

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

La Vida Medical Group, Inc.,

Opposer,

v.

VidaCare, Inc.,

Applicant.

Opposition No.: \_\_\_\_\_

Application Serial No.: 78/267,318

Mark: VIDACARE

Published for Opposition:  
June 22, 2004

Our Ref. No.: 58668-0022

**NOTICE OF OPPOSITION**

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as *Express* mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Trademarks, Box TTAB/Fee, 2900 Crystal Drive, Arlington, VA 22202-3514 on October 20 2004.  
By: \_\_\_\_\_

Opposer, La Vida Medical Group, Inc., a California corporation ("Opposer"), which is located at 4161 Redondo Beach Blvd., Suite 201, Lawndale, California 90260, believes that it is and will be damaged by the registration on the Principal Register of VIDACARE, in connection with managed healthcare services for those with special needs ("Applicant's services") in International Class 44, which is the subject of Application Serial No. 78/267,318 in the name of VidaCare, Inc. (hereinafter, "VidaCare"), and Opposer hereby opposes same.

As grounds for this Opposition, it is alleged:



11-08-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

1. Opposer has been engaged for many years in the business of physician services, medical services, cosmetic and plastic surgery, emergency medical assistance, medical clinics, medical counseling, providing medical information, medical laboratories, medical research, in vitro fertilization, medical testing, rental of medical equipment, and other services under the marks LA VIDA, LA VIDA MEDICAL GROUP, LA VIDA MEDICAL GROUP & IPA BRINGING QUALITY TO LIFE!, and LA VIDA MULTISPECIALTY MEDICAL CENTER (collectively, "Opposer's marks").

2. Since at least as early as 1987 and long prior to June, 2003, the filing date of Applicant's intent-to-use application, Opposer has used Opposer's marks in connection with physician services, medical services, cosmetic and plastic surgery, emergency medical assistance, medical clinics, medical counseling, providing medical information, medical laboratories, medical research, in vitro fertilization, medical testing, rental of medical equipment, among other services (collectively, "Opposer's services"). Such use by Opposer has been continuous since the date of first use.

3. Since at least as early as 1987 and long prior to June, 2003, the filing date of Applicant's intent-to-use application, Opposer advertised and promoted Opposer's marks in connection with Opposer's services with the result that Opposer's marks have become associated with Opposer in the United States in connection with health care and medical services. Because of these efforts and Opposer's continued advertising and promotion of Opposer's marks, and by virtue of the excellence of the services offered and provided under

Opposer's marks, Opposer has built up a valuable reputation and tremendous goodwill in Opposer's marks belonging exclusively to Opposer.

4. Opposer's mark LA VIDA is registered in the United States Patent and Trademark Office as Registration No. 2,410,770, issued on December 5, 2000 in connection with physician services, medical services, cosmetic and plastic surgery, emergency medical assistance, medical clinics, medical counseling, providing medical information, medical laboratories, medical research, in vitro fertilization, medical testing, rental of medical equipment, and other services. Opposer's registration is unrevoked and uncancelled, and Opposer is the owner of the registration and mark shown therein, as well as all of the business and goodwill connected therewith.

5. Opposer's mark LA VIDA MEDICAL GROUP & IPA BRINGING QUALITY TO LIFE! is registered in the United States Patent and Trademark Office as Registration No. 2,410,771, issued on December 5, 2000, in connection with physician services, medical services, cosmetic and plastic surgery, emergency medical assistance, medical clinics, medical counseling, providing medical information, medical laboratories, medical research, in vitro fertilization, medical testing, rental of medical equipment, and other services. Opposer's registration is unrevoked and uncancelled, and Opposer is the owner of the registration and mark shown therein, as well as all of the business and goodwill connected therewith.

6. Applicant's mark LA VIDA, either by itself or followed by the words "MEDICAL GROUP", "MEDICAL GROUP & IPA BRINGING QUALITY TO LIFE!", or

"MULTISPECIALTY MEDICAL CENTER" has become associated exclusively with Opposer and its services by virtue of Opposer's extensive advertising and promotion of Opposer's marks.

7. Pursuant to Section 13(a) of the Trademark Act (15 U.S.C. §1063(a)), Opposer believes it will be damaged by the registration of VIDACARE in connection with Applicant's services in International Class 35.

8. Applicant's mark VIDACARE so resembles Opposer's marks in appearance, sound and connotation, as to be likely, when used in connection with the Applicant's services, to cause confusion, or to cause mistake, or to deceive. Consumers will incorrectly believe that Applicant's use of VIDACARE in connection with Applicant's services is in some way associated or connected with or sponsored, authorized or warranted by Opposer. Any objection or fault found with Applicant's services offered and provided under the mark VIDACARE would reflect negatively upon and seriously injure the reputation that Opposer has established in Opposer's marks.

9. Registration of Applicant's mark VIDACARE in connection with Applicant's services will cause the distinctiveness of Opposer's marks LA VIDA, LA VIDA MEDICAL GROUP, LA VIDA MEDICAL GROUP & IPA BRINGING QUALITY TO LIFE!, and LA VIDA MULTISPECIALTY MEDICAL CENTER to be diluted and would thereby be a source of damage and injury to Opposer.

10. If Applicant is granted the registration herein opposed it would thereby obtain at least a *prima facie* exclusive right to the use of the mark VIDACARE in connection

with the services identified in Application Serial No. 78/267,318. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, in accordance with Section 13 of the Trademark Act (15 U.S.C. §1063), Opposer prays that this Opposition be sustained and that Application Serial No.78/267,318, be refused registration.

The required fee of three hundred dollars (\$300) is enclosed. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0440.

A duplicate copy of the Notice of Opposition is filed herewith.

Respectfully submitted,

JEFFER, MANGELS, BUTLER & MARMARO LLP

Dated: October 20, 2004

By: 

Rod S. Berman

Victor K. Sapphire

Attorneys for Opposer

JEFFER, MANGELS, BUTLER & MARMARO LLP

1900 Avenue of the Stars, Seventh Floor

Los Angeles, California 90067

(310) 203-8080