

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

Baxley

Mailed: November 14, 2013

Concurrent Use No. 94002550

Community Tampa Bay, Inc.

v.

The National Conference for
Community and Justice of the
Piedmont Triad, Inc.

v.

The National Conference for
Community and Justice
Connecticut/Western
Massachusetts, Inc.

v.

The Interfaith Council of
Southern Nevada

v.

Valley of the Sun YMCA

v.

Oasis Center

v.

YWCA Central Alabama

v.

National Conference for
Community and Justice of
Greater Dayton

v.
Oklahoma Center for Community
and Justice

v.
New Orleans Council for
Community and Justice

v.
Inclusion Center

v.
National Conference for
Community and Justice of
Metropolitan St. Louis

By the Trademark Trial and Appeal Board:

On September 14, 2012, the Board instituted this proceeding and allowed the named common law excepted users until October 24, 2012 to file an answer thereto.¹ On October 23, 2012, YWCA Central Alabama ("Alabama") filed an answer to the concurrent use application in which it admits that its territory of use is the State of Alabama, as applicant alleges in the involved application. See TBMP Section 1107 (3d ed. rev. 2 2013).

In the July 2, 2013 order, the Board entered default judgment against excepted users The National Conference for Community and Justice of the Piedmont Triad, Inc. ("PT"), The National Conference for Community and Justice Connecticut/Western Massachusetts ("CWM"), The Interfaith Council of Southern Nevada, Valley of the Sun YMCA, Oasis Center, National Conference for Community and Justice of

Greater Dayton, Oklahoma Center for Community and Justice, and New Orleans Council for Community and Justice for failure to to timely answer. However, in view of the stipulation that CWM filed on October 22, 2012 and the stipulation that PT filed on December 14, 2012, both in lieu of answers, to add to CWM's and PT's territories of use and to exclude the additional territories from the involved concurrent use application, the July 2, 2013 order modified to the extent that that entry of judgment against CWM and PT is vacated.¹

In the Board's July 2, 2013, the Board added two additional common law excepted users to Inclusion Center ("Inclusion") and National Conference for Community and Justice of Metropolitan St. Louis ("MSL"), exclude the states of Utah and Missouri from the application, and set Inclusion's and MSL's time in which to file an answer the involved concurrent use application. In view of the failure of common law excepted user Inclusion to timely answer, judgment by default is entered against Inclusion, and Inclusion is precluded from claiming any rights more extensive than acknowledged in the involved concurrent use application, as amended by this order. See Trademark Rule 2.99(c); TBMP Section 1107.

¹ The stipulations are more in the nature of settlements.

In lieu of an answer, MSL, on September 9, 2013, applicant filed a stipulation that it entered into with MSL to add the State of Illinois to MSL's territory of use and to exclude that state from the involved application. That stipulation is approved.

In view of the foregoing, the concurrent use statement of involved application Serial No. 85488380 is amended to the following:

Concurrent use information. The applicant seeks registration of the mark without limitation to any particular mode of use for educational services, namely, conducting classes, seminars, dialogue groups and workshops and facilitating participation in service learning events all in the fields of inclusive leadership training, diversity and sensitivity education and training, conflict mediation, advocacy and communication skill building, and distribution of course materials in connection therewith, and claims exclusive right to the mark in the area comprising the entire United States, with the exception of the following states and territories: North Carolina; the following counties in South Carolina: Chester County, Chesterfield County, Lancaster County, and York County; Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, Nevada, Arizona, Tennessee, Alabama, Ohio, Oklahoma, Louisiana, Utah and Missouri and Illinois. Applicant is aware of the following unregistered users of the ANYTOWN mark, and information regarding these uses is set forth as follows, to the best to the Applicant's knowledge: (1) The National Conference for Community and Justice of the Piedmont Triad, Inc., 713 North Greene Street, Greensboro, NC 27401; Geographic Area: North Carolina, and the following counties in South Carolina: Chester County, Chesterfield County, Lancaster County, and York County; Duration of Use: 2005 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (2) The National Conference for Community and Justice Connecticut/Western

Concurrent Use No. 94002550

Massachusetts, Inc., 1095 Day Hill Road, Windsor, CT 06095; Geographic Area: Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, and Vermont; Duration of Use: 2005 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (3) The Interfaith Council of Southern Nevada, P.O. Box 73070, Las Vegas, NV 89170; Geographic Area: Nevada; Duration of Use: 2005 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (4) Valley of the Sun YMCA, 350 N. First Ave., Phoenix, AZ 85003; Geographic Area: Arizona; Duration of Use: 2010 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (5) Oasis Center, 1704 Charlotte Ave., Suite 200, Nashville, TN 37203; Geographic Area: Tennessee; Duration of Use: 2010 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (6) YWCA Central Alabama, 309 North 23rd Street, Birmingham, AL 35203; Geographic Area: Alabama; Duration of Use: 2011 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (7) National conference for Community and Justice of Greater Dayton, 14 West First Street, Suite 401, Dayton, OH 45402-1259; Geographic Area: Ohio; Duration of Use: unknown; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (8) Oklahoma Center for Community and Justice, 100 West Fifth Street, LL 1030, Tulsa, OK 74103-4273; Geographic Area: Oklahoma; Duration of Use: 2007 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (9) New Orleans Council for Community and Justice, 650 Poydras Street, Suite 2303, New Orleans, Louisiana 70130; Geographic Area: Louisiana; Duration of Use: 2009 - present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (10) Inclusion Center, 14 Heritage Center, Salt Lake City, Utah 84112; Geographic Area: Utah; Duration of Use: 2005-present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. (11) National Conference for Community and Justice of Metropolitan St. Louis, 1405 Pine Street, Suite 203, Saint Louis, MO 63103; Geographic Area: Missouri and Illinois; Duration of Use: at least as early as 2005-present; Goods/Services: Youth educational seminars and/or events; Modes of Use: unknown. All verifications or declarations in

this application indicating that no one else to the best of Applicant's knowledge and belief, has the right to use the mark in commerce, refers to "no one else" except as specified in the application.

Based on the foregoing and the July 2, 2013 order (as modified by this order), the named excepted users have: (1) answered the concurrent use application by acknowledging that its territory of use is as set forth in the application (Alabama); (2) stipulating to add territories to their territories of use and to exclude those territories from the involved application (CWM, PT, and MSL); or (3) defaulting (The Interfaith Council of Southern Nevada, Valley of the Sun YMCA, Oasis Center, National Conference for Community and Justice of Greater Dayton, Oklahoma Center for Community and Justice, New Orleans Council for Community and Justice, and Inclusion). However, applicant still has the burden of proving its entitlement to the registration(s) sought as against every party specified in its application, including any defaulting party. See TBMP Sections 1107 and 1108 (3d ed. rev. 2 2013). That is, applicant still must prove that there will be no likelihood of confusion by reason of the concurrent use by the parties of their respective marks, and, where necessary, that the parties have become entitled to use their marks as a result of their concurrent lawful use in commerce prior to the application filing date. See Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

Applicant may prove its entitlement by making an ex parte showing. Applicant is allowed until ninety days from the mailing date set forth in this order to submit such a showing.² Proceedings herein are otherwise suspended.

² The availability of making an ex parte showing allows a concurrent use applicant the right to prove its entitlement to registration by less formal procedures (such as by the submission of affidavit evidence) than those (such as depositions upon oral examination) normally required for the introduction of evidence in an inter partes proceeding. Such a showing usually suffices if the concurrent use applicant can address many of the factors the Board looks at in settlement agreements. See TBMP Section 1108.