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

Proceeding	94002459
Party	User Lighthouse Senior Living, LLC
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Date	08/23/2010
Attachments	LIGHTHOUSE SENIOR LIVING LIGHTHOUSE HOSPICE COEXISTENCE AGREEMENT.PDF (5 pages)(207704 bytes) lighthouse senior living registration amendment.PDF (1 page)(27587 bytes)

TRADEMARK CO-EXISTENCE AGREEMENT

This Trademark Co-Existence Agreement is entered into this 18th day of August, 2009 ("Effective Date") by and between Lighthouse Hospice Partners, L.L.C. ("Hospice") and Lighthouse Senior Living, LLC ("Senior Living"). Hospice and Living sometimes referred to herein as Party and together as the "Parties").

BACKGROUND

Lighthouse Senior Living, LLC is the owner of a federally registered service mark "Lighthouse Senior Living", with a USPTO registration number of 2883252. Lighthouse Hospice Partners has filed a federal trademark registration application with the USPTO for the service mark Lighthouse Hospice. The USPTO has assigned serial number 78939060 to the Lighthouse Hospice application. On July 30, 2007, the USPTO examining attorney assigned to the Lighthouse Hospice application issued a final office action refusing registration due to the examining attorney's determination that there existed a likelihood of confusion with the Lighthouse Senior Living trademark. On February 4, 2008, Hospice filed a petition with the Trademark Trial and Appeal Board ("TTAB") to cancel Senior Living's registration. Senior Living filed an answer on March 24, 2008, responding to and opposing Hospice's petition. The Parties, having determined there is no likelihood of customer confusion as between the Lighthouse Senior Living service mark and the Lighthouse Hospice service mark due to (1) the geographic separation of the regions of the United States where the services being branded by the respective service marks will be marketed and (2) the sophistication of the consumers likely to purchase the respective services, have agreed to enter into this Trademark Co-Existence Agreement ("Agreement"). In response to the parties' desire to resolve their dispute by entering into this Agreement, the TTAB by Order dated August 11, 2010 dismissed Hospice's cancellation proceeding (Cancellation No. 92048856) in favor of a concurrent use proceeding (Concurrent Use No. 94002459). In order to bring the concurrent use proceeding to a final resolution and thereby finally resolve the parties' differences with respect to the territorial use of their respective marks, the parties hereby enter into this Agreement.

In consideration of the mutual covenants set forth herein, the Parties hereby agree as follows:

AGREEMENT

1. Definitions.

"Lighthouse Senior Living Mark" means that service mark registered with the United States Patent and Trademark Office ("USPTO"), with a registration number of 2883252.

"Lighthouse Hospice Mark" means that service mark to which the USPTO assigned serial number 78939060.

"Senior Living Geographic Area" means the following states: Connecticut, District of Columbia, Delaware, Florida, 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.

"Hospice Geographic Area" means any state or possession of the United States, including Puerto Rico, except: Connecticut, District of Columbia, Delaware, Florida, 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 .

2. Geographic Scope of Use.

a. As between the Parties, Senior Living shall have the exclusive right to use, advertise, and/or market the Lighthouse Senior Living Mark, except as limited by Section 3. b. below, within the Senior Living Geographic Area from the Effective Date until such time as Senior Living abandons its federal and common law rights in the Lighthouse Senior Living Mark throughout the United States, including its possessions and Puerto Rico, for a period of time exceeding twelve continuous months. During such period of time, Hospice shall not use, advertise, and/or market the Lighthouse Hospice Mark within the Senior Living Geographic Area, without the express written permission of Senior Living.

b. As between the Parties, Hospice shall have the exclusive right to use, advertise, and/or market the Lighthouse Hospice Mark, except as limited by Section 3. a. below, within the Hospice Geographic Area from the Effective Date until such time as Hospice abandons its federal and common law rights in the Lighthouse Hospice Mark throughout the United States, including its possessions and Puerto Rico, for a period of time exceeding twelve continuous months. During such period of time, Senior Living shall not use, advertise, and/or market the Lighthouse Senior Living Mark within the Hospice Geographic Area, without the express written permission of Hospice.

3. Limitation of Use of Mark.

a. Hospice agrees it will (i) limit its use and registration of the Lighthouse Hospice Mark to the provision of hospice services; (ii) not interfere with Senior Living's use of and its registration of the Lighthouse Senior Living Mark; and (iii) not derive any rights whatsoever as against the Lighthouse Senior Living Mark by virtue of its use of and/or registration of the Lighthouse Hospice Mark.

b. Senior Living agrees it will (i) limit its use and registration of the Lighthouse Senior Living Mark to the provision of providing assisted living facilities and health care services, namely, providing assistance to Alzheimer's and dementia care patients and other chronic care assistance services; (ii) not interfere with Hospice's use of and its registration of the Lighthouse Hospice Mark; and (iii) not derive any rights whatsoever as against the Lighthouse Hospice Mark by virtue of its use of and/or registration of the Lighthouse Senior Living Mark.

4. Incidents of Confusion.

a. The Parties each agree that the limitations set forth herein as to their respective rights to use their respective mark will prevent the likelihood of confusion, mistake, or deception as to the source of the Parties' respective services.

b. The Parties agree to cooperate and consult with one another, in good faith, should future conditions or developments suggest to either the possibility that the Parties' respective marks might be likely to be confused with one another, all with the view to insure that no substantial likelihood of confusion between the Parties' respective marks, as they are used in commerce, shall occur.

c. The Parties each agree that they will bring to each other's attention any instances of confusion between their respective marks and agree to cooperate with each other to alleviate such confusion.

5. Amendment to Lighthouse Senior Living Mark Registration (Registration No. 2883252). Concurrently with the filing of this Agreement with the TTAB, Lighthouse Senior Living shall file with the TTAB, an amendment in a form satisfactory to the TTAB, amending its registration of the Lighthouse Senior Living Mark to state that it is a concurrent use registration and that its territory of use is restricted to Connecticut, District of Columbia, Delaware, Florida, 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.

6. Amendment to Lighthouse Hospice Mark Registration Application (Application Serial No. 78939060). Concurrently with the filing of this Agreement with the TTAB, Lighthouse Senior Living shall file with the TTAB, an amendment in a form satisfactory to the TTAB, amending its registration application of the Lighthouse Hospice Mark to state that it is a concurrent use application and that its territory of use is restricted to the entire United States except the states of Connecticut, District of Columbia, Delaware, Florida, 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.

7. Miscellaneous.

a. In the event that either Party grants to any affiliate, subsidiary, representative, agent, or any third Party any rights in and to that Party's mark (Lighthouse Hospice Mark or Lighthouse Senior Living Mark respectively), any such grant of rights shall include a requirement that such Party abide by the terms and conditions of this Agreement, such that any such use of such Party's mark shall be subject to the same territorial and other restrictions set forth herein.

b. This Agreement shall inure to the benefit of, and be binding upon the Parties hereto, their assigns, successors-in-interest, parents, subsidiaries, licenses or related companies, and both Parties agree to give notice of this Agreement and the terms hereof to any and all of the above.

c. This Agreement shall be effective in the United States, including its possessions and Puerto Rico, and is to be construed under and governed by the applicable laws of the state of Maryland, excepting those conflicts of laws provisions which would serve to defeat application of Maryland substantive law.

d. This Agreement contains the full and complete understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements oral or written. No modification or amendment to this Agreement and no waiver of any provision shall be valid unless in writing and signed by a duly authorized officer of each Party.

e. Each person executing this Agreement on behalf of such Party hereby covenants, represents and warrants that such Party is duly formed or duly qualified and that each person executing this Agreement on behalf of such Party is an officer or member of such Party and is duly authorized to execute, acknowledge and deliver the Agreement to the other Party.

an ex parte, interlocutory and permanent injunction to enjoin and restrain such breach or threatened breach, without the posting of bond or other security. Such remedies shall be in addition to all other remedies available at law or in equity, including such Party's right to recover any and all damages, costs and expenses (including reasonable attorneys' fees) that may be sustained as a result of such breach or threatened breach of this Agreement.

g. Both Parties agree and acknowledge that this Agreement shall not be deemed enforceable against either Party until such time as (i) the USPTO TTAB accepts this Agreement as resolving all issues connected to the USPTO's denial of registration of the Lighthouse Hospice Mark due to its likelihood of confusion with the Lighthouse Senior Living Mark and (ii) all challenges by Hospice to the validity of Senior Living's registration of the Lighthouse Senior Living Mark, as well as Senior Living's federal statutory and common law rights in such mark are finally and conclusively terminated.

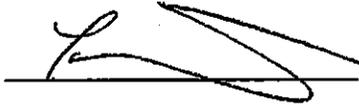
h. Any notice or communication required to be given pursuant to this Agreement shall be in writing and shall be sufficiently made or given if hand-delivered or mailed by certified mail, addressed to Hospice at its principal office, or to Senior Living at its principal office, or to any other addresses furnished in writing by any of the parties hereto to the other party hereto.

i. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile or PDF signatures shall be deemed originals for purposes of execution and enforcement.

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal the date first above written.

WITNESS:

Lighthouse Senior Living, LLC



By:  (SEAL)
Mark Caplan, Manager

WITNESS:

Lighthouse Hospice Partners, LLC



By: _____ (SEAL)
Name: _____
Title: _____

f. In the event of the breach or threatened breach of any provision of this Agreement, the non-breaching Party shall be entitled to specific performance of the provisions hereof, and or an ex parte, interlocutory and permanent injunction to enjoin and restrain such breach or threatened breach, without the posting of bond or other security. Such remedies shall be in addition to all other remedies available at law or in equity, including such Party's right to recover any and all damages, costs and expenses (including reasonable attorneys' fees) that may be sustained as a result of such breach or threatened breach of this Agreement.

g. Both Parties agree and acknowledge that this Agreement shall not be deemed enforceable against either Party until such time as (i) the USPTO TTAB accepts this Agreement as resolving all issues connected to the USPTO's denial of registration of the Lighthouse Hospice Mark due to its likelihood of confusion with the Lighthouse Senior Living Mark and (ii) all challenges by Hospice to the validity of Senior Living's registration of the Lighthouse Senior Living Mark, as well as Senior Living's federal statutory and common law rights in such mark are finally and conclusively terminated.

h. Any notice or communication required to be given pursuant to this Agreement shall be in writing and shall be sufficiently made or given if hand-delivered or mailed by certified mail, addressed to Hospice at its principal office, or to Senior Living at its principal office, or to any other addresses furnished in writing by any of the parties hereto to the other party hereto.

i. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile or PDF signatures shall be deemed originals for purposes or execution and enforcement.

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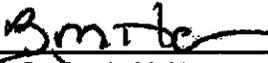
WITNESS:

Lighthouse Senior Living, LLC

By: _____ (SEAL)
Mark Caplan, Manager

WITNESS:

Lighthouse Hospice Partners, LLC

By:  (SEAL)
Name: Benjamin M. Hanson
Title: SVP and General Counsel

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

LIGHTHOUSE HOSPICE PARTNERS, LLC)	
)	CANCELLATION NO.
)	92048856
V.)	
)	
LIGHTHOUSE SENIOR LIVING, LLC)	
_____)	
)	
LIGHTHOUSE SENIOR LIVING, LLC)	CONCURRENT USE NO.
)	94002459
V.)	
)	
LIGHTHOUSE HOSPICE PARTNERS, LLC)	
_____)	

AMENDMENT TO REGISTRATION NO. 2883252

Pursuant to that certain trademark co-existence agreement entered into by and between Lighthouse Senior Living, LLC and Lighthouse Hospice Partners, LLC and the ruling issued by the TTAB on August 11, 2010 in the above captioned matter, Lighthouse Senior Living, LLC hereby amends its registration of its service mark, LIGHTHOUSE SENIOR LIVING, registration number 2883252 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 as follows:

1. Registration number 2883252 is hereby amended to a concurrent use registration with registration application number 78939060.
2. Registration number 2883252 is restricted to the area of Connecticut, District of Columbia, Delaware, Florida, 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.

Respectfully Submitted this
23rd day of August, 2010

Rosenberg|Martin|Greenberg, LLP



Susan Roberto-Saidi

Attorney of Record for Lighthouse Senior Living, LLC