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

Proceeding	92053467
Party	Defendant ReliantHospital Partners, LLC
Correspondence Address	RELIANTHOSPITAL PARTNERS LLC 15851 DALLAS PARKWAY, SUITE 500 ADDISON, TX 75001 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Deborah A. Wilcox
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Signature	/Deborah A. Wilcox/
Date	02/14/2011
Attachments	RHP's Answer to RMG's Petiton for Cancellation (TTAB).PDF (6 pages)(91732 bytes)

Registration Subject to the filing

Registration No	3426134	Registration date	05/13/2008
Registrant	Reliant Management Group, L.L.C. Suite A 11959 Bricksome Avenue Baton Rouge, LA 70816 UNITED STATES		

Goods/Services Subject to the filing

Class 044. First Use: 2003/07/00 First Use In Commerce: 2003/11/00 All goods and services in the class are requested, namely: Physical rehabilitation; Providing physical rehabilitation facilities

VIA ELECTRONIC SYSTEM FOR
TRADEMARK TRIALS AND APPEALS ("ESTTA")
DATE OF FILING: February 14, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Reliant Management Group, LLC, Petitioner, v. Reliant Hospital Partners, LLC Registrant.	)	Cancellation No. 92053467

ANSWER AND COUNTERCLAIM

Registrant Reliant Hospital Partners, LLC ("RHP") hereby answers the allegations in the Petition to Cancel Trademark Registration No. 3748850 filed by Reliant Management Group, LLC ("RMG"), as follows:

1. RHP admits that Petitioner was granted a registration with the details set forth in the allegations of Paragraph 1, and otherwise denies the remaining allegations; and further answering states that the registration is void and of no effect because Petitioner has never used Petitioner's Mark in commerce in connection with the services identified.

2. RHP admits the allegations of Paragraph 2.

3. RHP admits the allegations of Paragraph 3.

4. RHP admits the allegations of Paragraph 4.

5. RHP denies the allegations of Paragraph 5. Further answering, RHP states that it received correspondence from Petitioner's counsel in August and September, 2009 relating to the application for registration of the mark at issue in this action. On September 23, 2009, RHP filed

a petition for cancellation (No. 92051514) of Petitioner's Mark before the Trademark Trial and Appeal Board ("TTAB"). On November 11, 2009, RHP filed its Response to Office Action with the Trademark Examiner requesting suspension of its application for the RELIANT REHABILITATION HOSPITAL mark because of RHP's pending cancellation action. The TTAB suspended the proceedings in RHP's cancellation action on August 20, 2010.

6. RHP denies the allegations of Paragraph 6. Further answering, RHP states that the only issue in this action is the comparison of RELIANT HOSPITAL PARTNERS and Design with Petitioner's mark RELIANT REHABILITATION and Design, and those marks and their respective services and customers are all different, such that consumer confusion is not likely, as already has been determined by the Trademark Office in issuing RHP the registration in its mark.

7. RHP denies the allegations of Paragraph 7.

8. RHP denies the allegations of Paragraph 8.

9. RHP denies the allegations of Paragraph 9. Further answering, RHP states that RMG has alleged absolutely no facts to support a claim that its mark is "famous" as would be required to state a claim for trademark dilution; nor could it, as there are many businesses that use the mark RELIANT, indeed, even the mark RELIANT REHAB. See, e.g., http://www.reliantrehab.com/.

10. RHP denies the allegations of Paragraph 10.

AFFIRMATIVE DEFENSES

11. RMG's claims are barred by laches.

12. RMG's claims are barred by estoppel.

13. RMG has not been damaged.

14. RMG's mark is void and of no effect due to non-use.

15. RMG fails to state a claim upon which relief can be granted as to misrepresentation

of the source of the services in connection with which the mark is used.

16. RMG fails to state a claim upon which relief can be granted as to priority and likelihood of confusion.

17. RMG fails to state a claim upon which relief can be granted as to dilution.

WHEREFORE, Registrant requests that the Petition for Cancellation be dismissed.

COUNTERCLAIM

Registrant/Counterclaimant Reliant Hospital Partners, LLC ("RHP"), for its counterclaim against Petitioner Reliant Management Group, LLC ("RMG") states as follows:

Nature of the Action

18. In this action, RHP seeks cancellation of RMG's registration of the mark RELIANT REHABILITATION, Registration No. 3,426,134, because RMG never used the mark for the covered services prior to application for registration or the registration date.

Parties

19. Upon information and belief, RMG is a limited liability company organized and existing under the laws of the State of Louisiana with its principal place of business at Suite A, 11959 Bricksome Avenue, Baton Rouge, Louisiana, 70816.

20. RHP is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business at 15851 Dallas Parkway, Suite 500 Addison, Texas, 75001.

Facts

21. On May 13, 2008, RMG obtained a federal registration the mark RELIANT REHABILITATION and Design as a service mark for "[p]hysical rehabilitation; [p]roviding physical rehabilitation facilities" in International Class 44 ("RMG's Mark"). See Registration No. 3,426,134.

22. On May 13, 2009, RHP filed an application for the mark RELIANT HOSPITAL PARTNERS and Design, Serial Number 77/736,077, in International Class 44 for "[e]xtended acute care hospitalization services and skilled nursing facility providing inpatient and outpatient care consisting of treatment programs following a major illness, trauma, or surgery." ("RHP's Mark").

23. On February 16, 2010, the Trademark Office issued the registration of RHP's Mark, No. 3,748,850.

24. Upon information and belief, RMG never used RMG's Mark in commerce and never displayed RMG's Mark on or in any physical rehabilitation facility, thus rendering its application for the trademark false and misleading.

25. Upon information and belief, RMG is an outside contractor to nursing homes. RMG markets itself to nursing homes, not to nursing home occupants, and contracts with the nursing home to supply it with physical therapists and related services. While those therapists offer physical therapy to the nursing home occupants, they do not do so under the name or mark "RELIANT REHABILITATION." RMG does not use its name or the RMG Mark in any material way, if at all, in connection with providing physical rehabilitation services to the recipients. Only the owner of the nursing home that enters into a contract with RMG knows RMG's identity or mark. RMG thus never used RMG's Mark in commerce in connection with the services identified as "[p]hysical rehabilitation," or as "[p]roviding physical rehabilitation facilities," prior to the application or registration dates, rendering the registration void due to non-use for the identified services.

26. RHP will be damaged by the continued registration of RMG's Mark in that RHP is using the mark RELIANT HOSPITAL PARTNERS and Design in commerce and the

registration of said mark is being impaired by the continued registration of RMG's Mark. Further, if RMG's Mark is permitted to remain on the Principal Register, with all the substantive and procedural benefits conferred by its status as a registration on the Principal Register, RMG will enjoy an unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946.

27. On September 23, 2009, RHP filed a Petition for Cancellation before the Trademark Trial and Appeal Board requesting cancellation of registration of RMG's Mark, and so pleads in this action as well.

WHEREFORE, RHP prays that this Counterclaim be sustained in favor of RHP and that Registration No. 3,426,134 be cancelled.

Date: February 14, 2011

Respectfully submitted,

BAKER & HOSTETLER LLP

/s/ Deborah A. Wilcox

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Reliant Hospital Partners, LLC

CERTIFICATE OF FILING AND OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Answer and Counterclaim** is being filed electronically with United States Patent and Trademark Office and being served by First-Class U.S. Mail, postage prepaid, on February 14, 2011, on the following:

David W. Nance
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Attorney for RMG

/Deborah A. Wilcox/_____
Deborah A. Wilcox
Attorney for RHP