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

Applicant : Deborah Strange-Browne Inflammatory Breast Cancer Foundation
Serial No. : 76/226,481
Opposition No.: 91154019
Mark : DEBORAH STRANGE-BROWNE INFLAMMATORY
BREAST CANCER FOUNDATION
Filed : March 19, 2001
Published : November 5, 2002
:



01-06-2004
U.S. Patent & TMO/TM Mail Rpt Dt. #22

**AFFIDAVIT IN SUPPORT OF APPLICANT DEBORAH STRANGE-BROWNE
INFLAMMATORY BREAST CANCER FOUNDATION**

I, Thomas J. Browne, being duly sworn and deposed, says:

1. I am the founder and president of the Deborah Strange-Browne Inflammatory Breast Cancer Foundation (“Applicant”).
2. Applicant is an Illinois not-for-profit corporation, formed in 2001, and it received a Sec. 501 (c) (3) designation in June, 2002.
3. I, and other family members, formed Applicant after the tragic death of my young wife, Deborah Strange-Browne, who after being misdiagnosed, suffered for approximately one year, and succumbed to Inflammatory Breast Cancer (“IBC”), one of the rarer and less publicized forms of breast cancer.
4. In honor of the memory of Deborah-Strange Browne, Applicant was formed to help the medically underserved with IBC, to promote public awareness of IBC, and to advance research on IBC to eradicate the disease.

5. Applicant was also created to raise funds for and to educate about IBC.

6. Applicant was created to honor the memory of Deborah-Strange Browne, which is why it was named “Deborah Strange-Browne Inflammatory Breast Cancer Foundation.” No other name would serve the same purpose.

7. Applicant has solicited contributions from a mailing list which includes many friends and family. Applicant has had one fund raising dinner and has a second fund raising dinner planned, all activities consistent with a not-for-profit 501 (c)(3) corporation.

8. Applicant has also solicited contributions with targeted letters to corporations.

9. Applicant has registered with “www.iGive.com” an on-line service that refers a small percentage of sales to Applicant, when a party purchasing a product designates Applicant as the charity to benefit from its purchase. Opposer is also registered on “www.iGive.com” in its own name, which is, as pointed out numerous times later in this Affidavit, and in Applicant’s pleadings common in only one word, and not susceptible to being confused with one another. The choice to direct a contribution to benefit the Deborah Center, the Deborah Foundation or the seven word Deborah Strange-Brown Inflammatory Breast Cancer Foundation is clear.

10. In 2002, Applicant entered into an arrangement with the Little Company of Mary Hospital in Chicago, whereby Applicant makes contributions to fund treatment directly related to IBC, conducted at Little Company of Mary Hospital. Little Company of Mary Hospital is a full service hospital, serving the needs of a large number of residents of the south and southwest side of the City of Chicago.

11. On behalf of Applicant, in early 2001, I instructed my attorney to file a service mark application for Deborah Strange-Brown Inflammatory Breast Cancer Foundation and design. Since it was the name of my deceased wife, including a hyphenated last name, attached to four more words, and a design, all of which make up the service mark, I did not believe or expect to find another mark like it. To date, I have not found another mark like it, nor have I been informed that there exists another mark like it. The name Deborah Strange-Browne was not searched. The words inflammatory and breast cancer were searched which resulted in discovering the "Susan G. Komen Breast Cancer Foundation." That foundation did not oppose Applicants' mark. Nothing related to inflammatory breast cancer was discovered. Since Deborah Strange-Browne and Susan G. Komen could not be confused, and since Applicant uses "Inflammatory" in front of "Breast Cancer" the decision was made to proceed. Neither Applicant, nor I, or my family knew of Opposer or its marks, until Opposer filed the Opposition.

12. To the date of this testimony, neither the Opposer, nor anyone else has shown that Applicant's mark is the same or similar to any other registered mark or pending application, including all registered marks relied on by Opposer, made Exhibits V-Z of Opposer's Affidavit in Support of Opposer Deborah Heart and Lung Center ("Opposer's Affidavit").

13. In Opposer's Responses to Applicant's Requests for Admissions ("Request Response"), Opposer responded "Admitted" to Request for Admissions No. 20, which stated:

20. Opposer knows of no person or entity that has become confused, mistaken or deceived by believing that Applicant's mark is associated with Opposer's marks.

14. In Opposer's Request Response, Opposer responded "Admitted" to Request for Admissions No. 21, which stated:

21. Opposer knows of no person or entity that has associated Applicant's services under its mark with Opposer's services.

15. In Opposer's Request Response, Opposer responded "Admitted" to Request for Admissions No. 3, which stated:

3. The Opposer does not raise funds for inflammatory breast cancer research.

16. In Opposer's Request Response, Opposer responded "Admitted" to Request for Admissions No. 4, which stated:

4. The Opposer does not raise funds for education about the disease inflammatory breast cancer.

17. There were no current marks, or pending applications cited against Applicant's application, including Opposer's numerous marks. Applicant's mark was published in the Official Gazette on November 5, 2002.

18. Applicant's mark and Opposer's marks are not phonetically pronounced the same, notwithstanding that Applicant's mark is comprised of seven words and a ribbon shaped in a small "d". Opposer's marks use "Deborah" pronounced as three syllables, "D-E-B-O-O-R-A-H, not as Applicant pronounces it, with two syllables, D-E-B-R-A. This is made clear in Opposer's Request Response, Request for Admission No. 1,

wherein Opposer states in pertinent part “It is admitted that the pronunciation of Opposer’s mark has three syllables. It is denied that Opposer’s principal mark consists of more than one word.” Opposer is therefore saying “DEBORAH” has three syllables, and “DEBORAH” is the principal one word mark. This creates even less of a chance for confusion since Applicant’s seven word mark with design, and the one word mark “DEBORAH” could not possibly be mistaken for each other. For those of Opposer’s marks which are registered as more than one word, Opposer’s design “d” is an uppercase “D” attached to a heart, both with and without writing in it, depending on the specific mark. This further differentiates the marks in question.

19. In the Affidavit, Opposer’s President and Chief Executive Officer tries to make a connection between a non-profit hospital using a mark DEBORAH HOSPITAL, and a non-profit corporation (Applicant) funding treatment directly related to IBC, at a local Chicago hospital. Opposer does this by showing that Applicant’s benefactor, Little Company of Mary Hospital also performs services for heart patients. Little Company of Mary’s Hospital’s service mark or trade name is not in issue, or is it the issue. Applicant’s funds benefit Little Company of Mary Hospital, a full service hospital, whose services are not the same as Applicant’s, nor could there ever be confusion between Deborah Hospital in New Jersey and Little Company of Mary Hospital in Chicago, two distinct, unrelated medical institutions.

20. Applicant has no intention to affect Opposer’s marks, nor has it tried, nor will it ever pass itself off as Opposer, recognizing from the Affidavit the good work Opposer performs. Applicant, likewise raises money to perform needed services to

perform good work. The marks are so distinctive as to not create any confusion as to which mark represents which entity.

21. Opposer's numerous references to heart and lung, for example, the marks "DEBORAH-THE HEART OF NEW JERSEY", "YOU CAN COUNT ON ME, DEBORAH HEART AND LUNG CENTER I CARE" and the name of the center "Deborah Heart and Lung Center" serve to reinforce Applicant's contention that there are numerous and significant differences between the marks, not just the words, which are crucial, but, especially, the diseases and part of the body on which each focuses. In its Requests Response, Request for Admissions, No. 8, Opposer denies that Applicant specifies "inflammatory breast cancer, which is not the same as heart and lung disease." Yet, in the response to Request for Admissions No. 10 Opposer admits that heart and lung disease is not the same as IBC. This is inconsistent. Since the response to No. 10 affirms the two are different diseases, Opposer lends supports to the argument that the marks are distinctive.

22. Opposer's Par. 23 in the Affidavit states the obvious, that hospitals have more than one department. Many do. The opposition filed was not against a hospital's mark, it was against the pending mark of a fund-raising foundation. The non-limiting examples cited in Par. 23 are irrelevant to the issue presented by the Opposition.

23. Opposer's Par. 24 in the Affidavit is a very general statement and does nothing to strengthen its very weak argument that there is overlap in medicine. The example given in Par. 24 could be rewritten using most of the main systems of the human body, since the heart affects everything. Not only is the statement general, but the tie is made between breast cancer and heart disease. The Applicant's mark specifies the very

rare, "inflammatory breast cancer" not breast cancer in general. Par. 24 makes no statement about inflammatory breast cancer.

24. Opposer also uses "Deborah Hospital", the "Deborah Center" and the "Deborah Foundation." Of Applicant's seven word mark with design, the only word in common is "Deborah", pronounced differently. Applicant's Deborah Strange-Browne, and Opposer's use of the name of a biblical character are not the same, are not meant to be the same, was not created with Opposer's marks in mind, and as stated earlier, Applicant's is the actual full name of a recently deceased person.

25. Applicant's mark was first used with respect to its services, in interstate commerce, in 2002, and has since been used continuously since that time. No confusion with Opposer's marks has been pointed out or brought to the attention of Applicant.

26. Opposer's Par. 37 in the Affidavit is a final attempt to wield its weight over Applicant by stating that Opposer does not have control over Applicant's fundraising services, education services, other services, impressions it makes on the community and the extent to which it is diluting Opposer's marks. This is somewhat incredible, since Applicant is a separate corporation in a different part of the country, with a distinct, non-confusing mark. Opposer should not now, nor should it ever have the types of control or influence it states it lacks. Opposer sets Applicant up as a potential diluter of its mark without any proof. Instead, Opposer provides weak testimony that one hospital may provide the same programs or services as another, or that both parties seek funds on the Internet. Yet, Opposer's Responses to Applicant's Request for Admissions Nos. 3, 4, 10, 20 and 21, set forth above, tell a different story.

Further Affiant sayeth not.

Thomas J. Browne

Thomas J. Browne
President and Founder of the
Deborah Strange-Browne Inflammatory
Breast Cancer Foundation

December 29, 2003

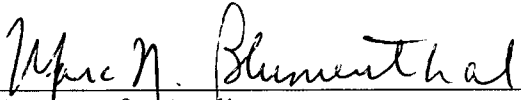
Date

Sworn to before me this 29th day of
December, 2003:

Linda J. Strange
Notary Public

CERTIFICATE OF SERVICE BY EXPRESS MAIL


I hereby certify that a copy of the foregoing APPLICANT'S AFFIDAVIT IN SUPPORT OF APPLICANT DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION in support of its Testimony in Opposition No. 91154019 and Certificate of Service by Express Mail, was deposited with the United States Postal Service, as Express Mail, EU553466155US and mailed in an envelope addressed to John P. Blasko, Esq., FOX, ROTHSCHILD LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Bldg. 3, Lawrenceville, N.J. 08648-2311, attorney for Opposer, on January 6, 2004.



Attorney for Applicant

CERTIFICATE OF SERVICE BY EXPRESS MAIL

I hereby certify that the foregoing APPLICANT'S AFFIDAVIT IN SUPPORT OF APPLICANT DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION in support of its Testimony in Opposition No. 91154019, Certificate of Service by Express Mail and receipt postcard was deposited with the United States Postal Service, as Express Mail EU278111367US and mailed in an envelope addressed to: BOX TTAB, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on January 6, 2004.



Attorney for Applicant

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

Applicant : Deborah Strange-Browne Inflammatory Breast Cancer Foundation
Serial No. : 76/226,481
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01-06-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

Attn: Trademark Trial and Appeal Board

January 6, 2004

NOTICE OF RELIANCE ON AFFIDAVIT IN SUPPORT OF APPLICANT
DEBORAH STRANGE-BROWNE
INFLAMMATORY BREAST CANCER FOUNDATION (THOMAS J. BROWNE)

Dear Attorney Peter Cataldo:

PLEASE TAKE NOTICE that Applicant, Deborah Strange-Browne Inflammatory Breast Cancer Foundation, an Illinois corporation with its principal place of business located at 6900 Foxwood Drive, Schererville, Indiana 46375, hereby makes of record, enters into evidence and will rely on Affidavit In Support Of Applicant Deborah Strange-Browne Inflammatory Breast Cancer Foundation (Thomas J. Browne), dated December 29, 2003.

The parties have stipulated in writing to the use of affidavit testimony under 37 C.F.R. 2.123(b) and said stipulation was previously submitted to the Trademark trial and Appeal Board on October 29, 2003. Applicant attached a photocopy of said submission.

This affidavit is relevant to show, among other things, a phonetic difference in the marks as well as many other differences, there has been no confusion; that Opposer

does not raise funds for the same disease. Additionally, these admissions are important to show that Opposer knows of no confusion, and there has been no person or entity that has associated Applicant's services under its mark with Opposer's services. The affidavit also states that neither affiant nor his family had heard of Opposer before Opposer filed this Opposition.

A copy of this Notice of Reliance and accompanying documents has been forwarded this 6th day of January, 2004, to John P. Blasko, Esq., attorney for Opposer, by Express Mail to FOX ROTHSCHILD LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Bldg. 3, Lawrenceville, N.J. 08648-2311.


Respectfully submitted,

Marc N. Blumenthal
LAW OFFICE OF MARC N. BLUMENTHAL
19 S. LaSalle Street
Suite 1500
Chicago, IL 60603
Tel: (312) 641-0616
Fax: (312) 332-4629

By: 
Marc N. Blumenthal

CERTIFICATE OF SERVICE BY EXPRESS MAIL


I hereby certify that a copy of the foregoing APPLICANT DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION NOTICE OF RELIANCE ON AFFIDAVIT IN SUPPORT OF APPLICANT DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION in Opposition 91154019 and Certificate of Service by Express Mail, was deposited with the United States Postal Service, as Express Mail, EU553466155US and mailed in an envelope addressed to John P. Blasko, Esq., FOX, ROTHSCHILD LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Bldg. 3, Lawrenceville, N.J. 08648-2311, attorney for Opposer, on January 6, 2004.



Attorney for Applicant

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I hereby certify that the foregoing APPLICANT DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION NOTICE OF RELIANCE ON AFFIDAVIT IN SUPPORT OF APPLICANT DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION, in Opposition 91154019 Certificate of Service by Express Mail and receipt postcard was deposited with the United States Postal Service, as Express Mail EU278111367US and mailed in an envelope addressed to: BOX TTAB, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on January 6, 2004.



Attorney for Applicant

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

Applicant : Deborah Strange-Browne Inflammatory Breast Cancer Foundation
Serial No. : 76/226,481
Opposition No.: 91154019
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BREAST CANCER FOUNDATION
Filed : March 19, 2001
Published : November 5, 2002
:

Attn: Trademark Trial and Appeal Board

January 6, 2004

**NOTICE OF RELIANCE ON OPPOSER'S RESPONSE TO APPLICANT'S
REQUESTS FOR ADMISSIONS**

Dear Attorney Peter Cataldo:

PLEASE TAKE NOTICE that Applicant, Deborah Strange-Browne Inflammatory Breast Cancer Foundation, an Illinois corporation with its principal place of business located at 6900 Foxwood Drive, Schererville, Indiana 46375, hereby makes of record, enters into evidence and will rely on the Opposer's responses to requests for admissions Nos. 1, 3, 4, 8, 10, 20 and 21 of the attached Opposer's Response To Applicant's Requests For Admissions.

Opposer's admissions are important to show that Opposer does not raise funds for the same disease Applicant does, Inflammatory Breast Cancer; that there is an admitted phonetic difference in the marks; and that there are other differences between the marks, such as the number of words in the marks. Additionally, these admissions are important to show that Opposer knows of no confusion, and there has been no person or entity that

has associated Applicant's services under its mark with Opposer's services. Opposer has not supplemented its responses since serving its Responses on Applicant.

A copy of this Notice of Reliance and accompanying documents has been forwarded this 6th day of January, 2004, to John P. Blasko, Esq., attorney for Opposer, by Express Mail to FOX ROTHSCHILD LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Bldg. 3, Lawrenceville, N.J. 08648-2311.

Respectfully submitted,

Marc N. Blumenthal
LAW OFFICE OF MARC N. BLUMENTHAL
19 S. LaSalle Street
Suite 1500
Chicago, IL 60603
Tel: (312) 641-0616
Fax: (312) 332-4629

By 
Marc N. Blumenthal

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

DEBORAH HEART AND LUNG CENTER, :

Opposer, :

v. :

DEBORAH STRANGE-BROWNE
INFLAMMATORY BREAST CANCER
FOUNDATION :

Applicant. :

Opposition No. 91151019
Serial No. 76226481

**OPPOSER'S RESPONSE TO
APPLICANT'S
REQUESTS FOR ADMISSIONS**



To: MARC N. BLUMENTHAL
Law Office of Marc N. Blumenthal
19 La Salle Street Suite 1500
Chicago, IL 60603
Attorney for Applicant

01-06-2004
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Opposer Deborah Heart and Lung Center through its undersigned counsel, Fox Rothschild LLP, hereby submits the following answers in response to the Applicant Deborah Strange-Browne Inflammatory Breast Cancer Foundation's Request for Admissions:

1. The pronunciation of the first word of the name of the Opposer is D-E-B-O-R-A-H using three syllables to state the name.

Response:

Admitted in part, denied in part. It is admitted that the pronunciation of Opposer's mark has three syllables. It is denied that Opposer's principal mark consists of more than one word.

2. The pronunciation of the first word of Opposer's name is not D-E-B-R-A, using two syllables.

Response:

Denied.

3. The Opposer does not raise funds for inflammatory breast cancer research.

Response:

Admitted.

4. The Opposer does not raise funds for education about the disease inflammatory breast cancer.

Response:

Admitted.

5. The Opposer's name is not the full name of a living or dead individual.

Response:

Admitted in part, denied in part. It is admitted that Opposer's mark is not the name of a living individual. Opposer's name relates to Deborah, the only woman Israelite judge, as discussed in the Old Testament.

6. The Applicant's foundation is named for an individual whose name was "DEBORAH STRANGE-BROWNE."

Response:

Admitted.

7. The Opposer's name "DEBORAH HEART AND LUNG CENTER" does not sound anything like the Applicant's name "DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION."

Response:

Denied.

8. The Applicant's mark specifies inflammatory breast cancer, which is not the same as heart and lung disease.

Response:

Denied.

9. The Applicant's mark specifies inflammatory breast cancer, which cannot be confused with heart and lung disease.

Response:

Denied.

10. Heart and lung disease is not the same as inflammatory breast cancer.

Response:

Admitted.

11. The Opposer's design attached to one or more of its registered marks uses a combination of an upper-case "D" and heart in a circle in which the word "Care" appears, with a heart also attached to the left side of the upper-case "D."

Response:

Denied.

12. The Applicant's design is in the shape of a ribbon forming a lower-case "d".

Response:

Denied.

13. A design using a lower-case "d" shaped like a ribbon is distinct from a design using an upper-case "D" attached to a heart in a circle in which the word "Care" appears, with a heart also attached to the left side of the upper-case "D."

Response:

Denied.

14. A design using a lower-case "d" shaped like a ribbon bears no resemblance to a design using an upper-case "D" attached to a heart in a circle in which the word "Care" appears, with a heart also attached to the left side of the upper-case "D".

Response:

Denied.

15. Applicant's mark "DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST, CANCER FOUNDATION" and design is distinct from Opposer's mark "DEBORAH" in sound and physical appearance.

Response:

Denied.

16. Applicant's mark "DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION" and design is distinct from Opposer's mark "DEBORAH...THE HEART OF NEW JERSEY" in sound and physical appearance.

Response:

Denied.

17. Applicant's mark "DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION" and design is distinct from Opposer's mark "DEBORAH DIFFERENCE" in sound and physical appearance.

Response:

Denied.

18. Applicant's mark "DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION" and design is distinct from Opposer's mark "YOU CAN COUNT ON ME DEBORAH HEART & LUNG CENTER I CARE" with design, in sound and physical appearance.

Response:

Denied.

19. Applicant's mark "DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION" and design is distinct from Opposer's mark stylized "D" in sound and physical appearance.

Response:

Denied.

20. Opposer knows of no person or entity that has become confused, mistaken or deceived by believing that Applicant's mark is associated with Opposer's marks.

Response:

Admitted.

21. Opposer knows of no person or entity that has associated Applicant's services under its mark with Opposer's services.

Response:

Admitted.

22. Opposer has been made fully aware through Applicant's Answer and Affirmative Defenses to Notice of Opposition, that Applicant's mark and Opposer's marks are phonetically dissimilar.


Response:

Denied.

Respectfully submitted,

FOX ROTHSCHILD, LLP

By: _____

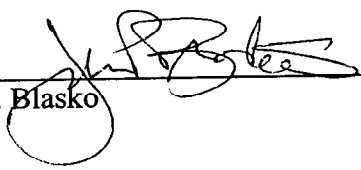

JOHN P. BLASKO, ESQUIRE
Princeton Pike Corporate Center
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648-2311
Telephone (609) 896-3600
Facsimile (609) 896-1469

CERTIFICATE OF SERVICE

I, John P. Blasko, state that on August 14, 2003, I caused a true and correct copy of the foregoing Opposer's Response to Applicant's Requests for Admissions to be served upon the following counsel of record in the following manner:

VIA FIRST CLASS MAIL

Marc. N. Blumenthal, Esquire
Law Office of Marc N. Blumenthal
19 La Salle Street Suite 1500
Chicago, IL 60603



John P. Blasko

DATED: August 14, 2003

CERTIFICATE OF SERVICE BY EXPRESS MAIL

I hereby certify that a copy of the foregoing APPLICANT DEBORAH STRANGE-BROWNE INFLAMMATORY BREAST CANCER FOUNDATION NOTICE OF RELIANCE ON OPPOSER'S RESPONSE TO APPLICANT'S REQUESTS FOR ADMISSIONS and attached Opposer's Response to Applicant's Requests for Admissions, in Opposition No. 91154019 and Certificate of Service by Express Mail, was deposited with the United States Postal Service, as Express Mail, EU553466155US and mailed in an envelope addressed to John P. Blasko, Esq., FOX, ROTHSCHILD LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Bldg. 3, Lawrenceville, N.J. 08648-2311, attorney for Opposer, on January 6, 2004.


Attorney for Applicant

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Attorney for Applicant