

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: November 7, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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Greenfield Senior Living, Inc.

v.

Greenfield Health System, LLC
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Concurrent Use Proceeding No. 94002722
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Julia M. Bishop of Troutman Sanders, LLP,
for Greenfield Senior Living, Inc.

Greenfield Health System, LLC, pro se.
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Before Bergsman, Shaw, and Pologeorgis,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Greenfield Senior Living, Inc. (“Applicant”) seeks concurrent use registrations for the marks GREENFIELD ASSISTED LIVING (in standard characters; ASSISTED LIVING disclaimed)¹ and GREENFIELD SENIOR LIVING (in standard characters;

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¹ Application Serial No. 86239895, filed on April 2, 2014, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming March 31, 2002 as both the date of first use and the date of first use in commerce.

SENIOR LIVING disclaimed),² both for “providing retirement homes and assisted living facilities” in International Class 43. Applicant originally filed each application without geographic limitations, and later amended each application to allege and to identify Greenfield Health System, LLC (“Registrant”) as an exception to Applicant’s exclusive right to use the marks in commerce. In each application, as amended, Applicant now “claims exclusive right to use the mark in the area comprising the entire United States except the state of Oregon,” which is where Applicant concedes that Registrant uses its mark.

I. The Record

The record includes the files of Applicant’s involved applications and Registrant’s geographically unrestricted registration.³ Additionally, Applicant submitted the following evidence:

- A notice of reliance on (1) various printed publications and Internet materials purportedly demonstrating Applicant’s print advertising, relevant consumer market, and consumer recognition; and (2) Internet materials purportedly consisting of Registrant’s website and social media pages, as well as third-party websites featuring business listings and online reviews of Registrant’s identified services;⁴ and

² Application Serial No. 86240008, filed on April 2, 2014, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming June 30, 2005 as both the date of first use and the date of first use in commerce.

³ Reg. No. 4578882 for the mark GREENFIELD, issued on August 5, 2014, registered, in whole, under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), claiming November 8, 2000 as the date of first use and July 1, 2002 as the date of first use in commerce. The underlying application was filed on August 27, 2013.

⁴ 3 and 4 TTABVUE.

- Testimony Declaration of Mathew A. Peponis, Chairman and CEO of Applicant, and accompanying exhibits in the nature of printed publications and Internet materials.⁵

Registrant did not file an answer, a brief or any testimony or evidence in this proceeding.

As noted above, Applicant submitted numerous printouts from various websites downloaded from the Internet via its notice of reliance. Although admissible for what they show on their face, *see* Trademark Rule 2.122(e)(2), 37 C.F.R. § 2.122(e)(2), this evidence also constitutes hearsay and may not be relied upon for the truth of the matters asserted therein, unless a competent witness has testified to the truth of such matters. Fed. R. Evid. 801(c); *Safer, Inc. v. OMS Invs., Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010); *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1717 n.2 (TTAB 2007); TBMP § 704.08(b) (2018).

II. The Parties

A. Applicant

Applicant was founded in 2002 and later was incorporated in Virginia in July 2006.⁶ Applicant operates retirement homes and assisted living facilities and offers independent living, personal care and assisted living, memory care, short-term stay, and hospice support services in those facilities.⁷ Applicant adopted and began using the mark GREENFIELD ASSISTED LIVING in commerce in connection with the

⁵ 5 TTABVUE.

⁶ Peponis Decl., ¶ 2; 5 TTABVUE 2.

⁷ *Id.* at ¶ 3; 5 TTABVUE 2.

services identified above at least as early as March 31, 2002,⁸ and adopted and began using the mark GREENFIELD SENIOR LIVING in commerce in connection with its identified services at least as early as June 30, 2005.⁹

In 2002, Applicant opened its first facility in Virginia.¹⁰ Over the course of fifteen years, Applicant has expanded into five additional states: Tennessee, Texas, Maryland, Pennsylvania, and New Jersey.¹¹ It continues to expand by developing another facility in Virginia, which was expected to open in August 2018, and is interviewing for management positions.¹²

Since beginning operations in 2002, Applicant has invested well over \$100 million in expansion efforts, including facility purchase, renovation and construction costs.¹³ It has spent hundreds of thousands of dollars on advertising and marketing since 2002, spending on average about \$10,000 to \$20,000 per month.¹⁴ Applicant advertises in print in newspapers, magazines, printed flyers, and brochures and in online publications in Virginia, Pennsylvania, Tennessee, Maryland, New Jersey, and Texas.¹⁵

⁸ *Id.* at ¶ 4; 5 TTABVUE 2.

⁹ *Id.*; 5 TTABVUE 2.

¹⁰ *Id.* at ¶ 6; 5 TTABVUE 3.

¹¹ *Id.*

¹² *Id.* at ¶ 9; 5 TTABVUE 4.

¹³ *Id.* at ¶ 10; 5 TTABVUE 4.

¹⁴ *Id.* at ¶ 11; 5 TTABVUE 4.

¹⁵ *Id.* at ¶ 12; 5 TTABVUE 4.

Applicant has been the subject of media attention. Applicant and its identified services were featured in an article in *Business in Focus* in July 2017.¹⁶ Applicant's press releases about new location openings and location acquisitions, new hires, and major renovation projects have been picked up by Cision PRWeb,¹⁷ and third-party press releases referencing Applicant have also been picked up by BusinessWire.¹⁸ Applicant has also been featured in articles published online by *Senior Housing News*, *The Mercury Business*, the *Williamsburg Yorktown Daily*, *Richmond BizSense*, and *The Times Herald*.¹⁹ Additionally, Argentum published an article in its online magazine "Making Senior Living the Career of a Lifetime," which highlighted the executive director of Applicant's Glassboro, New Jersey location.²⁰

Applicant has also received industry and community accolades. For example, in 2016, it was awarded the VALA Best Practice Award for its Check-In Angels program, wherein Applicant partnered with Causely. When Applicant's followers and community members "checkin" or leave reviews for Applicant via social media, Causely makes a donation to various charitable causes.²¹ In 2017, Applicant was named the Best Retirement Community in the Greater Fort Worth, Texas area by

¹⁶ Applicant's Notice of Reliance, Exh. 11; 3 TTABVUE 63-68.

¹⁷ *Id.* at Exhs. 13, 15, 16, 18, & 24; 4 TTABVUE 15-16, 19-22, 33-34, and 54-55.

¹⁸ *Id.* at Exhs. 23 and 25; 4 TTABVUE 51-53 and 56-58.

¹⁹ *Id.* at Exhs. 14, 16, 19-22, & 26; 4 TTABVUE 17-18, 21-22, 35-50, and 59-61.

²⁰ *Id.* at Exh. 27; 4 TTABVUE 62-67.

²¹ Peponis Decl., at ¶ 28; 5 TTABVUE 8.

the *Fort Worth Star-Telegram*.²² In 2015, Applicant's Oak Ridge, Tennessee facility was voted "Best of the Best" in senior living care in all of Anderson County, Tennessee.²³

Finally, Applicant has submitted un rebutted testimony declaring that it adopted its marks in good faith and without knowledge of Registrant or Registrant's use of its GREENFIELD mark.²⁴ Additionally, this uncontroverted testimony demonstrates that (1) in the more than fifteen years of coexistence of the parties' respective marks, Applicant is unaware of any instances of actual confusion,²⁵ and (2) Applicant has never been contacted by a consumer seeking information about Registrant or Registrant's services offered under its GREENFIELD mark nor has Registrant contacted Applicant about Applicant's involved marks or the services associated therewith.²⁶

B. Registrant

Registrant is the owner of the registered mark GREENFIELD (in standard characters) for "health care services; medical clinics; medical radiology services; medical testing for diagnostic or treatment purposes; providing information in the field of medicine and preventative care via a website on the internet; medical services, namely, providing medical information in the nature of targeted patient advisories

²² *Id.* at ¶ 29; 5 TTABVUE 8.

²³ *Id.* at ¶ 30; 5 TTABVUE 8.

²⁴ *Id.* at ¶¶ 33-34; 5 TTABVUE 9.

²⁵ *Id.* at ¶ 35; 5 TTABVUE 9.

²⁶ *Id.*

and targeted alerts delivered via email and a website on the internet” in International Class 44. As noted above, Registrant did not submit any testimony or evidence regarding its first use of its registered GREENFIELD mark in commerce, its current use of the mark, or the geographic scope of its use of its mark in the United States.

Applicant contends that Registrant offers its services solely in the state of Oregon and more specifically in only two locations in the city of Portland.²⁷ Applicant also contends that Registrant has not expanded the geographic scope of its services beyond the two locations in Portland, Oregon and has no plans to do so.²⁸ In support of its contentions, Applicant has submitted what it purports to be excerpts from Registrant’s website, its Facebook page, and portions of online reviews of Registrant’s services. As discussed above, however, Internet materials have little to no probative value unless a competent witness testifies to the truth of the matters stated in the materials. Here, no such competent testimony was submitted. Notwithstanding, we note that Registrant’s address of record is identical to the address set forth on the website www.greenfield.com, excerpts of the Facebook pages, as well as the third-party online reviews submitted by Applicant. We can infer, therefore, that the website www.greenfield.com, as well as the Facebook pages, belong to Registrant, and that the online reviews concern Registrant’s services offered under its registered GREENFIELD mark at the two locations in Portland, Oregon.

²⁷ Applicant’s Brief, p. 9; 6 TTABVUE 10.

²⁸ *Id.*

III. Analysis

As we stated in *America's Best Franchising Inc. v. Abbott*, 106 USPQ2d 1540, 1547 (TTAB 2013), concurrent use proceedings are governed by the following proviso of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d):

[I]f the Director determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of the concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this chapter

In other words, there are two “conditions precedent to the issuance of concurrent registrations,” specifically that: (1) the parties are presently entitled to concurrently use the mark in commerce, and (2) there is no likelihood of confusion, mistake or deception in the market place as to the source of the goods resulting from the continued concurrent use of the trademark(s). *America's Best*, 106 USPQ2d at 1547 (quoting *In re Beatrice Foods Co.*, 429 F.2d 466, 166 USPQ 431, 435-36 (CCPA 1970)). Furthermore, when a claim is made of concurrent rights, such use must begin prior to the filing date of any application by a conflicting claimant to the same mark or one which may be likely to cause confusion with that of the claimant. *Action Temp. Servs. Inc. v. Labor Force, Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989).

The applicant for concurrent registration is the plaintiff in a concurrent use proceeding and has the burden of proof to demonstrate its entitlement to a concurrent use registration. *Gray v. Daffy Dan's Bargaintown*, 823 F.2d 522, 3 USPQ2d 1306, 1308 (Fed. Cir. 1987) (stating that concurrent use plaintiff “was not ‘entitled’ to [a

concurrent use] registration unless he also satisfied the ‘touchstone’ requirement of no likelihood of confusion with [the defendant’s use”]; *see also Over the Rainbow, Ltd. v. Over the Rainbow, Inc.*, 227 USPQ 879, 883 (TTAB 1985); Trademark Rule § 2.99(e), 37 C.F.R. § 2.99(e).

In a concurrent use registration, the “conditions and limitations as to the mode or place of” use almost always take the form of a geographic restriction, especially where the Board, rather than a court, approves registration based on evidence regarding the actual “conditions and limitations.” *See Holmes Oil Co. v. Myers Cruizers of Mena, Inc.*, 101 USPQ2d 1148, 1149 (TTAB 2011). The respective rights of the parties to registration are determined on the basis of the facts as they exist up to and until the close of the testimony period. *Nark, Inc. v. Noah’s, Inc.*, 212 USPQ 934, 944 (TTAB 1981).

A. Jurisdiction

Here, the first condition to issuance of concurrent use registration(s), which is “primarily jurisdictional in nature,” *see Beatrice Foods Co.*, 166 USPQ at 436, has been met. The evidence of record is uncontroverted and consistent, and we find, that Applicant adopted its marks in good faith, in its own geographic areas, and without knowledge of Registrant’s use of the mark GREENFIELD. Moreover, the record demonstrates that Applicant “began using its marks for [its] services prior to the filing date of” Registrant’s geographically unrestricted application. *CDS, Inc. v. I.C.E.D. Mgmt., Inc.*, 80 USPQ2d 1572, 1580 (TTAB 2006); *see also, Gray v. Daffy Dan’s Bargaintown*, 823 F.2d 522, 3 USPQ2d 1306, 1308 (Fed. Cir. 1987); *Olé Taco Inc. v. Tacos Ole, Inc.*, 221 USPQ 912, 915 (TTAB 1984) (where uncontroverted

evidence established the concurrent use applicant's use before the excepted registrant's filing date, "[w]e have no reason to assume that this was other than an innocent use without notice of registrant's use and activity under the [involved] mark"). Under circumstances such as those presented here, "it is settled law that each party has a right to use its mark in its own initial [geographic] area of use." *Weiner King, Inc. v. The Wiener King Corp.*, 615 F.2d 512, 204 USPQ 820, 829 (CCPA 1980).

While the parties' rights to use their respective marks in their initial areas of use are thus established, here, as in *Wiener King*, what remains "[i]n dispute ... are the **registrable** rights to the remainder of the United States possessed by each party." *Wiener King*, 204 USPQ at 829 (emphasis added); *see also Alfred Dunhill of London, Inc. v. Dunhill Tailored Clothes, Inc.*, 293 F.2d 685, 130 USPQ 412, 418-20 (CCPA 1961).

The starting point for any determination as to the extent to which the registrations are to be territorially restricted should be the conclusion that the prior user is prima facie entitled to a registration covering the entire United States. Such a prior user, who applies for a registration before registration is granted to another party, is entitled to a registration having nationwide effect no less than if there were no concurrent user having registrable rights. His rights and, therefore, his registration, should be limited only to the extent that any other subsequent user, who can establish the existence of rights earlier than the prior user's application for registration, can also prove a likelihood of confusion, mistake or deception. *Beatrice Foods*, 166 USPQ at 436.

However, this presumption, articulated in *Beatrice*, can be overcome, as further discussed *infra*. In any event, before considering the geographic scope of the parties' registrable rights, if any, we first consider the second "condition precedent" or threshold question, i.e. whether, with an appropriate geographic restriction, there would "be no likelihood of confusion, mistake or deception in the market place as to the source of the goods resulting from the continued concurrent use of the trademark." *Beatrice Foods*, 166 USPQ at 435-36.

B. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the [services] and differences in the marks.").

Because the marks at issue are similar, the services are identical in part,²⁹ and therefore, the services are presumed to travel in the same channels of trade to the

²⁹ Applicant has conceded that it provides some type of health care services at its assisted living and retirement home facilities. *See Peponis Decl.*, at ¶¶ 37-38; 5 TTABVue 10. Because Registrant's "health care services" are not limited in any manner, they encompass the health

same classes of consumers, we find that Applicant's marks GREENFIELD ASSISTED LIVING and GREENFIELD SENIOR LIVING for "providing retirement homes and assisted living facilities" is likely to cause confusion under the first, second and third *du Pont* factors with the registered mark GREENFIELD for "health care services; medical clinics; medical radiology services; medical testing for diagnostic or treatment purposes; providing information in the field of medicine and preventative care via a website on the internet; medical services, namely, providing medical information in the nature of targeted patient advisories and targeted alerts delivered via email and a website on the internet." However, that is not the question before us. *See America's Best*, 106 USPQ2d at 1549. Rather, "[t]he question before us is whether a likelihood of confusion would be avoided by a geographic restriction." *Id.* The record herein supports a conclusion that confusion would not be likely with an appropriate geographic restriction.

First, we find that the lack of actual confusion in this case is relevant. Applicant contends that, despite the parties' coexistence for over fifteen years, it is not aware of any instances of actual confusion between the parties' marks and associated services. As noted above, Registrant did not submit any evidence or argument to rebut the contention that there has been no actual confusion. Although both parties employ the Internet for advertising purposes for many years, "we find that there has been a reasonable opportunity for confusion to have occurred and that the lack of any reported instances of confusion weighs against finding that there is a likelihood of

care provided by Applicant at its assisting living and retirement home facilities.

confusion.” *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 USPQ2d 1645, 1662, (TTAB 2010), *aff’d*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011); *see also G.H. Mumm & Cie v. Desnoes & Geddes Ltd.*, 917 F.2d 1292, 16 USPQ2d 1635, 1638 (Fed. Cir. 1990) (lack of actual confusion in more than a decade weighs against finding that confusion is likely).

Second, the Board has often found that a geographic restriction is sufficient to avoid confusion between identical or highly similar marks, which are used for identical or highly similar goods or services. *See e.g., Wiener King*, 615 F.2d at 512, 204 USPQ at 820 (concurrent use registrations for WIENER KING with and without design for hot dog restaurants issued despite geographically separate use of WEINER KING with and without design for hot dog restaurants); *CDS Inc.*, 80 USPQ2d at 1572 (concurrent use registration for THE COPY CLUB for copying and related services issued despite geographically separate use of COPY CLUB for identical services); *Georgia-Southern Oil Inc. v. Richardson*, 16 USPQ2d 1723 (TTAB 1990) (concurrent use registration for HUNGRY HARVEY for retail convenience store services issued despite geographically separate use of HUNGRY HARVEY’S for restaurant and convenient store services); *Pinocchio’s Pizza Inc. v. Sandra Inc.*, 11 USPQ2d 1227 (TTAB 1989) (concurrent use registration for PINOCCHIOS for restaurant services featuring pizza issued despite geographically separate use of PINOCCHIO’S for restaurant services, and despite finding “that confusion in the marketplace, if the marks are used in the same geographical area, is not only likely but certain”); *Thriftmart, Inc. v. Scot Lad Foods, Inc.*, 207 USPQ 330 (TTAB 1980)

(concurrent use registration for THRIFTMART for retail supermarket services issued despite geographically separate use of THRIF-T-MART for identical services).

As the predecessor to our primary reviewing court stated:

Opposer seems to regard it as an impossibility that two parties can own and register the same trademark. Not only is that a commonplace where there is sufficient difference in goods, even as to identical marks ... but the concurrent registration provisions of section 2(d) contemplate it even in the case of the same or similar goods.

Alfred Dunhill, 293 F.2d 685, 130 USPQ at 418.

Third, to the extent Applicant's and Registrant's advertising has overlapped, courts have found that the elimination of all possible confusion which might arise from overlapping advertising is not necessary. *See e.g., Thrifty Rent-A-Car System, Inc. v. Thrift Cars, Inc.*, 831 F.2d 1177, 4 USPQ2d 1709, 1714 (1st Cir. 1987) ("While we recognize that some consumer confusion may result because there will be some overlap in advertising, the Lanham Act does not require the complete elimination of all confusion."); *All Video, Inc. v. Hollywood Entm't Corp.*, 929 F. Supp. 262, 40 USPQ2d 1130, 1135 (E.D. Mich. 1996) ("Congress recognized and accepted that some level of confusion would inevitably result from allowing a limited defense for junior users").

Finally, our conclusion is not changed by the fact that the parties' advertise their respective services on the Internet. *America's Best*, 109 USPQ2d at 1551-52. Since there is no evidence of record that Registrant has expanded beyond the two locations in Portland, Oregon, or that it enjoys a reputation beyond Oregon, the fact that both

parties' services are promoted online is not enough to result in a likelihood of confusion.

For all of these reasons, we find that confusion would not be likely with an appropriate geographic restriction, as discussed below.

C. Territory

Having determined that confusion is not likely with an appropriate geographic restriction, we must now determine the geographic territory to which each party is entitled. In doing so, we are not limited to considering only Registrant's actual trademark use prior to Registrant's filing date.

The Commissioner of Patents has the statutory responsibility to make sure that concurrent registrations are limited so as to prevent the likelihood of confusion, mistake or deception from occurring. Where a party has submitted evidence sufficient to prove a strong probability of future expansion of his trade into an area, that area would then become an area of likelihood of confusion if a registration covering it was granted to the other party. For example, many forms of evidence which would ordinarily be proffered to show a likelihood of *expansion* would be the same kind submitted to argue a likelihood of *confusion* if another party began use of the mark in that area. Thus, based on the premise that territorially restricted registrations must issue and, further, that said registrations combined will encompass the entire United States, if a likelihood of confusion is to be avoided, the territories of the parties must be limited in such a way as to exclude from each the area of probable expansion of the other party.

Beatrice Foods, 204 USPQ at 437-38. More specifically,

[A]ctual use in a territory [is] not necessary to establish rights in that territory and the inquiry should focus on the party's (1) previous business activity; (2) previous expansion or lack thereof; (3) dominance of contiguous areas; (4) presently-planned expansion; and, where

applicable (5) possible market penetration by means of products brought in from other areas.

Wiener King, 204 USPQ at 830.

In determining which party is entitled to which territory, the Court, in *Weiner King*, reiterated certain criteria originally set forth in *Beatrice Foods*, supra. The Court noted that actual use in a territory is not necessary to establish rights in that territory and that the inquiry should focus on a number of factors, including the party's previous business activity, previous expansion (or lack thereof) and presently planned expansion.

Applying the above noted criteria to the parties, we find that the general policy of favoring the first to register is inapplicable and that all other relevant factors favor Applicant. Indeed, Applicant, as the prior user, would likely prevail, on the facts present herein, in a petition to cancel the registered mark, had such a course of action been taken. In any event, the record shows that Registrant operates only two health care facilities in Portland, Oregon. Most significantly, there is no evidence of record regarding Registrant's plans for expansion beyond these two locations since its alleged date of first use in July of 2002. Registrant had an opportunity to present evidence regarding the use of its registered GREENFIELD mark, its promotional efforts, and any plans to expand the scope of its services beyond its Portland, Oregon locale. Registrant, however, did not do so.

Applicant, by contrast, has expanded to six states since its first retirement facility opened in Virginia in 2002. Applicant has also demonstrated plans to continue its expansion of its services under its involved marks. Moreover, in the years between

2015 and 2017, Applicant has been contacted by hundreds of prospective clients from nearly thirty states, most of whom are located in the Northeast and Mid-Atlantic regions of the United States, as well as Tennessee and Texas.³⁰ Applicant has also been contacted by potential clients in Arkansas, Oklahoma, Missouri, Iowa, Arizona, Nevada, Washington, and California.³¹

Because the evidence of record does not demonstrate that Registrant has expanded its services provided under its registered GREENFIELD mark beyond its two Portland, Oregon locations, we find that Registrant, through inaction over a considerable period of time, has abandoned its right to expand use of the mark outside of its trading area; and that such abandonment therefore cannot serve to preclude Applicant, an innocent user, from filling the territorial void left by Registrant. *Nark, Inc.*, 212 USPQ at 947. We further find that Applicant's previous business activities and expansion entitles it to the territory requested in its involved applications.

In view of the foregoing, we believe that the purpose of the statute is best served by granting Applicant registrations for the entire United States except for Registrant's trading area, i.e., the state of Oregon.

Decision: Applicant is entitled to concurrent use registrations for the marks GREENFIELD ASSISTED LIVING and GREENFIELD SENIOR LIVING, as shown in application Serial Nos. 86239895 and 86240008, respectively, for the services

³⁰ Peponis Decl. at ¶ 19; 5 TTABVUE 5.

³¹ *Id.*

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identified therein for “**the area comprising the entire United States, except for the state of Oregon.**”

Registrant’s Registration No. 4578882 for the mark GREENFIELD (in standard characters) for “health care services; medical clinics; medical radiology services; medical testing for diagnostic or treatment purposes; providing information in the field of medicine and preventative care via a website on the internet; medical services, namely, providing medical information in the nature of targeted patient advisories and targeted alerts delivered via email and a website on the internet” in International Class 44 is ordered restricted to “**the area comprising the state of Oregon.**”
