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

Proceeding	92051514
Party	Plaintiff Reliant Hospital Partners, LLC
Correspondence Address	Deborah A. Wilcox Baker & Hostetler LLP 1900 East 9th Street , 3200 National City Center Cleveland, OH 44114 UNITED STATES clevelandip@bakerlaw.com,dwilcox@bakerlaw.com
Submission	Opposition/Response to Motion
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Date	07/02/2010
Attachments	RHP RMG Petitioner's Opp 92051514.pdf (20 pages)(1237597 bytes)

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

In the Matter of Registration No. 3426134

RELIANT HOSPITAL PARTNERS LLC Petitioner, v. RELIANT MANAGEMENT GROUP, LLC, Registrant.	Cancellation No. 92051514

PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION FOR SUSPENSION OF PROCEEDINGS AND PETITIONER'S REQUEST FOR EXTENSION OF TRIAL DATES BY 60 DAYS

Petitioner, Reliant Hospital Partners LLC ("RHP"), by and through its undersigned counsel, hereby opposes the Motion for Suspension of Proceedings ("Motion") filed by Registrant, Reliant Management Group, LLC ("Registrant") because Registrant has no basis for its Motion. There is no lawsuit pending between the same parties involving related issues to this action. Registrant disingenuously, with full knowledge that the lawsuit does not involve RHP, misrepresents the facts and attempts to mislead this tribunal. RHP further is using this Motion to hide in the corners, refusing to respond to discovery which would show that the trademark must be cancelled.

Throughout Registrant's Motion, Registrant refers to RHP as "Petitioner/Defendant" in reference to a complaint Registrant filed in the U.S. District Court for the Northern District of Texas (Dallas) (the "District Court Litigation"). However, RHP is not the defendant in the District Court Litigation. The defendant in the District Court Litigation is Reliant Surgery Center, Inc. Since RHP is not a party to the District Court Litigation, the District Court

Litigation will have no bearing on this cancellation proceeding. Therefore, the Board should deny Registrant's Motion for Suspension of Proceedings.

FACTS AND PROCEDURAL BACKGROUND

On September 23, 2009, RHP initiated this cancellation proceeding against Registrant to cancel the registration due to non-use for the identified services. The only issue thus before the Board in this cancellation proceeding is Registrant's failure to use the service mark RELIANT REHABILITATION (the "Mark") for "physical rehabilitation; providing physical rehabilitation facilities."

Registrant claims to be a contractor providing "turnkey rehabilitation department services." (Motion at 2.) Registrant offers no "physical rehabilitation" services to patients and operates no "physical rehabilitation facilities" under the Mark. To now say that this identification of services should be read to mean "providing someone with every facility for accomplishing a task" tortures the plain meaning of the terms. This violates the requirement that the identification of goods "should set forth common names, using terminology that is generally understood." Trademark Manual of Examining Procedure Section 1402.01 (5th ed. 2007).

RHP has been attempting to secure discovery from Registrant so that RHP can prove its case. RHP served its First Set of Interrogatories and First Set of Document Requests upon Registrant on December 8, 2009. Registrant failed to produce a single document to show its claimed use of the Mark, despite repeated promises, nor did it object to the discovery. RHP filed a Motion to Compel on March 1, 2010. On March 12, 2010, the Board suspended this proceeding pending the disposition of the Motion to Compel. Before the Board ruled on RHP's Motion to Compel, Registrant finally produced some documents and the Motion to Compel was withdrawn. This proceeding resumed on May 18, 2010.

On April 28, 2010, RHP served further discovery on Registrant, and sent a letter outlining deficiencies in the discovery responses. RHP also repeatedly attempted to schedule the deposition of Registrant. On June 14, 2010, RHP sent a letter to Registrant to attempt to resolve the dispute without resorting to filing another motion to compel (copy attached as Exhibit A). Registrant refused to permit further discovery and instead filed the Motion to Suspend.

As for the lawsuit Registrant mentions, on January 22, 2010, Registrant filed it against Reliant Surgery Centers, Inc. Although the undersigned counsel also represents Reliant Surgery Centers, Inc., it is not a party to this cancellation proceeding. Registrant did not send a waiver of service of process in the District Court Litigation until April 29, 2010 and Reliant Surgery Centers, Inc. responded by filing a Motion to Dismiss Plaintiffs' Complaint on June 28, 2010 (copy attached hereto as Exhibit B).

ARGUMENT

Registrant's Motion should be denied. The District Court Litigation has no bearing upon this cancellation proceeding because RHP is not a party to the District Court Litigation. Moreover, the defendant in the District Court Litigation has filed a Motion to Dismiss Plaintiffs' Complaint. Because the District Court Litigation does not involve the same parties, and the complaint in that matter likely will be dismissed, this cancellation proceeding should continue.

Registrant cites *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992) in support of its Motion, but that case is distinguishable from the present matter. In that case, the petitioner had filed a cancellation action before the Board, and also brought a civil suit against the registrant asking the district court to cancel the registration of the mark at issue. The Board granted the petitioner's motion to suspend the cancellation proceedings pending a final determination of the civil suit, because the district court's decision would be

dispositive of the issues before the Board. Here, RHP is not a party to the District Court Litigation, and cancellation of the Mark is not an issue before that court. This Board has previously held that a claim in a civil action grounded on trademark infringement is "fundamentally different" than a claim in a proceeding to cancel registration of that mark. *Treadwell's Drifters, Inc. v. Larry Marshak*, 18 USPQ2d 1318 (TTAB 1990). In sum, Registrant's Motion should be denied because the District Court Litigation involves different parties and different issues than this proceeding, so it will have no bearing on the instant cancellation proceeding.

Registrant's attempt to avoid its discovery production is another reason supporting continuing with this proceeding and denying the request for a stay. Registrant's statement that the parties' discovery dispute "would be best resolved by the federal district court" in the District Court Litigation (to which RHP is not a party), is nothing short of ridiculous. This proceeding has already been suspended once due to Registrant's refusal to provide discovery. Another unnecessary suspension will prejudice RHP, who has been diligently trying to resolve the parties' current discovery dispute regarding the sole issue in this proceeding—Registrant's use of the Mark. Throughout this dispute, Registrant has ducked addressing its claims and refused to answer appropriate discovery requests, and now Registrant hides in the corner since it cannot produce one single piece of information to support its claim of use of the mark with the services and facilities. Registrant has no basis for suspending this action and the Motion is a thinly veiled attempt to avoid its discovery obligations.[1]

[1] Registrant complains it did not obtain discovery from RHP regarding the issues of "infringement and unfair competition"—but Registrant is not entitled to that discovery here. Those claims are not germane to this case, nor are any "facts" that Registrant added to its Motion about mistakes job applicants may be making in contacting the other party. The only issue in this proceeding is Registrant's failure to use the Mark. RHP served sufficient discovery responses to establish its standing in the action. Registrant's discovery served on RHP is not only irrelevant to cancellation of Registrant's registration, but is harassing and sanctionable.

CONCLUSION

For the foregoing reasons, RHP respectfully requests that the Board deny Registrant's Motion to Suspend Proceedings and that it reset the trial dates to extend them by 60 days so that the parties have sufficient time within which to complete discovery.

/Deborah A. Wilcox/
Deborah A. Wilcox, Esq.
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Attorneys for Reliant Hospital Partners, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION TO SUSPEND PROCEEDINGS,** is being served this 2nd day of July, 2010, on David W. Nance, Attorney for Registrant, by email as follows: david@dwnance.com.

/Deborah A. Wilcox/
Deborah A. Wilcox

EXHIBIT A

Baker&Hostetler LLP
PNC Center
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T 216.621.0200
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Deborah A. Wilcox
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June 14, 2010

VIA E-MAIL

David Nance, Esq.
D.W. Nance LLC
5700 Magazine Street
New Orleans, LA 70115

Re: Reliant Hospital Partners, LLC v. Reliant Management Group, LLC
TTAB Cancellation No. 92051514

Dear Mr. Nance:

We write to resolve the following issues regarding our outstanding discovery requests:

Written Discovery Requests

On April 28, 2010, I contacted you via email regarding your client Reliant Management Group's ("RMG") deficient discovery responses to Reliant Hospital Partners' ("RHP") first set of discovery. I identified the following deficiencies, which to date have not been cured:

- You have not sent us a Verification of the Interrogatory responses, as required under F.R.C.P. 33(b)(5), so the responses provided remain deficient in their entireties.

- Interrogatory No. 6 requests 5 years' of sales information. Please provide a full answer.

- Interrogatory No. 9 requests identification of the persons; please provide names and contact information for the "business development managers."

- Interrogatories Nos. 15 and 16 request identification of customers. RMG's responses do not provide sufficient information from which to identify any customers who have purchased RELIANT REHABILITATION-branded services (we are not asking for information that cannot be revealed under HIPPA).

- Interrogatory No. 21 requests a definition. Your response identifies multiple definitions as to "facility." Please clarify what your definition is for "physical rehabilitation facilities."

In addition, on April 28, 2010, I electronically served a second set of Document Requests and Interrogatories with respect to RMG's "service marks." On May 28, you responded by objecting to each and every request. Your objections have no merit, because all of the requests go to the use of the trademark—which is the only issue in this cancellation action. Unlike the requests you served on RHP, which were entirely objectionable because they did not relate to the sole issue before the TTAB—your client's use of the mark—here, your client has no basis for merely copying RHP's objections to completely different topics of discovery.

We request that you withdraw your improper objections and provide proper responses to our second set of discovery immediately.

Request for Deposition

On May 7, 2010, we exchanged email correspondence regarding scheduling the deposition of Mark Fowler. I followed up via email on May 18, 2010, and also had my assistant, Gloria Rothhaas, contact you regarding potential deposition dates. Ms. Rothhaas emailed you on May 18, 2010, and telephoned you on May 18, 2010, May 24, 2010, and June 1, 2010. We continue to await your response as to available dates for Mr. Fowler's deposition.

If we cannot resolve these issues by your agreement to provide adequate responses to the first and second set of written discovery on a timely basis, and to schedule a date for the deposition of Mr. Fowler, we will have no choice but to seek assistance from TTAB by filing yet another motion to compel.

I am available Tuesday afternoon and most of Wednesday to discuss a resolution and will contact you if I do not hear further from you to schedule a particular time to talk.

Very truly yours,

/Deborah A. Wilcox/

Deborah A. Wilcox

cc: Reliant Hospital Partners, LLC

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RELIANT MANAGEMENT GROUP, LLC D.B.A. RELIANT REHABILITATION et al.	§	
Plaintiffs,	§	CIVIL ACTION NO. 3:10-cv-00122-B
vs.	§	JUDGE JANE J BOYLE
RELIANT SURGERY CENTERS, INC. D.B.A. RELIANT HEALTHCARE PARTNERS, INC.	§	
Defendant.	§	

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO FEDERAL RULE 12(B)(6), OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL RULE 56

Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56, Defendant Reliant Surgery Centers, Inc. ("RSC") files this motion to dismiss for failure to state a claim upon which relief can be granted, or, in the alternative, moves for summary judgment. RSC's Brief in Support of this motion to dismiss, or in the alternative, motion for summary judgment, is filed contemporaneously with this motion.

WHEREFORE, RSC respectfully requests that this Court grant its motion to dismiss Plaintiffs' Complaint, or in the alternative, grant its motion for summary judgment, and for such other and further relief, at law or in equity, to which RSC may be justly entitled.

Respectfully submitted this 28th day of June, 2010.

BAKER & HOSTETLER LLP

By: /s/ Paul S. Francis
Paul S. Francis
Attorney in Charge
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COUNSEL FOR DEFENDANT, RELIANT SURGERY CENTERS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the persons listed below via ECF filing on June 28, 2010.

David W. Nance, Esq.
D.W. Nance, LLC
5700 Magazine Street
New Orleans, LA 70115

/s/ Paul S. Francis
Paul S. Francis

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RELIANT MANAGEMENT GROUP, LLC D.B.A. RELIANT REHABILITATION et al.	§	
Plaintiffs,	§	CIVIL ACTION NO. 3:10-cv-00122-B
vs.	§	JUDGE JANE J BOYLE
RELIANT SURGERY CENTERS, INC. D.B.A. RELIANT HEALTHCARE PARTNERS, INC.	§	
Defendant.	§	

BRIEF IN SUPPORT OF DEFENDANT RELIANT SURGERY CENTERS, INC.'S MOTION TO DISMISS RELIANT MANAGEMENT GROUP, LLC D.B.A. RELIANT REHABILITATION'S COMPLAINT PURSUANT TO FEDERAL RULE 12(B)(6), OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL RULE 56

Defendant Reliant Surgery Centers, Inc. ("Defendant"), files this Brief in Support of its Motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) the Complaint of Plaintiffs Reliant Management Group, LLC D.B.A. Reliant Rehabilitation and Reliant Pro Rehab, LLC d.b.a. Reliant Rehabilitation (collectively, "Plaintiffs") for failure to state a claim upon which relief against Defendant can be granted, or in the alternative, motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.

I. FACTS

Defendant was incorporated in 2004. (Appendix, Declaration of Emmett E. Moore, p. 1, ¶ 2.) Defendant was formed as a holding company to pursue a business venture that did not involve rehabilitation facilities or services. (Id., ¶ 3.) The business venture never got off the ground, and Reliant Surgery Centers, Inc. ceased operations in 2006. (Id.)

Defendant did not adopt or use the name "Reliant Rehabilitation." (Id., p. 2, ¶ 4.) Defendant does not and has never operated under the name "Reliant Rehabilitation." (Id., p. 2, ¶ 5.)

II. STANDARD OF REVIEW

To withstand a motion brought under Rule 12(b)(6), Plaintiffs must allege "more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). A plaintiff must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action" in order to defeat a motion to dismiss. *Bell Atlantic Co. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007). A complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," such that the substance of its claims go "across the line from conceivable to plausible." *See Iqbal*, 129 S.Ct. at 1949; *Twombly*, 550 U.S. at 570.

Summary judgment is appropriate when the movant establishes that there is no genuine issue of material fact. FED. R. CIV. P. 56(c). The moving party has the initial burden of showing "an absence of evidence to support [plaintiff's] case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Lynch Properties, Inc. v. Potomac Ins. Co.*, 140 F.3 d 622, 625 (5th Cir. 1998). The burden then shifts to the plaintiff "to identify specific facts that show the existence of a genuine issue of material fact." *Thomas v. Int'l Business Machines*, 48 F.3d 478, 484 (10th Cir. 1995). Plaintiffs must do far more than "simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Instead, Plaintiffs "must present sufficient evidence in specific, factual form for a jury to return a verdict" in their favor. *Bacchus Indus., Inc. v. Arvin Indus., Inc.*, 939 F.2d 887, 891 (10th Cir. 1991). Rule 56(c) does not require that discovery take place before a motion for summary

judgment may be granted. See *Walker v. U.S. Environmental Protection Agency*, 802 F.Supp. 1568, 1576 (S.D. Tex. 1992) (citing *Mills v. Damson Oil Corp.*, 931 F.2d 346, 350 (5th Cir. 1983)).

III. ARGUMENT

Defendant is not a real party in interest to this lawsuit. Defendant has no interest in the result of this lawsuit. Defendant has no interest in or control over the subject matter of the litigation. Defendant has no involvement with the facts alleged in the Complaint.

Plaintiffs allege that in 2006, Defendant adopted and commenced use of the name RELIANT REHABILITATION with the intention of competing unfairly with Plaintiffs. (Complaint, ¶ 9.) In fact, Defendant ceased operations in 2006. (Appendix, Declaration of Emmett E. Moore, p. 1, ¶ 3.) As stated above, Defendant has never adopted, used or operated under the name "Reliant Rehabilitation." (Appendix, Declaration of Emmett E. Moore, p. 2, ¶¶ 4-5.) Further, Defendant's business did not involve rehabilitation, and Defendant did not intend to compete with Plaintiffs, much less compete unfairly. (Appendix, Declaration of Emmett E. Moore, p. 1, ¶ 3.)

Plaintiffs allege that Defendant has used the name RELIANT REHABILITATION in its corporate name, in the name of multiple hospitals in Texas, and in advertising. (Complaint, ¶ 9.) The face of the Complaint shows that although Defendant's corporate name contains the word "reliant," it does not contain the word "rehabilitation." Again, Defendant ceased operations in 2006, and never did business involving rehabilitation services. (Appendix, Declaration of Emmett E. Moore, p. 1, ¶ 3.) Defendant has no involvement with any hospitals in Texas. It has no need for advertising. It is not an operating company.

WHEREFORE, based upon the foregoing facts and authorities, Defendant respectfully

requests that this Court grant its motion to dismiss the Complaint of Plaintiffs Reliant Management Group, LLC D.B.A. Reliant Rehabilitation and Reliant Pro Rehab, LLC D.B.A. Reliant Rehabilitation, or in the alternative, grant its motion for summary judgment, and for such other and further relief, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted this 28th day of June, 2010.

BAKER & HOSTETLER LLP

By: /s/ Paul S. Francis

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COUNSEL FOR DEFENDANT, RELIANT SURGERY CENTERS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the persons listed below via ECF filing on June 28, 2010.

David W. Nance, Esq.
D.W. Nance, LLC
5700 Magazine Street
New Orleans, LA 70115

/s/ Paul S. Francis
Paul S. Francis

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RELIANT MANAGEMENT GROUP, LLC D.B.A. RELIANT REHABILITATION et al.	§	
Plaintiffs,	§	CIVIL ACTION NO. 3:10-cv-00122-B
vs.	§	JUDGE JANE J BOYLE
RELIANT SURGERY CENTERS, INC. D.B.A. RELIANT HEALTHCARE PARTNERS, INC.	§	
Defendant.	§	

DECLARATION OF EMMETT E. MOORE

I, Emmett E. Moore, hereby declare as follows:

1. My name is Emmett E. Moore. I am more than twenty-one (21) years of age, of sound mind, and have personal knowledge of the facts and the circumstances set forth in this Declaration, and they are all true and correct.

2. I was the president and chief executive officer for Reliant Surgery Centers, Inc. from the date of its incorporation in 2004 until it ceased operations in 2006. I am familiar with the records, business, and operations of Reliant Surgery Centers, Inc.

3. Reliant Surgery Centers, Inc. was formed to be a holding company for future subsidiaries, in pursuit of a business venture that did not involve rehabilitation facilities or services. Reliant Surgery Centers, Inc. ceased operations in 2006.

4. Reliant Surgery Centers, Inc. did not adopt or use the name "Reliant Rehabilitation."

5. Reliant Surgery Centers, Inc. does not and has never operated under the name "Reliant Rehabilitation."

6. I declare under penalty of perjury of the laws of the United States of America (28 U.S.C. § 1746) that the foregoing is true and correct.

Executed on June 25, 2010.

Emmett E. Moore

Emmett E. Moore