

ESTTA Tracking number: **ESTTA676332**

Filing date: **06/04/2015**

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    | The Board of Regents of The University of Texas System   |             |       |
| Entity  | state agency   | Citizenship | Texas |
| Address | 201 West 7th Street<br>Austin, TX 78701<br>UNITED STATES |             |       |

|                      |  |  |  |
|----------------------|--|--|--|
| Attorney information | Alexandra H. Bistline<br>Pirkey Barber PLLC<br>600 Congress Ave., Suite 2120<br>Austin, TX 78701<br>UNITED STATES<br>abistline@pirkeybarber.com, lpirkey@pirkeybarber.com, jmatthysse@pirkeybarber.com, eolson@pirkeybarber.com, tmcentral@pirkeybarber.com Phone:512.322.5200 |  |  |
|----------------------|--|--|--|

### Applicant Information

|                        |   |                        |            |
|------------------------|---|------------------------|------------|
| Application No         | 86382447  | Publication date       | 05/26/2015 |
| Opposition Filing Date | 06/04/2015  | Opposition Period Ends | 06/25/2015 |
| Applicant              | BVR, LLC<br>114 ARDMORE DRIVE<br>SAN GABRIEL, CA 91775<br>UNITED STATES |                        |            |

### Goods/Services Affected by Opposition

|   |
|---|
| Class 045. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Online social networking services in the field of health, cancer, cancer recovery and survival |
|---|

### Grounds for Opposition

|                                      |                            |
|--------------------------------------|----------------------------|
| False suggestion of a connection     | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

### Mark Cited by Opposer as Basis for Opposition

|                      |            |                       |            |
|----------------------|------------|-----------------------|------------|
| U.S. Application No. | 86487568   | Application Date      | 12/22/2014 |
| Registration Date    | NONE       | Foreign Priority Date | NONE       |
| Word Mark            | CANCERWISE |                       |            |

|                     |  |
|---------------------|--|
| Design Mark         | <b>CANCER WISE</b>   |
| Description of Mark | NONE   |
| Goods/Services      | Class 041. First use: First Use: 2000/08/31 First Use In Commerce: 2000/08/31<br>Interactive on-line social media and web journals featuring commentaries and information in the fields of cancer and cancer prevention; on-line social media and journals for others in the fields of cancer and cancer prevention; on-line social media and journals, namely, social media sites and blogs featuring commentaries and information for others in the fields of cancer and cancer prevention; education services, namely, providing on-line educational information for others in the fields of cancer and cancer prevention |

|             |   |
|-------------|---|
| Attachments | 86487568#TMSN.png( bytes )<br>Notice of Opposition re Cancer Wise Empowering Patients App (UTMD035).pdf(32066 bytes ) |
|-------------|---|

### **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 | /AHB/                 |
| Name      | Alexandra H. Bistline |
| Date      | 06/04/2015            |

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

|                                     |   |                      |
|-------------------------------------|---|----------------------|
| In Re Serial No. 86/382,447         | § |                      |
| Filed: September 2, 2014            | § |                      |
| Mark: <b>CANCER WISE EMPOWERING</b> | § |                      |
| <b>PATIENTS &amp; Design</b>        | § |                      |
| Published: May 26, 2015             | § |                      |
|                                     | § |                      |
| The Board of Regents of             | § |                      |
| The University of Texas System,     | § |                      |
|                                     | § | Opposition No. _____ |
| Opposer,                            | § |                      |
|                                     | § |                      |
| v.                                  | § |                      |
|                                     | § |                      |
| BVR, LLC,                           | § |                      |
|                                     | § |                      |
| Applicant.                          | § |                      |

**NOTICE OF OPPOSITION**

The Board of Regents of the University of Texas System (“Opposer”), a state agency with a principal place of business at 201 West 7th Street, Austin, Texas 78701, believes that it will be damaged by registration of the mark shown in U.S. Serial No. 86/382,447, and hereby opposes same under the provisions of 15 U.S.C. § 1063. As grounds for opposition, Opposer asserts the following:

1. Opposer is a Texas state board established for the purpose of governing The University of Texas System (the “UT System”), a system of highly regarded universities and related institutions, including the University of Texas M.D. Anderson Cancer Center (“MD Anderson”) in Houston. The powers and duties of Opposer are set forth generally at Chapter 65 of the Texas Education Code. Specific authority to manage and control MD Anderson is conferred upon Opposer by Chapter 73, Subchapter C, of the Texas Education Code.

2. Established seventy years ago, MD Anderson is the largest freestanding cancer center in the world and one of the world's most respected centers devoted exclusively to cancer patient care, research, education, and prevention. MD Anderson is one of the nation's original three comprehensive cancer centers designated by the National Cancer Act of 1971, and has ranked as one of the top two hospitals in cancer care every year since U.S. News & World Report's began its annual "America's Best Hospitals" survey in 1990.

3. Since opening its doors, MD Anderson has treated more than 800,000 patients. Approximately one-third of new patients arrive at MD Anderson from outside of Texas. MD Anderson ranks first in the nation in the total amount of grant funds given by the National Cancer Institute. In the previous fiscal year, MD Anderson invested more than \$735 million in research and trained over 6,400 physicians, scientists, nurses, and allied health professionals.

4. For nearly 15 years, MD Anderson has used the mark CANCERWISE in connection with interactive online educational services, including providing social media services and web journals featuring commentaries and information for others in the fields of cancer and cancer prevention.

5. MD Anderson has developed substantial goodwill in the CANCERWISE mark. The mark is respected by the public, and represents the institution's commitment to providing world-class medical, educational, and support services.

6. As a result of MD Anderson's long use and promotion of the CANCERWISE mark, the mark has become distinctive to designate MD Anderson, to distinguish the institution and its services from those of others, and to distinguish the source or origin of MD Anderson's services. As a result of these efforts by MD Anderson, the consuming public recognizes and associates the CANCERWISE mark with MD Anderson.

7. As a result of MD Anderson's long use and promotion of the CANCERWISE mark, the institution has acquired valuable common law rights in the CANCERWISE mark.

8. In addition to its extensive common law rights, Opposer is the owner of a United States Trademark Application covering the CANCERWISE mark. *See* U.S. Ser. No. 86/487,568. Although Opposer has priority based on its extensive prior use of the CANCERWISE mark, the United States Patent and Trademark Office has suspended Opposer's Trademark Application (U.S. Ser. No. 86/487,568) due to Applicant's earlier filing date.

12. Applicant BVR, LLC (the "Applicant") is a California limited-liability company with a principal place of business at 114 Ardmore Drive, San Gabriel, California 91775. Applicant filed U.S. Serial No. 86/382,447 (the "Application") pursuant to 15 U.S.C. § 1051(b) on September 2, 2014 for the mark CANCER WISE EMPOWERING PATIENTS & Design covering "Online social networking services in the field of health, cancer, cancer recovery and survival" in Class 45.

13. Upon information and belief, Applicant is using the mark CANCER WISE EMPOWERING PATIENTS & Design in commerce.

14. Applicant is aware of Opposer's CANCERWISE mark.

15. Opposer has priority based on its prior use of its CANCERWISE mark.

16. Applicant's services are highly similar to the services for which Opposer has long used its CANCERWISE mark.

17. Upon information and belief, Applicant's services will travel in the same or similar channels of trade as Opposer's services, and will be used by the same or similar types of consumers who purchase and use Opposer's goods and services.

18. Opposer has not given Applicant permission or approval to use or register the CANCERWISE mark or the mark CANCER WISE EMPOWERING PATIENTS & Design.

19. The fame of MD Anderson is such that, should the mark CANCERWISE or a confusingly similar mark be used in connection with Applicant's services, a connection with MD Anderson would be presumed. Thus, registration of the mark CANCER WISE EMPOWERING PATIENTS & Design should be refused under 15 U.S.C. § 1052(a).

20. Applicant's mark CANCER WISE EMPOWERING PATIENTS & Design so resembles Opposer's CANCERWISE mark as to be likely, when used in connection with the services identified in the Application, to cause confusion, or to cause mistake, or to deceive. Registration therefore should also be refused under 15 U.S.C. § 1052(d).

21. Opposer has already been damaged by the proposed registration of Applicant's mark CANCER WISE EMPOWERING PATIENTS & Design on the Principal Register in that the United States Patent and Trademark Office has suspended Opposer's Trademark Application (U.S. Ser. No. 86/487,568) due to Applicant's earlier filing date.

22. Registration of Applicant's mark CANCER WISE EMPOWERING PATIENTS & Design would further damage Opposer because it would confer upon Applicant statutory presumptions to which Applicant is not entitled in view of Opposer's longstanding prior use of its CANCERWISE mark.

WHEREFORE, Opposer prays that U.S. Serial No. 86/382,447 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber PLLC, Account No. 50-3924/UTMD:035/LTP, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: June 4, 2015

/Alexandra H. Bistline/  
Louis T. Pirkey  
Jered E. Matthyse  
Alexandra H. Bistline  
PIRKEY BARBER PLLC  
600 Congress Avenue, Suite 2120  
Austin, Texas 78701  
(512) 322-5200

ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served via first-class mail, postage prepaid, on June 4, 2015 on Applicant's attorney-of-record:

Walter B. Batt  
The Batt Law Group, PC  
11111 Santa Monica Blvd Ste 100  
Los Angeles, California 90025-3378

/Alexandra H. Bistline/