

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

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In re Application of

Missouri Doctors Mutual Insurance, Co.

Serial No. 76/645,177

For: **MISSOURI DOCTORS MUTUAL
INSURANCE COMPANY**
**WWW.MODOCS.ORG (800) 264-5959 &
Design**

THE DOCTORS COMPANY,

Opposer,

v.

MISSOURI DOCTORS MUTUAL
INSURANCE, CO.,

Applicant

NOTICE OF OPPOSITION

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: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on 2/14, 2007.

THELEN REID BROWN RAYSMAN & STEINER LLP

Date: February 14, 2007

By: Michael J. Lyman

Name: Michael J. Lyman

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Opposer, The Doctors Company, believes that it will be damaged by Applicant's registration of the above identified mark and therefore opposes registration.

1. Opposer is a California Inter-insurance Exchange having a principal place of business at 185 Greenwood Road, Napa, California.
2. On information and belief, Applicant is a Missouri corporation having a principal place of business at 224 North 7th Street, P.O. Box 914, St. Joseph, MO 64502.
3. Opposer was established in California in 1976 as a member-owned company with a core mission of insuring liability in the medical field. Since then it has used THE DOCTORS COMPANY trademark and trade name ("Opposer's Mark") continuously and exclusively in commerce in connection with medical professional liability services and it has grown into a large national company holding \$1.7 billion in assets.

4. Opposer has expended millions of dollars in advertising and promoting its services under the service mark THE DOCTORS COMPANY. Through its marketing efforts as well as its long and continuous use of the service mark THE DOCTORS COMPANY in interstate commerce, the service mark THE DOCTORS COMPANY has become a distinctive, well-known mark in the medical malpractice insurance field and has acquired substantial value and good will associated with the mark.

5. Opposer is the owner of U.S. Application Serial No. 76/589,251, filed on April 29, 2004, for THE DOCTORS COMPANY for "insurance underwriting, brokerage, and reinsurance in the field of medical malpractice, in Class 36." The application was published for opposition on May 23, 2006. Applicant has opposed registration of this application on the grounds that Opposer's Mark is "generic, or if not generic, has not in fact acquired secondary meaning sufficient to warrant its registration, and/or has become diluted by virtue of use of similar terms by others." Opposition No. 91172291, Notice of Opposition, p. 3.

6. In U.S. Application Serial No. 76/645,177, Applicant seeks to register the mark MISSOURI DOCTORS MUTUAL INSURANCE COMPANY WWW.MODOCS.ORG (800) 264-5959 & Design ("Applicant's Mark") on the Principal Register for "insurance underwriting services, namely, insuring physicians against malpractice claims, in International Class 36".

7. The dominant portion of Applicant's Mark is the term MISSOURI DOCTORS MUTUAL INSURANCE COMPANY. The website and telephone number that appear in the mark function as contact information, contain no trademark significance, and have been disclaimed from Applicant's Mark.

8. On information and belief, Applicant first commenced use and use in commerce of Applicant's mark, and the dominant portion thereof, MISSOURI DOCTORS MUTUAL INSURANCE COMPANY, no earlier than April 1, 2004.

9. As between the parties, Opposer has long priority of use of THE DOCTORS COMPANY over Applicant's use of either Applicant's Mark or its dominant portion, MISSOURI DOCTORS MUTUAL INSURANCE COMPANY.

10. Applicant's Mark and Opposer's Mark are similar in appearance, sound, and meaning to the ordinary consumer in the marketplace differing only by the addition of the descriptive wording MISSOURI and MUTUAL INSURANCE.

11. Applicant seeks to register its mark for services that are identical to the services offered under the Opposer's Mark for the past 30 years.

12. Applicant's Mark so resembles Opposer's Mark that, when used in connections with the services of Applicant, it is likely to cause confusion, or cause mistake, or to deceive. Lanham Act Section 2(d), 15 U.S.C. § 1052(d).

13. Applicant's Mark for Applicant's services is likely to falsely suggest a connection with Opposer under Section 43(a) of the Lanham Act. 15 U.S.C. § 1052 (a).

WHEREFORE, Opposer prays that Application Ser. No. 76/645,177 be refused registration.

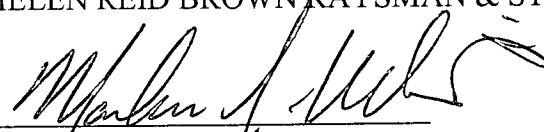
The Trademark Office is authorized to charge the filing fee of \$300 to Deposit Account No. 500918.

Respectfully Submitted,

THELEN REID BROWN RAYSMAN & STEINER LLP

Dated: February 14, 2007

By



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Our References: 893972-126