

ESTTA Tracking number: **ESTTA271357**

Filing date: **03/11/2009**

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

Proceeding	91177203
Party	Defendant Healthestate LLC
Correspondence Address	Thomas Carulli Kaplan von Ohlen & Massamillo 555 5th Avenue, 15th Floor New York, NY 10017 UNITED STATES tcarulli@kvolaw.com
Submission	Opposition/Response to Motion
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Date	03/11/2009
Attachments	Applicant's Response to Opposer's Motion to Vacate Judgment.pdf ( 2 pages ) (17221 bytes ) March 11 2008 Order.pdf ( 3 pages )(45724 bytes )

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

-----X  
Healthe PTY Ltd.,

Opposition No.: 91177203

-v-

**APPLICANT'S RESPONSE TO  
OPPOSER'S  
MOTION TO VACATE  
JUDGMENT**

Healthestate LLC,  
-----X

Pursuant to the Order issued February 27, 2009, Applicant respectfully submits this response to Opposer's motion to vacate the judgment dismissing the Opposition with prejudice.

Simply put, Opposer's motion is both false and moot, and should be dismissed.

First, Opposer falsely asserts that the Opposition "related to two trademark applications" (Opposer's "Motion", paragraph 4) when the record in this proceeding is clear – Opposer's own Notice of Opposition recites that it relates solely to application 78895445 for the mark HEALTHEVIRGINIA (Notice of Opposition, paragraph 1) and that the fee for opposing only a single application, \$300, was being submitted therewith (Notice of Opposition, final paragraph).

Second, while Opposer claims a "change of attorney" allegedly caused Opposer to fail to respond to the March 11 and April 30, 2008 Orders, the record also is clear that Opposer itself was sent the March 11, 2008 Order and therefore was on notice of its contents.

On February 5, 2008, Opposer's then counsel filed a Request to Withdraw as Representative, expressly noted that they had been discharged by Opposer's Group Legal Counsel, Kristine Moralis – the very counsel to whom a copy of the March 11, 2008 Order was mailed by the TTAB (see the March 11 Order, attached hereto for convenience) - and who is still listed with the TTAB, to this day, as the correspondence addressee for Opposer. Opposer made no "change of counsel" in this proceeding, and itself became the correspondent for the proceeding and the recipient of the Orders.

Third, subsequent to the dismissal of the Opposition, the application that was the subject of the Opposition, Application No. 78895445, went abandoned. As such, there is no justiciable controversy because events have rendered the Opposition moot.

Finally, Applicant confirms that Opposer's motion never was served on Applicant or its counsel in July, 2008 or at any time thereafter

Healthestate LLC

By: /tgc/\_\_\_\_\_

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I hereby certify that a true and complete copy of the foregoing Applicant's Response to Opposer's Motion to Vacate Judgment has been served on the Opposers' Correspondent identified in the record of this proceeding, namely Kristine Moralis, Esq, Healthe Pty Ltd., Corporate Centre One, 2 Corporate Court Level 4, Bundall QLD 4217 by mailing said copy on March 28, 2008, via First Class Mail, postage prepaid to said correspondent at said address

By: /tgc/\_\_\_\_\_

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Alexandria, VA 22313-1451

vw/gcp

Mailed: March 11, 2008

Opposition No. 91177203

Healthe Pty Ltd

v.

Healthestate LLC

George C. Pologeorgis, Interlocutory Attorney:

On February 5, 2008, opposer's attorneys filed a request to withdraw as opposer's counsel of record in this case. The request to withdraw as counsel is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40, and is accordingly granted. In view thereof, the law firm of Howrey LLP no longer represents opposer in this proceeding.

In light of the withdrawal of opposer's counsel, and in accordance with standard Board practice, proceedings herein are suspended, and opposer is allowed until **thirty days** from the mailing date of this order to appoint new counsel, or to file a paper stating that opposer chooses to represent itself. If opposer files no response, the Board may issue an order to show cause why default judgment should not be entered against

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opposer based on opposer's apparent loss of interest in the case.

The parties will be notified by the Board when proceedings are resumed, and dates will be rescheduled at the appropriate time.

As an additional matter, the Board notes that answer to the notice of opposition was due (as last reset) in this case on November 19, 2007. Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to further extend its time to answer, notice of default is hereby entered against applicant under Fed. R. Civ. P. 55(a).

The Board will allow applicant time in which to respond to the notice of default if, and when, proceedings herein are resumed.

A copy of this order has been sent to all persons listed below.

cc:

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**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>  
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>