

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: April 8, 2011

Concurrent Use No. 94002459

Lighthouse Hospice Partners,
LLC
(Serial No. 78939060)

v.

Lighthouse Senior Living, LLC
(Reg. No. 2883252)

**Before Quinn, Zervas and Cataldo,
Administrative Trademark Judges.**

By the Board:

Concurrent use applicant, Lighthouse Hospice Partners, LLC, (hereinafter "applicant"), seeks to register the service mark LIGHTHOUSE HOSPICE for, "provision of hospice services" in Class 44.¹

Registrant, Lighthouse Senior Living, LLC (hereinafter "LSL") is the owner of a U.S. trademark registration for LIGHTHOUSE SENIOR LIVING for, "providing assisted living facilities" in Class 43, and "health care services, namely, providing assistance to Alzheimer's and dementia care patients" in Class 44.² Applicant names LSL as the exception to its

¹ Application Serial No. 78939060 filed, July 27, 2006, claiming first use and first use in commerce on March 30, 2003. A disclaimer of "hospice" is of record.

² Registration No. 2883252, filed March 27, 2003, claiming first use and first use in commerce on Aug. 1, 2003. A disclaimer of "senior living" is of record.

exclusive right to use its mark. On August 23, 2010, LSL filed the parties' coexistence agreement with the Board.

As noted in its August 26, 2010 order, the Board held a teleconference with the parties wherein the Board suspended these proceedings to allow applicant to amend its application to clarify the territory of use named therein, to limit the recitation of services, and to allow time for the application to be republished and a new opposition period to expire. Satisfactory amendments were entered, including amendments to reflect the geographical restrictions for each party as noted at the end of this order, the application was republished, and the opposition period expired with no opposition proceeding filed. In view thereof, the Board now reviews the coexistence agreement.

The agreement, signed by both parties, provides that for geographical restrictions and the following consent; LSL consents to applicant's use of the mark LIGHTHOUSE HOSPICE within any state or possession of the United States, including Puerto Rico, except for the states of Connecticut, 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, and the District of Columbia. Also in the agreement, applicant consents to LSL's use of the mark LIGHTHOUSE SENIOR LIVING in the states of Connecticut, 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, and the District of Columbia.

The agreement provides that the parties do not believe that confusion is likely between their respective marks due to their use in their separate geographical areas and the sophistication of their consumers. The parties state that they will take commercially reasonable steps to prevent actual confusion, and agree to cooperate and consult with one another. The parties further provide that, in the event any actual confusion occurs, or if they believe it may be likely to occur, they will cooperate and work together to alleviate such confusion, and take steps to avoid future confusion.

Upon careful consideration of the agreement between the parties the Board is persuaded that, under the circumstances of this case, confusion among the relevant classes of consumers is unlikely to occur. In making this determination, the Board has taken into account not only the provisions of the agreement and the actual geographic restrictions of the areas of use, but also the voluntary entry by the parties into an agreement which includes provisions for concurrent use when it would be clearly against their business interests to cause confusion on the part of the public. *See Amalgamated Bank of New York v. Amalgamated Trust & Savings*, 842 F.2d 1270, 6 USPQ2d 1305 (Fed. Cir. 1988).

DECISION:

Applicant, Lighthouse Hospice Partners, LLC, is entitled to the registration of its mark, LIGHTHOUSE HOSPICE for "provision of hospice services" for the area consisting of "any state or possession of the United States, including Puerto Rico, except for the states of Connecticut, 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, and the District of Columbia" (Application Serial No. 78939060).

Registration No. 2883252 for the mark LIGHTHOUSE SENIOR LIVING owned by Lighthouse Senior Living, LLC, will be restricted to the area consisting of, "states of Connecticut, 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, and the District of Columbia."
