

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451

Lykos

Mailed: August 11, 2010

Cancellation No. 92048856

Lighthouse Hospice
Partners, LLC

v.

Lighthouse Senior Living,
LLC

Concurrent Use No. 94002459

Lighthouse Senior Living,
LLC

v.

Lighthouse Hospice
Partners, LLC

Angela Lykos, Interlocutory Attorney

On May 13, 2009, proceedings herein were suspended pending publication of Lighthouse Hospice Partners LLC's Application Serial No. 78939060 in the *Official Gazette*, the close of the opposition period, and termination of any opposition to the application. Insofar as that time period has now lapsed, the Board hereby dismisses the instant cancellation proceeding in favor of Concurrent Use Proceeding No. 94002459, and brings Application Serial No. 78939060 under the Board's jurisdiction.

Ordinarily, when a concurrent use proceeding is instituted, separate notice thereof is sent to each party

specified as a concurrent user in the application wherein trial dates are set. In this case, however, the parties have already filed a settlement agreement for purposes of terminating this concurrent use proceeding. In view thereof, there is no need to send a separate notice to each party.

By Application Serial No. 78939060, Lighthouse Hospice Partners, LLC is seeking to register the mark LIGHTHOUSE HOSPICE for "hospice services" in International Class 44, for the area comprising "Alabama, Arkansas, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Texas and Wisconsin." The application names Lighthouse Senior Living, LLC as the exception to Lighthouse Hospice Partners' claim of exclusive right to use the mark in commerce.

By the terms of the parties' proposed settlement agreement, Lighthouse Senior Living seeks to amend its Registration No. 2883252 for the mark LIGHTHOUSE SENIOR LIVING for "providing assisted living facilities" in International Class 43 and "health care services, namely, providing assistance to Alzheimer's and dementia care patients" in International Class 44, restricted to the area comprising "Connecticut, the District of Columbia, **Florida (most)**, Georgia, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North

Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia," naming Lighthouse Hospice Partners as the excepted user (emphasis added).

The Board construes these terms of the settlement agreement as a motion to amend. The motion is denied, however, as indefinite. The description of the geographic area must be sufficiently definite. See TBMP Section 1103.01(d)(2) (2d ed. rev. 2004). If the area is less than an entire state, it must be described in terms of counties or in other specific and definite terms. See *Pro-Cuts v. Schilz-Price Enterprises Inc.*, 27 USPQ2d 1224 (TTAB 1993) (description excepting "the San Francisco Bay area" indefinite). The term "most" after the state of Florida fails to delineate the geographic area in a precise manner.

In addition, the parties are also advised of the following. Under the terms of their proposed settlement agreement, the parties have each claimed various states and the District of Columbia as mutually exclusive geographic territories but have then designated a "non-claimed geographic area" consisting of the remaining area of the United States, where either party, upon written notification to the other, can use their respective mark in each state on a "first come basis." Thus, any registration that would issue pursuant to the parties' current settlement agreement will not reflect any future alterations regarding geographic use.

A concurrent use registrant that wishes to alter the restriction to its registration may only do so, if at all, through an appropriate decision in a new concurrent use proceeding before the Board, or by order of a court of competent jurisdiction. See TBMP Section 1114 (2d ed. rev. 2004). A Trademark Act Section 7(e) amendment cannot be used to alter a concurrent use restriction. Thus, if one of the parties expands into the "non-claimed geographic area," it would need to file a new concurrent use application setting forth the new geographic area and naming the other party as the excepted user. Following publication of the new application in the *Official Gazette*, the close of the opposition period, and termination of any opposition to the application, a new concurrent use proceeding would be required in order to adjudicate the parties' respective rights.

It is apparent that the parties seek to resolve this proceeding by way of settlement. As such and in view of the foregoing, the parties are allowed until **FORTY-FIVE (45) DAYS** from the mailing date hereof to prepare and submit to the Board for review a revised settlement agreement which properly delineates the parties' respective territories in each application and registration.

Proceedings otherwise remain suspended.