

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

_____))
))
HCA-HEALTHONE LLC) Reg. No. 2102922
))
PETITIONER,))
))
v.))
))
WINIFRED MASTERSON BURKE) Cancellation No. 92042004
REHABILITATION HOSPITAL, INC.))
))
RESPONDENT.))
_____)



12-17-2003
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

CERTIFICATE OF MAILING
BY EXPRESS MAIL PURSUANT TO 37 C.F.R. § 1.10
THE UNDERSIGNED CERTIFIES THAT HE/SHE IS
MAILING THIS MATERIAL BY EXPRESS MAIL
(LABEL NUMBER EL 80065970045)
ADDRESSED TO U. S. PATENT AND TRADEMARK OFFICE,
TRADEMARK TRIAL AND APPEAL BOARD, 2900 CRYSTAL DRIVE,
ARLINGTON, VIRGINIA 22202 ON THIS 17th DAY
OF December, 2003.

Jo Brand

REPLY

Petitioner, HCA-HealthOne LLC, hereby submits the following Reply to Respondent's Response to Motion Pursuant to Fed.R.Civ.P. 56(f).

In its Response, Respondent argues that the Motion filed by Petitioner was improper because the rules governing motions to compel require that a copy of the discovery requests be attached to the motion, and no such copies were attached to Petitioner's motion. The motion filed by Petitioner on November 19, 2003 requested this Board to require Respondent to respond to the outstanding discovery responses prior to requiring Petitioner to respond to a pending Motion for Summary Judgment. While the

title of the Motion was "Motion to Require Respondent to Respond to Discovery" the motion states specifically in the first sentence that it was submitted pursuant to 35 C.F.R. §2.116 and Fed. R. Civ.P.56(f), and an affidavit entitled, "Fed.R.Civ.P. 56(f) Affidavit" was filed therewith. Respondent filed a Motion for Summary Judgment thus taking the time for answering the discovery tendered to it previously. Therefore, the motion filed was not a motion to compel, but rather a motion pursuant to Fed.R.Civ.P.56(f) stating why it was essential that Petitioner have some of the requested information prior to submitting a response to the Motion for Summary Judgment. This rule does not require a party to file a copy of the applicable discovery requests. Nonetheless, to satisfy any concerns Respondent may have, Petitioner has attached a copy of the discovery requests to this Reply as a courtesy to the Board.

Second, Respondent argues that they should not be required to answer the discovery requests prior to Petitioner being required to respond to the Motion for Summary Judgment because Petitioner did not mention abandonment or estoppel in its original Motion for Summary Judgment. However, there was no reason for Petitioner to raise the issue of estoppel until after Respondent filed its Motion for Summary Judgment because only then did the Respondent raise the five-year limitations defense. While Petitioner can assert a legal argument regarding estoppel at this time, it does not have access to the factual information regarding this issue which is solely within the possession of Respondent. The requested information may support the fact that Respondent should be estopped from asserting the statute of limitations argument set forth in its Motion for Summary Judgment, which makes it directly relevant to Petitioner's response and to the Board's decision on that motion. Where the discovery sought is directly relevant to the issues

raised by summary judgment motion, the nonmoving party should not be denied the opportunity for full discovery. *Opryland USA, Inc. v. Great American Music Show Inc.*, 970 F.2d 847 (Fed.Cir. 1992). A review of Petitioner's Fed.R.Civ.P. 56(f) Motion indicates that Petitioner did not rely upon abandonment as the basis for its motion. Rather, that issue was raised to demonstrate that a motion for summary judgment is premature in this case as information relating to abandonment and other bases of cancellation may now be applicable based upon Respondent's discovery responses.

Respondent cites *Keebler Co. v. Murray Bakery Prod.*, 866 F.2d 1386 (Fed.Cir. 1989) for its position that it should not be required to respond to the outstanding discovery requests. This case is distinguishable from the present set of facts. In *Keebler*, the court denied the Fed.R.Civ.P. 56(f) motion because opposer did not state the reasons why it was necessary for discovery to precede briefing on the motion for summary judgment until the appeal stage. The Court stated:

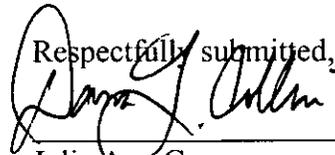
Keebler tells us that the board should not have denied its motions because, if it had granted them, Keebler might have been able to obtain evidence of Murray's intent in adopting its mark and any evidence of actual confusion in Murray's files. Having never said that in its affidavits to the board, Keebler faces the well-nigh insurmountable appellate burden of convincing this court that the board abused its discretion in not fathoming Keebler's mind.

Id. at 1388. In the present case, Petitioner has clearly stated the specific reasons that discovery is necessary prior to responding to the Motion for Summary Judgment in its affidavit and Fed.R.Civ.P. 56(f) motion.

Finally, Respondent states that Petitioner is speculating in its Motion pursuant to Fed.R.Civ.P. 56(f) as what information would be produced in response to the discovery requests. Petitioner filed the Motion because it cannot respond to the Motion for

Summary Judgment *without* speculating. Without information relevant to estoppel, for instance, 1) when Respondent became aware of Petitioner's mark; and/or 2) what action Respondent did or did not take to protect its mark and the likelihood of confusion between the two marks since that time, the issues in this proceeding cannot be fully briefed.

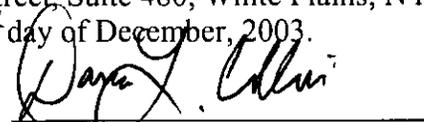
For the foregoing reasons and those set forth in its prior Motion to Require Respondent to Respond to Discovery, Petitioner requests this Board to require Respondent to answer the discovery requests tendered on it on September 30, 2003 prior to requiring Respondent to file a response to the pending Motion for Summary Judgment.

Respectfully submitted,


Julie Ann Gregory
Dana L. Collins
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
Phone: (502)584-1135
Fax: (502)561-0442
Email: jgregory@middreut.com
dcollins@middreut.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Leo Zucker, Esq., Law Office of Leo Zucker, 50 Main Street, Suite 480, White Plains, NY 10606-1964, Counsel for Respondent, on this 17th day of December, 2003.



COUNSEL FOR PETITIONER

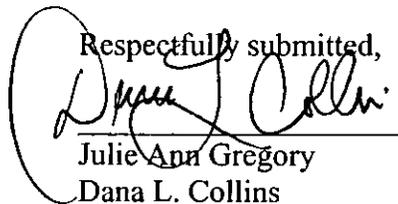
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HCA-HEALTHONE LLC))	Reg. No. 2102922
PETITIONER,))	
v.))	
WINIFRED MASTERSON BURKE))	Cancellation No. 92042004
REHABILITATION HOSPITAL, INC.))	
RESPONDENT.))	
_____))	

PETITIONER'S FIRST REQUEST FOR ADMISSION TO RESPONDENT

1. Admit that the documents and things produced by Respondent in response to Petitioner's Requests for Production in this Cancellation Proceeding (Cancellation No. 92042004) are authentic.

Answer:

Respectfully submitted,


Julie Ann Gregory
Dana L. Collins
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
Phone: (502)584-1135
Fax: (502)561-0442
Email: jgregory@middreut.com
dcollins@middreut.com

COUNSEL FOR PETITIONER

7

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Leo Zucker, Esq., Law Office of Leo Zucker, 50 Main Street, Suite 480, White Plains, NY 10606-1964, Counsel for Respondent, on this 3rd day of September, 2003.

Dana J. Collins

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

_____)	
HCA-HEALTHONE LLC)	Reg. No. 2102922
PETITIONER,)	
v.)	
WINIFRED MASTERSON BURKE)	Cancellation No. 92042004
REHABILITATION HOSPITAL, INC.)	
RESPONDENT.)	
_____)	

* * * * *

PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to FED. R. CIV. P. 34, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Petitioner hereby requests that Respondent produce copies of the documents or other physical objects specified in the Requests set forth below, at the offices of Petitioner's counsel, MIDDLETON REUTLINGER, 2500 Brown & Williamson Tower, Louisville, Kentucky 40202, within thirty (30) days from the effective date of service hereof, or at such other time and place which may be mutually agreed to by counsel for the parties. Although copies are requested, Petitioner reserves the right to inspect the originals of all documents produced.

Definitions and Instructions

The definitions and instructions contained in Petitioner's First Set of Interrogatories are incorporated by reference as if fully set forth herein.

Lost or Destroyed Document

If any document requested herein was at one time in existence, but has been lost, discarded or destroyed, identify the document as completely as possible, providing as much of the following information as possible:

- (a) the date of the document;
- (b) the subject matter of the document;
- (c) the date or approximate date the document was lost, discarded or destroyed;
- (d) the circumstances and manner in which the document was lost, discarded or destroyed;
- (e) the identity of the person(s) who lost, discarded or destroyed the document; and
- (f) the identity of all persons having knowledge of the contents thereof.

DOCUMENT REQUESTS

1. All documents identified or requested to be identified in Petitioner's First Set of Interrogatories to Respondent.

Response:

2. Documents sufficient to identify each service with which the Challenged Mark has been used, is now used, and is intended to be used.

Response:

3. Documents sufficient to show use of the Challenged Mark on or in connection with each service with which the Challenged Mark has been used, is now used, and is intended to be used.

Response:

4. Documents sufficient to demonstrate first use of the Challenged Mark in commerce as of May 1, 1994.

Response:

5. Documents sufficient to show each channel of trade through which Respondent has marketed and offered, markets and offers, or intends to market and offer, any services under the Challenged Mark.

Response:

6. If different advertising or promotional efforts are made in different geographic regions, representative samples of advertising and promotional materials directed towards geographic markets, distributed by or for Respondent, or planned to be distributed by or for Respondent, that depict, mention, identify, or describe any services offered or promoted by Respondent under the Challenged Mark in each region.

Response:

7. Representative samples of advertising and promotional materials distributed by or on behalf of Respondent, or planned to be distributed by or on behalf of Respondent, in each media identified in Interrogatory No. 5, that depict, mention, identify, or describe any services offered or promoted by Respondent under the Challenged Mark.

Response:

8. Copies of all catalogs distributed by or on behalf of Respondent, or planned to be distributed by or on behalf of Respondent, that depict, mention, identify, or describe any services offered by Respondent under the Challenged Mark.

Response:

9. All documents relating to Respondent's selection and adoption of the Challenged Mark.

Response:

10. All documents concerning trademark searches and investigations relating to the Challenged Mark conducted by or on behalf of Respondent.

Response:

11. All documents concerning trademark searches and investigations relating to Petitioner's Mark conducted by or on behalf of Respondent.

Response:

12. All documents concerning any research, reports, surveys, investigations and/or studies conducted by or on behalf of Respondent relating to consumer confusion or the likelihood of confusion between the Challenged Mark and Petitioner's Mark, or the asserted dilution of the Challenged Mark by Petitioner's Mark..

Response:

13. All documents concerning any research, reports, surveys, investigations and/or studies conducted by or on behalf of Respondent relating to consumer confusion or the likelihood of confusion between the Challenged Mark and any other third party mark containing the terms "REBUILDING LIVES" or "RENEWING HOPE" or the dilution of the Challenged Mark by any third party mark containing said terms.

Response:

14. All documents concerning any communications received by Respondent referring to or relating to Petitioner or Petitioner's Mark.

Response:

15. All documents referring or relating to each instance in which a person has inquired as to whether Petitioner, Petitioner's Mark and/or Petitioner's products and services are or were affiliated with Respondent, the Challenged Mark and/or Respondent's products and services.

Response:

16. All documents and things comprising, relating, or referring to, profiles, studies, or reports of consumers expected to purchase or use Respondent's services promoted by the Challenged Mark, or to whom Respondent may or will advertise and promote its services bearing the Challenged Mark, including but not limited to marketing studies.

Response:

17. All documents concerning agreements between Respondent and third parties concerning others' use and/or registration of any mark or name containing the Challenged Mark, including, but not limited to, license agreements, consent agreements, co-existence agreements, covenants not to sue, settlement agreements, and assignments.

Response:

18. All documents relating or referring to trademark or service mark usage with respect to the Challenged Mark by licensees of Respondent, including, but not limited to, standards of use.

Response:

19. All documents concerning Petitioner and/or Petitioner's Mark in Respondent's possession.

Response:

20. All documents concerning the circumstances under which Respondent first learned of Petitioner's Mark.

Response:

21. Documents sufficient to show Respondent's actual and planned annual unit and dollar sales of products and services marketed or sold under the Challenged Mark from the first use of the Challenged Mark to the present.

Response:

22. Documents sufficient to show Respondent's actual and planned annual advertising and promotional expenditures for products and services marketed or sold under the Challenged Mark from the first use of the Challenged Mark to the present.

Response:

23. All documents relating to Respondent's plans for use of Respondent's Mark, including but not limited to business plans, marketing plans, and similar documents.

Response:

24. All documents relating or referring to objections Respondent has made to third parties' use and/or registration of marks or names based on the Challenged Mark or alleged to infringe, dilute, or otherwise violate Respondent's rights in the Challenged Mark.

Response:

25. All documents relating or referring to objections Respondent has received regarding its use and/or registration of the Challenged Mark other than from Petitioner.

Response:

26. Documents sufficient to identify all Internet domain names owned, registered, applied for, and/or used by Respondent that contain either the terms “REBUILDING LIVES,” or “RENEWING HOPE.”

Response:

27. With respect to each person whom Respondent intends to provide expert witness testimony in this lawsuit, a written report prepared and signed by the witness containing:

- (a) a complete statement of each opinion to be expressed and the basis and all reasons therefore;
- (b) the data and other information considered by the witness in forming each opinion;
- (c) any and all exhibits to be used to summarize or support each opinion;
- (d) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- (e) the compensation to be paid for the study and testimony; and
- (f) a listing of any other lawsuits and/or legal proceedings in which the witness has testified as an expert at trial or by deposition within the preceding five years.

Response:

28. All documents referring or relating to communications with any consumer, marketing or survey expert concerning the Challenged Mark or Petitioner’s Mark or any mark containing either the terms “REBUILDING LIVES” or “RENEWING HOPE”.

Response:

29. All documents referring or relating to any consumer surveys, including all drafts of questionnaires, tabulations, calculations, and other results related to the Challenged Mark or Petitioner's Mark or any mark containing either the terms "REBUILDING LIVES" or "RENEWING HOPE".

Response:

30. Each and every document not already produced in response to these Requests upon which Respondent will rely in this Cancellation proceeding.

Response:

Respectfully submitted,



Julie Ann Gregory
Dana L. Collins
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
Phone: (502)584-1135
Fax: (502)561-0442
Email: jgregory@middreut.com
dcollins@middreut.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Leo Zucker, Esq., Law Office of Leo Zucker, 50 Main Street, Suite 480, White Plains, NY 10606-1964, Counsel for Respondent, on this 30th day of September, 2003.



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

_____)	
HCA-HEALTHONE LLC)	Reg. No. 2102922
PETITIONER,)	
v.)	
WINIFRED MASTERSON BURKE)	Cancellation No. 92042004
REHABILITATION HOSPITAL, INC.)	
RESPONDENT.)	
_____)	

* * * * *

PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT

Petitioner hereby submits for answer by Respondent, the following interrogatories in accordance with Rules 2.116 and 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure. Each interrogatory is to be answered under oath by an officer or agent of Respondent, Winifred Masterson Burke Rehabilitation Hospital, Inc. ("Respondent"), who has best knowledge of the facts, or may be answered by several officers or agents, each answering those parts to which he/she has best knowledge.

DEFINITIONS AND INSTRUCTIONS

As used herein, the following terms shall have the meaning as set forth below:

- (1) The term "Respondent" or "you" or "your" includes without limitation the Respondent, Winifred Masterson Burke Rehabilitation Hospital, Inc., and any partner, employee,

agent, officer, director or other person acting on behalf of Winifred Masterson Rehabilitation Hospital, Inc., as well as any predecessor, parent or subsidiary company, attorneys, and any other person or entity related to Winifred Masterson Burke Rehabilitation Hospital, Inc.

(2) The term “Petitioner” means and includes the Petitioner, HCA-HealthONE LLC, as well as its predecessors, subsidiaries and officers, attorneys, and all other persons in privity with Petitioner in respect to the subject of the requests.

(3) The word “document(s)” is used in its customary broad sense and includes all written, typed, printed, recorded or graphic statements, communications or other matter, however produced or reproduced, and whether or not now in existence, in the possession, custody or control of Respondent, or otherwise known to Respondent, without limitation: writings; correspondence; literature; papers; memoranda; electronic mail or other electronic transmissions; studies; reports; notes; notations; diaries; messages; telegrams; books; invoices; letters; ledgers; drawings; proofs; photographs; displays; publications; advertisements; catalogs; brochures; pamphlets; labels; packaging; artwork; tear sheets; sketches; illustrative materials; magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form; price lists; videotapes; models; films; recordings; contracts; purchase orders; all drafts of the foregoing; and any other materials whether printed, typewritten, handwritten, recorded, or reproduced by any mechanical, electronic or magnetic process; including copies and reproductions of the foregoing upon which notations have been made which did not appear on the original, and all other materials within the scope of FED. R. CIV. P. 34.

(4) The word “communication(s)” is used in its customary broad sense and includes but is not limited to correspondence, conversations, discussions, and consultations between or

among two or more persons, and other statements or assertions by a person(s) to (an)other person(s), whether oral or reduced to writing or otherwise reflected in a document.

(5) The word “person(s)” shall include, without limitation, any individual, firm, company, association, partnership, corporation, and any other legal, business or governmental entity, wherever existing or organized, and any employee, agent or representative of the foregoing.

(6) The word “mark” or “trademark” shall be deemed to include trademarks, service marks, and collective marks, both registered and unregistered (unless otherwise indicated).

(7) “Challenged Mark” shall mean U. S. Registration No. 2,102,922 for the mark “RENEWING HOPE, REBUILDING LIVES, RESTORING INDEPENDENCE”, which is the subject of this cancellation proceeding

(8) The term “Petitioner’s Mark” shall mean the service mark “REBUILDING LIVES, RENEWING HOPE” which has been used in commerce by Petitioner.

(9) The phrase “trademark opinion” means any business, legal, or other opinion (whether formal or informal) with respect to a trademark, including any opinion concerning either trademark, service mark or trade name validity, or possible conflict with any person or entity (identifying the same), arising out of Respondent’s adoption and/or use or intended use of the trademark in connection with Respondent’s products.

(10) The word “identify” or the phrase “identity of” when used with respect to an individual means to state such individual's full name, present or last known residence and

business address(es) and telephone number(s), present or last known employer(s), place of employment and job title (if any), and the nature (including job title, if any) and dates of any affiliation, by employment or otherwise, with any party to this proceeding.

(11) The word “identify” or the phrase “identity of” when used with respect to a person other than an individual means to state its full name and address, to describe its nature (e.g., corporation, partnership, etc.); and to identify the person(s) employed by such entity with whom you have dealt concerning the subject matter of these interrogatories.

(12) The word “identify” when used with respect to a document means to briefly describe the nature or type of the document (e.g., letter, memorandum, drawing, etc.) and its date, to identify the person(s) who originated the document, to identify the person(s) to whom the document was directed, and to describe in general the subject matter of the document with sufficient particularity so as to enable such document to be precisely identified.

(13) The word “identify” when used with respect to a survey, study, focus group, or investigation, means to furnish the name, current address and former (if applicable) and current position of the person(s) responsible for requesting the survey, study, focus group, or investigation; the name, current address, qualifications, and former (if applicable) and current position of the person(s) who conducted the survey, study, focus group, or investigation; and the date, purpose, results, and conclusions of the survey, study, focus group, or investigation, including without limitation issues regarding the likelihood of confusion between the Challenged Mark and Petitioner’s Mark; the goodwill established by Petitioner or Respondent in such marks; the consumers who use or purchase Petitioner’s or Respondent’s products or services; the

circumstances under which Petitioner's or Respondent's products or services are marketed, advertised, or sold; or any other differences or similarities between the Challenged Mark and Petitioner's Mark; the use of such marks; the products or services sold in connection therewith; or the consumers or users of such products or services.

(14) The word "identify" when used with respect to a trademark opinion, means to describe in detail the circumstances under which Respondent acquired such knowledge and the substance thereof (including the identity of each employee of Respondent who acquired such knowledge), and to identify all documents comprising the opinion, the date(s) on which such opinion was rendered, the and identity of the person(s) rendering the opinion.

(15) The word "identify" when used with respect to a trademark application or registration of Respondent, means to specify the serial or other identifying number and the filing date; the governmental office and location of filing; the entire mark registered or sought to be registered; the date(s) of first use claimed; the goods and/or services on or in connection with which the mark was, or was intended to be, used; the type and class or classes of registration; the disposition and/or present status of the application (including the registration number and date, if registration issued); the reasons and circumstances, if registration was refused or denied, or if the application was withdrawn or abandoned; and to identify all documents comprising or referencing communications with, to, or from the governmental office in which the application was or is pending.

(16) The word "any" shall mean "each and every" as well as "any one."

(17) The use of the words “include(s)” and “including” shall be construed to mean “without limitation.”

(18) The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the language used inclusive rather than exclusive.

(19) The singular shall be construed to include the plural and the present tense shall be construed to include the past tense, and vice versa, as necessary to make the language used inclusive rather than exclusive.

Continuing Interrogatories

These interrogatories are continuing in character so as to require you to file prompt supplementary and amended answers if you obtain further or different information relevant to any of these interrogatories prior to trial herein.

Privileged or Proprietary Matter

If it is claimed that an answer to any interrogatory is privileged, work product or otherwise protected from disclosure and such privilege or work product is asserted, identify such information by its subject matter and state with particularity the facts and grounds constituting the nature and basis for any such claim of privilege, work product or other ground for nondisclosure. Any part of an answer to which you do not claim privilege or work product should be given in full.

Form of Responses

Respondent should answer each interrogatory separately and fully, unless it is objected to, in which event the reasons for the objections should be specifically and separately stated. The answers should be signed by Respondent and the objections, if any, must be signed by the attorney making them. Where a complete answer to a particular interrogatory is not possible, Respondent should answer it to the fullest extent possible and state why only a partial answer is given.

In the event that the answer to any interrogatory is not within the knowledge of Respondent, the answer should so indicate and should identify whom Respondent believes has knowledge of the information requested.

Answers to these interrogatories shall set forth each question in full before each answer. Separate answers shall be provided in response to each interrogatory, and, when an interrogatory has subdivisions, to each subdivision.

With respect to any interrogatory calling for the identification or listing of documents, unless otherwise indicated, you may, in lieu thereof, attach to your answers a copy of such documents segregated separately for each answer, with an identification of the interrogatory or interrogatories (or portion thereof) to which they are submitted as being responsive.

If Respondent is aware that a document or a group of documents once existed but has been destroyed, this should be stated, and it should also be stated who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

INTERROGATORIES

1. Identify by its common, usual, and ordinary commercial name each separate service with which the Challenged Mark has been used or is intended to be use.

Answer:

2. For each service identified in response to Interrogatory No. 1 above, identify, where applicable, the period(s) of time during which use of the Challenged Mark on or in connection therewith has occurred, including the date of first use anywhere and the date of first use in interstate commerce.

Answer:

3. Identify the channels of trade through which Respondent has marketed and/or intends to market each service identified in response to Interrogatory No. 1 above.

Answer:

4. Identify the geographic scope in which Respondent has marketed and/or intends to market each service identified in response to Interrogatory No. 1.

Answer:

5. With respect to the Challenged Mark:

(a) Identify all media (including, but not limited to trade journals, newsletters, magazines, advertising, direct-mail, radio programs, television programs, Internet, trade shows, or conferences), in which Respondent has advertised or intends to advertise each service identified in response to Interrogatory No. 1 above; and

(b) State separately for each of Respondent's services identified in response to Interrogatory No. 1 above, Respondent's actual and planned annual

advertising and promotional expenses in the United States in the media identified in Interrogatory No. 5(a) above, from the first use of the Challenged Mark to the present.

Answer:

6. Identify the person or person(s) most knowledgeable about Respondent's use, promotion, and advertisement or intended use, promotion, or advertisement of the Challenged Mark from the time Respondent first selected the Challenged Mark to the present.

Answer:

7. State when and under what circumstances Respondent adopted the Challenged Mark, whether by way of its own adoption or acquisition of Challenged Mark from a third party, including, but not limited to, Respondent's reasons for adopting or acquiring the Challenged Mark.

Answer:

8. Identify all individuals involved in Respondent's selection of and decision to adopt or acquire the Challenged Mark.

Answer:

9. State when and under what circumstances Applicant first became aware of Petitioner and Petitioner's Mark.

Answer:

10. Identify that person(s) employed by or affiliated with Respondent that is most knowledgeable about Petitioner's Mark or Petitioner's use of its Mark in relation to the Respondent or the Challenged Mark.

Answer:

11. Identify all facilities by name and location that use the Challenged Mark.

Answer:

12. Identify all investigations, searches, surveys, reports, and studies concerning consumer confusion or the likelihood of confusion between the Challenged Mark and Petitioner's Mark, or relating to the alleged dilution of the Challenged Mark by Petitioner's Mark, that Respondent has ever conducted or prepared, or had conducted or prepared, by stating the following for each search, survey, report, or study:

(a) The result of the search, report, or study; and

(b) The person or persons responsible for conducting and preparing the search, report, or study.

Answer:

13. For each instance in which a person has allegedly been confused or mistaken as to the identity, source, affiliation, or relationship between Petitioner, Petitioner's Mark, or Petitioner's services, and Respondent, the Challenged Mark or Respondent's services, state:

(a) the identity of the person who was confused or mistaken;

(b) the date and place the confusion or mistake occurred;

(c) the manner or circumstances in which the person was confused or mistaken;

(d) the manner in which Respondent received notice of the confusion or mistake; and

(e) the identity of each person who has knowledge of the confusion or mistake.

Answer:

14. Describe in detail any standards of trademark or service mark usage with respect to the Challenged Mark by licensees or affiliated companies of Respondent or other third parties.

Answer:

15. Pursuant to Fed.R.Civ.P. 26(b)(4), identify each person whom Respondent expects will provide testimony on its behalf as an expert witness in this proceeding, and for each such person, set forth a complete statement of all opinions to be expressed and the basis therefore; the date or other information considered by the witness in forming the opinions; and exhibits to be used as a summary of or as support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding five years.

Answer:

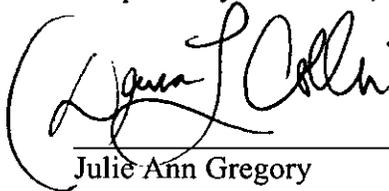
16. Describe in detail any other instances wherein Respondent has contested use of the terms “REBUILDING LIVES” or “RENEWING HOPE” by any other third party, including, but not limited to, the identity of that third party, the date(s) that Respondent asserted its rights against said third party, and the disposition of said dispute.

Answer:

17. Describe in detail the facts on which Respondent intends to rely to support its defense that this Cancellation proceeding should be dismissed on the basis of “laches, estoppel and/or acquiescence.”

Answer:

Respectfully submitted,

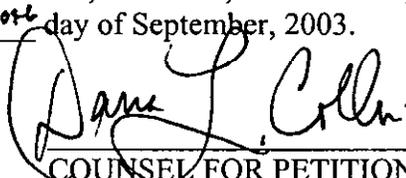


Julie Ann Gregory
Dana L. Collins
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
Phone: (502)584-1135
Fax: (502)561-0442
Email: jgregory@middreut.com
dcollins@middreut.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Leo Zucker, Esq., Law Office of Leo Zucker, 50 Main Street, Suite 480, White Plains, NY 10606-1964, Counsel for Respondent, on this 30th day of September, 2003.



COUNSEL FOR PETITIONER



December 17, 2003

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2500
Brown & Williamson
Tower
Louisville, Kentucky
40202
502.584.1135
502.561.0442 fax
www.middreut.com

U.S. Patent & Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Dana L. Collins
Direct Dial: (502) 625-2741
dcollins@middreut.com

Re: Cancellation No. 92042004
**Mark: RENEWING HOPE, REBUILDING LIVES,
RESTORING INDEPENDENCE**
Reg. No.: 2,102,922

Dear Commissioner:



Enclosed herewith for filing are:

12-17-2003
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

1. Reply filed on behalf of HCA-HealthONE LLC;
2. Certificate of Express Mail under 37 C.F.R. §1.10; and
3. A return postcard.

Please return the postcard to indicate your receipt of the above-referenced materials.
Thank you for your assistance in this matter.

Very truly yours,

MIDDLETON REUTLINGER

Dana L. Collins

DLC/jb
Enclosures
cc: HCA-HealthONE LLC
Spalding Rehabilitation Hospital