

TAB

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

LA VIDA MEDICAL GROUP, INC.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91162940
v.	:	
	:	Serial No. 78/267,318
VIDACARE INC.,	:	
	:	
Applicant.	:	

ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF OPPOSITION

ANSWER

Applicant, VidaCare Inc., by and through its attorneys, hereby answers the Notice of Opposition of Opposer, La Vida Medical Group, Inc., in the captioned proceeding.

With respect to the first unnumbered paragraph: Applicant denies that Opposer will be damaged by the registration of Applicant's VIDACARE mark. Applicant admits that it filed Application No. 78/267,318 to register VIDACARE and in the U.S. Patent and Trademark Office for managed health care services for those with special needs. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies the allegations.

With respect to the numbered paragraphs:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations.
2. Applicant is without knowledge or information sufficient to form a belief as to the



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truth of the allegations in this paragraph and therefore denies the allegations.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations.

4. Applicant admits that, according to the U.S. Patent and Trademark Office records, Registration No. 2,410,770 for LA VIDA in stylized letters with a design component depicting a human form is registered in the name of La Vida Medical Group, Inc. and that the services, with the exception of "other services," and all dates alleged in this paragraph which pertain to this registration are set forth in these records. Applicant denies that Registration No. 2,410,770 identifies "other services." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the allegations.

5. Applicant admits that, according to the U.S. Patent and Trademark Office records, Registration No. 2,410,771 for LA VIDA MEDICAL GROUP & IPA BRINGING QUALITY TO LIFE! in stylized letters with a design component depicting a human form is registered in the name of La Vida Medical Group, Inc. and that the services, with the exception of "other services," and all dates alleged in this paragraph which pertain to this registration are set forth in these records. Applicant denies that Registration No. 2,410,771 identifies "other services." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the allegations.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations.

7. Applicant denies the allegations in this paragraph.

8. Applicant denies the allegations in this paragraph.
9. Applicant denies the allegations in this paragraph.
10. Applicant admits that if its VIDACARE mark is registered, Applicant will obtain a *prima facie* exclusive right to use this mark in connection with the services identified in Application No. 78/267,318. Applicant denies the remaining allegations in this paragraph.

AFFIRMATIVE DEFENSES

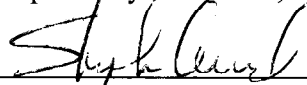
1. Applicant's mark and Opposer's marks differ in overall commercial impressions. Applicant's mark does not incorporate the distinctive human form displayed in Opposer's marks nor does Applicant's mark incorporate the words "MEDICAL GROUP & IPA Bringing Quality to Life!" in Registration No. 2,410,771.
2. There are numerous active registrations in the U.S. Patent and Trademark Office for marks incorporating the term "VIDA" which identify goods and services in the medical and health care fields. By virtue of these co-existing registrations, Opposer's marks are entitled to a narrow scope of protection and any rights Opposer may be entitled to with respect to the exclusive use of its pleaded marks do not extend to the denial of registration to Applicant's mark.
3. Opposer has acquiesced to the registration of numerous marks incorporating the term "VIDA" in connection with goods and services in the medical and health care fields. Under the doctrine of estoppel, any rights Opposer may be entitled to with respect to the exclusive use

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of its pleaded marks do not extend to the denial of registration to Applicant's mark.

Date: December 23, 2004

Respectfully submitted,



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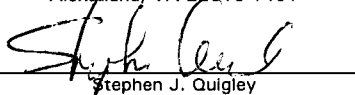
Facsimile: (212) 949-9190

Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Trademarks
United States Patent and Trademark Office
PO Box 1451,
Alexandria, VA 22313-1451

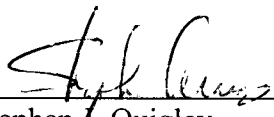

Stephen J. Quigley

Date: December 23, 2004

CERTIFICATE OF SERVICE

I certify that a true copy the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF OPPOSITION was served on Opposer by first class mail, postage prepaid, this 23rd day of December, 2004 to:

Rod S. Berman, Esq.
Jeffer, Mangels, Butler & Marmaro LLP
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Los Angeles, California 90067



Stephen J. Quigley