion for Judgment on the Pleadings. The description of Opposer's services makes clear that its services are rendered to professionals or to businesses that require the services it provides. Such services, *e.g.*, insurance claims auditing, insurance compliance, cost management of

health benefit plans, medical insurance underwriting, organizing and administration of pre-paid health care plans, managed care services, cost management of the health benefit plans of others, insurance, and employee health benefits risk financing, consultation, and management -- or any of the other services identified in Opposer's registered marks or claimed in any of its other marks – are not only provided to professionals and businesses, they also involve matters that are not inexpensive.

Health care and related services are well recognized as being obtained with careful consideration -- not on impulse.

> "To state the obvious, there are few things more important in life than health and well being, and it is beyond dispute that the decision to purchase healthcare insurance and related services, such as HMO services, is a very important decision for a person or a family to make....Moreover, it is common knowledge that the purchase of healthcare services involves a substantial financial commitment; healthcare costs continue to increase year after year. Inasmuch as this purchasing decision involves both the quality of health care and a significant cost, purchasers will proceed cautiously and deliberately in making their choice." *Carefirst of Maryland, Inc. v. FirstHealth of Carolina, Inc.*, 77 USPQ2d 1492, 1503-04 (TTAB, 2005).

Applicant's Services

Pharmacists and any others to whom Applicant's services are rendered under its Armada Specialty Pharmacy Summit mark are professionals who have been determined by applicable case law to be intelligent and to exercise caution with those with whom

they deal. "The relevant cases not only authorize but instruct the trial courts, in making a determination as to likelihood of confusion, to consider the level of sophistication of the relevant purchasers." *McGregor-Doniger Inc. v. Drizzle Inc.*, 599 F.2d 1126, 1137 (2nd Cir., 1979). The services covered by Applicant's mark are directed to pharmacists. Pharmacists have been long recognized as "a highly intelligent and discriminating public." *Warner Hudnut, Inc. v. The Wander Co.*, 280 F.2d 435, 436 (CCPA, 1960).

III. THE BUYERS OF THE PARTIES' SERVICES

When the purchasers of services are professional or commercial buyers, their sophistication negates confusion even between trademarks that (unlike those of Applicant and Opposer) are closely similar. *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 128 (4th Cir. 1990) "([I]n a market with extremely sophisticated buyers, the likelihood of consumer confusion cannot be presumed on the basis of the similarity in trade name alone."); *Oreck Corp. v. U.S. Floor Sys., Inc.*, 803 F.2d 166, 173-74 (5th Cir. 1986) (business purchasers of expensive products are not likely to confuse goods with similar marks).

IV. THE EFFECT OF COST OF SERVICES

The effect of cost on the issue of consumer confusion is not limited to health and well being. Cost is recognized across the board as determinative of and resulting in consumer caution and care. There is "less likelihood of confusion where goods are expensive and purchased after careful consideration." *Pignons S.A. De Mecanique De Precision v. Polaroid Corp.*, 657 F.2d 482, 489 (1st Cir., 1981).

V. THE MARKS IN THEIR ENTIRETIES

Opposer argues that, because Armada is the dominant element of Applicant's mark and the words Specialty, Pharmacy, and Summit are disclaimed, Applicant's mark "is identical to Opposer's pleaded mark, Armada" (Opposer's Response, p. 5). That is not the law. The law is indisputably to the contrary. Marks must be assessed in their entirety for their overall effect. "It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion." *Franklin Mint Corp. v. Master Manufacturing Co.*, 667 F2d 1005, 1007 (CCPA, 1981) "That marks must be considered in their entireties in determining whether there is likelihood of confusion or mistake is a basic rule in comparison of marks." *Massey Junior College, Inc. v. Fashion Institute of Technology*, 492 F2d 1399, 1402 (CCPA 1974).

The rule that marks must be assessed in their entirety applies whether or not the marks include the same dominant word. "The use of identical, even dominant, words in commerce does not automatically mean that two marks are similar." *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 627 (8th Cir., 1987).

In *Viacom International Inc. v. Komm*, 46 USPQ2d 1233 (TTAB, 1998), the applicant's mark was My-T-Mouse The Software That Makes Your Mouse A Mouse That Types. The applicant disclaimed all the words of its mark other than My-T-Mouse. The opposer's mark was the long-standing Mighty Mouse which was used in connection with the sale of computer products, among many others. The applicant's mark was used in connection with the sale of computer software. After pointing out that the applicant's

product was for a "very specialized purpose" (46 USPQ2d at 1238) and that both the applicant's and the opposer's marks involved computers, the Trademark Trial and Appeal Board dismissed the opposition, holding that the marks had "different connotations" which were "emphasized by the informational language in the [applicant's] mark" (46 USPQ2d at 1238), even though all of that informational language was disclaimed.

VI. APPEARANCE, SOUND, CONNOTATION, COMMERICIAL IMPRESSION

Contrary to Opposer's assertion, the marks in their entireties are not similar in appearance, sound, connotation, or commercial impression. The word Armada is, of course, the same in Applicant's and Opposer's marks. However, the words Specialty Pharmacy, and Summit are clearly not similar in appearance, sound, connotation, or commercial impression with Armada on its own or with the words Care or Health, the words of the Opposer's three registered marks, or the words Administrators, Benefits, Casualty or the letters HR, one of each of which is a part of the four additional marks the Opposer claims but has not registered. None of the additional words in Opposer's marks or the letters HR sound like Specialty Pharmacy Summit, nor do they connote or give the commercial impression of Specialty Pharmacy Summit, a mark sought for services not rendered by Opposer (and one of which is in Class 41, a class of services for which Opposer does not have a mark).

In *The Sports Authority Michigan, Inc. v. The PC Authority, Inc.*, 63 USPQ2d 1782 (TTAB, 2002), the applicant sought to register The PC Authority and PC Authority. The opposer had four registered marks, including Authority on its own, as well as The Sports Authority, The Sports Authority with design, and The Ski Authority. The dominant word in the marks of both the applicant and the opposer was Authority, and the

applicant (as in *Viacom International Inc. v. Komm, supra*) disclaimed all the other words and letters in its marks. In determining that there was no likelihood of confusion, the Trademark Trial and Appeal Board ruled as follows:

> "It is well settled that it is improper to dissect a mark, and that marks must be viewed in their entireties....It need not automatically follow, however, that, merely because marks have the same dominant element, they are pronounced the same, look the same or present the same overall commercial impression." 63 USPQ2d at 1792.

VII. APPLICANT'S MARK IS FOR SPECIALIZED PURPOSES

Applicant's mark is for two very specialized purposes, one in Class 35 for "arranging and conducting business conferences" and the other in Class 41 for "educational services, namely, conducting conferences in the field of pharmaceuticals." Neither is a service included in or covered by Opposer's marks. Each description of Applicant's services is clear, unambiguous, and brief. The services are not the same as or similar to any of the Opposer's services. What Opposer does not do is to address the fact that, as Exhibit A to Opposer's Response shows, Applicant's mark -- Armada Specialty Pharmacy Summit -- is used in connection with Applicant's annual special pharmacy summit. Opposer does not claim -- nor can it -- that it conducts specialty pharmacy summits. In connection with and at its specialty pharmacy summits, Applicant's services consist of those for which it seeks registration of its mark -- arranging and conducting business conferences and educational services, namely, conducting conferences in the field of pharmaceuticals. Those are not activities that are included in any of Opposer's

marks. They are "for a very specialized purpose," a fact that the differentiates one mark from another. *See Viacom International, Inc. v. Komar, supra* at page 1238.

CONCLUSIONS

The following conclusions result from the pleaded facts and the law applicable to those facts.

Class 35 Services

Opposer's opposition to the registration of Armada Specialty Pharmacy Summit in Class 35 should be dismissed for the following reasons:

(1) the incontrovertible differences between Applicant's Class 35 services (arranging and conducting business conferences) and Opposer's Class 35 services (various matters relating to insurance, health care, benefits and costs) as well as the differences between Applicant's Class 35 services and Opposer's two other Classes of services, *i.e.*, Class 36 services (involving insurance administration, underwriting and related services), and Class 44 services (services involving managed health care); (2) the cost of Opposer's services; (3) the sophistication of the buyers of the Applicant's services and the Opposer's services; (4) the core and incontrovertible differences in meaning, sound, connotation, and appearance between the words Specialty Pharmacy Summit and the words Health or Care or any of the words or the letters in Opposer's unregistered but claimed marks; (5) Opposer's lack of exclusive right to use the word Armada; and (6) the very special purpose of Applicant's mark and the services it covers.

Class 41 Services

Opposer's opposition to the registration of Armada Specialty Pharmacy in Class 41 should be dismissed for the following reason:

(1) Applicant's mark is in Class 41 and the fact that Opposer has no mark in Class 41; (2) the incontrovertible differences between Applicant's Class 41 services and Opposer's services in Classes 35, 36 and 44; (3) the cost of Opposer's services; (4) the sophistication of buyers of the Applicant's services and the Opposer's services; (5) the core and incontrovertible differences in meaning, sound, connotation, and appearance between the words Specialty Pharmacy Summit and the words Health or Care or any of the other words or the letters in Opposer's unregistered but claimed marks; (6) Opposer's lack of exclusive right to use the word Armada; and (7) the very special purpose of Applicant's mark and the services it covers .

Date: December 19, 2012

Respectfully submitted,

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By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2012, a copy of the foregoing Reply to Opposer's Response in Opposition to Motion for Judgment on the Pleadings was served by mailing same first class, postage prepaid, to:

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