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

Proceeding	92050284
Party	Plaintiff CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support
Correspondence Address	CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, etal Att: Dawn M. Torrence Williamson, 3650 Rogers Road #290 Wake Forest, NC 27587 UNITED STATES dawn.williamson@cherubs-cdh.org
Submission	Testimony For Plaintiff
Filer's Name	Dawn M. Torrence Williamson
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Signature	/Dawn M. Torrence Williamson/
Date	03/14/2009
Attachments	CHERUBS Disclosures.pdf (6 pages)(122291 bytes)

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

CHERUBS - THE ASSOCIATION OF
CONGENITAL DIAPHRAGMATIC HERNIA
RESEARCH, ADVOCACY AND SUPPORT

Petitioner,

v.

BREATH OF HOPE, INC.

Respondent.

PETITION TO CANCEL

Mark: CONGENITAL DIAPHRAGMATIC
HERNIA AWARENESS

Reg. No. 3,503,325

Reg. Date: September 17, 2008

DISCLOSURES

CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support, also known as CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Awareness and Support, would like to submit the following evidence for this proceeding.

1. DESCRIPTION OF REGISTRANT'S REGISTRATION No. 3,503,325: Filed on April 1, 2008 by Breath of Hope, Inc. the mark CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS "Promoting public awareness of congenital diaphragmatic hernia; Public advocacy to promote awareness of congenital diaphragmatic hernia", claiming first use in commerce on 07/01/2007. Registered on September 17, 2008 on the Supplemental Register.
 - CHERUBS Evidence – Breath of Hope Web Site.pdf
 - CHERUBS Evidence – Breath of Hope Web Site CDH.pdf
 - CHERUBS Evidence – Breath of Hope Web Site Awareness.pdf
 - CHERUBS Evidence – Breath of Hope Web Site About.pdf
 - CHERUBS Evidence – Breath of Hope Listserv.pdf
2. GENERIC USE OF THE TERM CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS: Congenital diaphragmatic hernia is a birth defect that affects approximately 1600 babies each year in the United States, taking the lives of approximately 800 of these children.
 - CHERUBS Evidence – CDH Study Group.pdf
 - CHERUBS Evidence – WebMD.pdf
 - CHERUBS Evidence – Torfs Study.pdf
 - CHERUBS Evidence – Childrens Hospital Boston.pdf

- CHERUBS Evidence – Medical Research Society.pdf
 - CHERUBS Evidence – Kays Kids.pdf
 - CHERUBS Evidence – CDH Research Site.pdf
 - CHERUBS Evidence – Fetal Treatment Center.pdf
 - CHERUBS Evidence – Fetal Care Center.pdf
 - CHERUBS Evidence – Alder Hey.pdf
 - CHERUBS Evidence – The Health Foundation.pdf
 - CHERUBS Evidence – Ackerman.pdf
 - CHERUBS Evidence – CHERUBS Brochure.pdf
 - CHERUBS Evidence – Parent Reference Guide.pdf
3. Congenital diaphragmatic hernia is a common medical problem. It affects 1 in every 2500 babies. It occurs as often as Spina Bifida and Cystic Fibrosis. Every 10 minutes, somewhere in the world a baby is born with congenital diaphragmatic hernia.
- CHERUBS Evidence – Alder Hey.pdf
 - CHERUBS Evidence – The Health Foundation.pdf
 - CHERUBS Evidence – Ackerman.pdf
 - CHERUBS Evidence – CHERUBS Brochure.pdf
 - CHERUBS Evidence – Parent Reference Guide
4. CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS is a term commonly used by the patients, medical care providers and other organizations affected by congenital diaphragmatic hernia. Congenital diaphragmatic hernia is often abbreviated as CDH and the term CDH awareness is used.
- CHERUBS Evidence – CDH News 1996.pdf
 - CHERUBS Evidence – CDH News 1997.pdf
 - CHERUBS Evidence – CDH News 1998.pdf
 - CHERUBS Evidence – Rainbow of Hope Web Site.pdf
 - CHERUBS Evidence – Awareness Ribbon.pdf
 - CHERUBS Evidence – YouTube.pdf
 - CHERUBS Evidence – CHERUBS Australia.pdf
 - CHERUBS Evidence – CHERUBS UK.pdf
5. Over 4000 people, including 8 congenital diaphragmatic hernia organizations and many doctors and nurses have signed an on-line petition against this trademark for this common phrase, CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS.

- CHERUBS Evidence – On-Line Petition.pdf
- CHERUBS Evidence – On-Line Petition Signatures.pdf
- CHERUBS Evidence – TPRF Email 8-26-2008.pdf
- CHERUBS Evidence – Little Lambs.pdf
- CHERUBS Evidence – Facebook Group.pdf
- CHERUBS Evidence – Rainbow of Hope.pdf
- CHERUBS Evidence – Rainbow of Hope 2.pdf

6. THREAT OF HARM TO OUR NON-PROFIT ORGANIZATION: CHERUBS was founded in February, 1995 to support families affected by congenital diaphragmatic hernia, to research congenital diaphragmatic hernia and to advocate for awareness of congenital diaphragmatic hernia.

- CHERUBS Evidence – IRS.pdf
- CHERUBS Evidence – 1995-2008 Organizations timeline.pdf
- CHERUBS Evidence – Breath of Hope Listserv Post 6-14-2007.pdf
- CHERUBS Evidence – CHERUBS Site Awareness.pdf
- CHERUBS Evidence – CHERUBS Site 1998.pdf
- CHERUBS Evidence – CHERUBS Site 2000.pdf
- CHERUBS Evidence – CHERUBS Site What Is CDH.pdf
- CHERUBS Evidence – CHERUBS Site CDH.pdf
- CHERUBS Evidence – CDH Research Site.pdf
- CHERUBS Evidence – CHERUBS Blog.pdf
- CHERUBS Evidence – CHERUBS 2000 Spring Newsletter.pdf
- CHERUBS Evidence – CHERUBS 2000 Summer Newsletter.pdf
- CHERUBS Evidence – CHERUBS 2009 Winter Newsletter.pdf
- CHERUBS Evidence – CHERUBS 2008 Winter Newsletter.pdf
- CHERUBS Evidence – CHERUBS 2007 Fall Newsletter
- CHERUBS Evidence – CDH Conferences.pdf
- CHERUBS Evidence – Golf Tournament.pdf
- CHERUBS Evidence – Angel Ball.pdf

7. Since at least as early as 2000, CHERUBS has been using the term awareness in correlation with congenital diaphragmatic hernia in the marketplace.

- CHERUBS Evidence – 1995-2008 Organizations timeline.pdf
 - CHERUBS Evidence – CHERUBS Listserv 1999.pdf
 - CHERUBS Evidence – CHERUBS Listserv 1999 3.pdf
 - CHERUBS Evidence – CHERUBS Listserv 1999 2.pdf
 - CHERUBS Evidence – CHERUBS Listserv 2000.pdf
 - CHERUBS Evidence – CHERUBS Listserv 2000 2.pdf
 - CHERUBS Evidence – CHERUBS Listserv 2004.pdf
 - CHERUBS Evidence – Cafepress 4.pdf
8. Since at least as early as 2000, CHERUBS has been using term CDH AWARENESS in the marketplace, using the common abbreviation of CDH for congenital diaphragmatic hernia.
- CHERUBS Evidence – Cafepress 4.pdf
 - CHERUBS Evidence – Cafepress 2004.pdf
 - CHERUBS Evidence – 1995-2008 Organizations timeline.pdf
9. On January 4, 2008 CHERUBS began the necessary paperwork to change our public name to and be Incorporated as CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Awareness and Support with our registration of an Employer Identification Number.
- CHERUBS Evidence – EIN.pdf
10. THREAT OF HARM TO OUR NON-PROFIT ORGANIZATION: CHERUBS has been threatened with this trademark since October, 2007. The first threats came immediately following a civil restraining order case filed by DAWN M. TORRENCE, President & Founder of CHERUBS against ELIZABETH DOYLE-PROPST, CEO and Founder of BREATH OF HOPE, INC that was dismissed only on the grounds that it would be better suited as a corporate tort suit.
- CHERUBS Evidence – Threats and Blackmail Attempt 8-31-08.pdf
 - CHERUBS Evidence – Letter to NC Dept of State.pdf
 - CHERUBS Evidence – Restraining Order Court Transcript.pdf
 - CHERUBS Evidence – No Contact Order.pdf
 - CHERUBS Evidence – Timeline.pdf
 - CHERUBS Evidence – Breath of Hope Blog 10-4-07.pdf
 - CHERUBS Evidence – EDP Email 5-8-2007.pdf
 - CHERUBS Evidence – EDP Email 5-8-2007.pdf
 - CHERUBS Evidence – Slandorous Blog 1-6-2008.pdf
 - CHERUBS Evidence – Slandorous Blog 1-12-2008.pdf

- CHERUBS Evidence – Slanderous Blog 1-23-2008.pdf
- CHERUBS Evidence – Slanderous Blog 1-26-2008.pdf
- CHERUBS Evidence – Slanderous Blog 2-3-2008.pdf
- CHERUBS Evidence – Aliases.pdf
- CHERUBS Evidence – Cherubs Sucks.pdf
- CHERUBS Evidence – Cherubs Sucks 2.pdf
- CHERUBS Evidence – Breath of Hope Blog 10-22-07.pdf
- CHERUBS Evidence – SDE Email 7-26-2007.pdf
- CHERUBS Evidence – SDE Email 7-26-2007b.pdf
- CHERUBS Evidence – SDE Email 7-29-2007.pdf
- CHERUBS Evidence – JS Email 10-28-2007.pdf
- CHERUBS Evidence – EDP Email 12-12-2007.pdf
- CHERUBS Evidence – Travis Murray.pdf

11. On several occasions BREATH OF HOPE, INC. has contacted CHERUBS with threats of lawsuits sent to both our President and our lawyer. Cafepress.com, Yahoo.com, Zazzle.com and Google.com were contacted in an attempt to have our charity's site removed from their listings and our fundraising store taken down because of our use of the common term CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS.

- CHERUBS Evidence – SDE Email 10-23-2007.pdf
- CHERUBS Evidence – Yahoo.pdf

12. On September 18, 2008, Cafepress.com was contacted by ELIZABETH DOYLE-PROPST, CEO and Founder of BREATH OF HOPE, INC, requesting that CHERUBS on-line fundraising store be altered or removed because of our use of the term CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS.

- CHERUBS Evidence – Cafepress.pdf
- CHERUBS Evidence – Cafepress 2.pdf
- CHERUBS Evidence – Cafepress 3.pdf
- CHERUBS Evidence – Cafepress 4.pdf

13. On November 17, 2008, Zazzle.com notified CHERUBS that ELIZABETH DOYLE-PROPST, CEO and Founder of BREATH OF HOPE, INC, requested removal of fundraising products on CHERUBS account that contained the phrase "Congenital Diaphragmatic Hernia". This is the name of the disease and not the registered phrase, but ELIZABETH DOYLE-PROPST claimed registered ownership of this phrase.

- CHERUBS Evidence – Zazzle.pdf
- CHERUBS Evidence – Zazzle 2.pdf

CHERUBS would also like to submit the following evidence for the record that we have tried to work this trademark issue out with Breath of Hope, Incorporated with the many other organizations for Congenital Diaphragmatic Hernia. Breath of Hope, Incorporated did not respond or attempt to work with the CDH community to find a resolution to this issue.

CHERUBS Evidence - Attempt to Resolve Trademark Issue.pdf

All of the above evidence is submitted wholly, truthfully and in accordance of providing evidence only at the issue at hand.

Sincerely,



Dawn M. Torrence Williamson
President and Founder, CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support

CERIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing information and evidence in this DISCLOSURE BY CHERUBS, THE ASSOCIATION OF CONGENITAL DIAPHRAGMATIC HERNIA RESEARCH, ADVOCACY AND SUPPORT was served upon the Respondent, BREATH OF HOPE, INCORPORATED, this 14th day of March, 2009, by sending the same via electronic mail to:

Elizabeth Doyle Propst
elizabeth@breathofhopeinc.com
Breath of Hope Incorporated
CEO
PO Box 6627, 53 Four Season Drive
Charlottesville, VA 22906



Dawn M. Torrence Williamson
President and Founder, CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support