

ESTTA Tracking number: **ESTTA309931**

Filing date: **10/06/2009**

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

Proceeding	92051361
Party	Defendant United Home Care, Inc.
Correspondence Address	J. Tucker Barr Arnall Golden Gregory LLP 171 17th Street, N.W. Atlanta, GA 30363 UNITED STATES tucker.barr@agg.com
Submission	Answer
Filer's Name	J. Tucker Barr
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Date	10/06/2009
Attachments	First Amended Answer and Defenses.pdf (7 pages)(22451 bytes)

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

In the matter of Registration No. 3,180,437
For the Mark UNITED HOME CARE
Registration Date: December 5, 2006

United Home Care Services, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92051361
)	
United Home Care, Inc.)	
)	
Respondent.)	
_____)	

**FIRST AMENDED ANSWER AND DEFENSES
TO PETITION FOR CANCELLATION**

COMES NOW, United Home Care, Inc. (“Respondent”) and, pursuant to 37 C.F.R. § 2.115 and Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, hereby submits its First Amended Answer and Defenses to Petition for Cancellation (“Petition”).

ANSWER

Respondent answers the separately numbered paragraphs of the Petition as follows:

1.

Respondent denies the allegations contained in paragraph 1 of the Petition.

2.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition.

3.

Respondent admits the allegations contained in paragraph 3 of the Petition.

4.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition.

5.

Respondent admits the allegations contained in paragraph 5 of the Petition.

6.

Respondent admits the allegations contained in paragraph 6 of the Petition.

7.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition.

8.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Petition.

9.

Respondent denies the allegations contained in paragraph 9 of the Petition.

10.

Respondent denies the allegations contained in paragraph 10 of the Petition.

11.

Respondent admits that the mark claimed by Petitioner (*i.e.*, United Home Care) appears to be identical to Respondent's UNITED HOME CARE mark in terms of sound and appearance. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 11 of the Petition that Petitioner uses its mark in connection

with “identical services.” Respondent is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 11 of the Petition.

12.

Respondent denies the allegations contained in paragraph 12 of the Petition.

13.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Petition.

14.

Respondent denies the allegations contained in paragraph 14 of the Petition.

15.

Respondent admits the allegations contained in paragraph 15 of the Petition.

16.

Respondent admits that it was formally incorporated on April 12, 1999. Respondent denies the remaining allegations contained in paragraph 16 of the Petition

17.

Respondent denies the allegations contained in paragraph 17 of the Petition.

18.

Respondent denies the allegation contained in paragraph 18 of the Petition that “[t]he health care industry is a small one” Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 18 of the Petition.

19.

Respondent admits that it is based in Georgia and that Georgia and Florida are

neighboring states. Respondent denies the remaining allegations contained in paragraph 19 of the Petition.

20.

Respondent denies the allegations contained in paragraph 20 of the Petition.

21.

Respondent denies the allegations contained in paragraph 21 of the Petition.

22.

Respondent denies the allegations contained in paragraph 22 of the Petition.

23.

Respondent denies the allegations contained in paragraph 23 of the Petition.

24.

Respondent denies the allegations contained in paragraph 24 of the Petition.

General Denial

Except to the extent that factual allegations contained in the Petition are expressly admitted by Respondent in the foregoing paragraphs of this Answer, they are denied.

DEFENSES

Respondent sets forth its defenses to the claims set forth in the Petition as follows:

First Defense

The claimed mark has been not been used continuously and exclusively by Petitioner from the date of first use claimed in the Petition, and has not been used continuously and exclusively since the date of Respondent's adoption and use of its UNITED HOME CARE mark.

Second Defense

The mark claimed by Petitioner in the Petition varies from the mark actually used by Petitioner in commerce.

Third Defense

Neither the claimed mark nor the mark used in commerce by Petitioner is likely to be confused with Respondent's UNITED HOME CARE mark.

Fourth Defense

Petitioner's claims are barred in whole or in part by the equitable doctrine of laches.

Fifth Defense

Petitioner's claims are barred in whole or in part by the equitable doctrine of acquiescence.

Sixth Defense

Petitioner's claims are barred in whole or in part by the doctrine of estoppel.

Seventh Defense

The mark used in commerce by Petitioner is not distinctive.

WHEREFORE, Respondent respectfully requests that (1) the Cancellation Proceeding be decided in its favor; (2) the Petition be dismissed with prejudice; and (3) Respondent receive such other, further or different relief as this Board deems just and proper.

Respectfully submitted this 6th day of October 2009.

[Signature of Counsel Appears on the Following Page]

ARNALL GOLDEN GREGORY LLP

/s/ J. Tucker Barr

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing by depositing FIRST AMENDED ANSWER AND DEFENSES TO PETITION FOR CANCELLATION a copy of same in the United States Mail, with sufficient postage thereon, and addressed to the following:

Michael Tschupp, Esq.
Espinosa | Trueba PL
3001 SW 3rd Avenue
Miami, Florida 33129

I further certify that the foregoing FIRST AMENDED ANSWER AND DEFENSES TO PETITION FOR CANCELLATION has been filed electronically with the Trademark Trial and Appeal Board.

This 6th day of October 2009.

ARNALL GOLDEN GREGORY LLP

/s/ J. Tucker Barr

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