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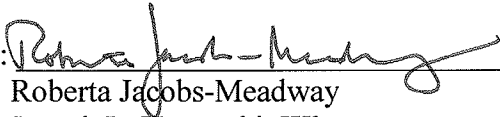
Filing date: **07/30/2010**

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

Proceeding	91192704
Party	Defendant AETNA INC.
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Submission	Defendant's Notice of Reliance
Filer's Name	Roberta Jacobs-Meadway
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Signature	/Roberta Jacobs-Meadway/
Date	07/30/2010
Attachments	NOTICE OF RELIANCE - DISCOVERY RESPONSES (M0840000).PDF (23 pages)(747531 bytes)

Respectfully submitted,

Dated: 7/30/10

By: 

Roberta Jacobs-Meadway

Joseph L. Hoynoski, III

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ATTORNEYS FOR APPLICANT

Aetna, Inc.

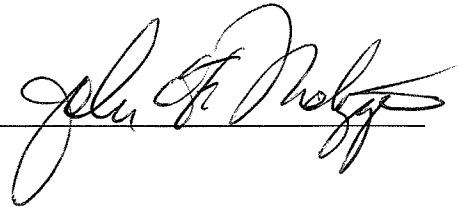
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of APPLICANT'S NOTICE OF RELIANCE ON OPPOSER'S RESPONSES TO DISCOVERY was served on counsel for the Opposer on the date listed below via First Class Mail, postage pre-paid:

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Date:

July 30, 2010



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

HUMANA INC.	:	
	:	
OPPOSER,	:	
	:	
v.	:	Opposition No 91192704
	:	
AETNA INC.	:	
	:	
APPLICANT.	:	

**HUMANA INC'S RESPONSES TO APPLICANT'S FIRST SET OF
INTERROGATORIES TO OPPOSER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Opposer Humana Inc. ("Humana" or "Opposer") hereby responds to Applicant Aetna Inc.'s ("Aetna" or "Applicant") First Set of Interrogatories.

HUMANA'S GENERAL OBJECTIONS

Humana makes the following General Objections, which apply to all of Aetna's requests. More specific objections to AETNA's requests are set forth in the individual responses below.

1. HUMANA objects to AETNA's requests to the extent they seek information protected, privileged, and immune or otherwise exempt from discovery by the attorney-client privilege, the work-product doctrine, or any applicable state or federal statutes, the Federal Rules of Civil Procedure, or any other applicable rule, decision, or law. The specific objections stated below on the grounds of attorney-client privilege and/or work-product doctrine in no way limit the generality of this objection. Nothing contained in the responses below is intended to be, nor should be considered, a waiver of any attorney-client privilege and/or work-product doctrine, right of privacy, or any other applicable privilege or doctrine.

2. HUMANA objects to AETNA's requests to the extent that they seek documents or things protected from disclosure by statute, regulation, administrative order, or case law.

3. HUMANA objects to AETNA's requests to the extent they: (i) seek information that is beyond the scope of discovery as provided by the Federal Rules of Civil Procedure, or other applicable rules or law; or (ii) seek to impose obligations on HUMANA beyond those permitted under the Federal Rules of Civil Procedure or other applicable rules or laws.

4. HUMANA objects to AETNA's requests as being overly broad and unduly burdensome to the extent that they seek the disclosure of information existing in the public domain. Such information is as available to AETNA as it is to HUMANA.

5. HUMANA objects to AETNA's requests to the extent they seek discovery of information that is in sole possession, custody, and control of AETNA.

6. HUMANA objects to AETNA's requests to the extent they seek information protected from disclosure: (i) by agreement, including, but not limited to, confidentiality agreements; or (ii) pursuant to a court order.

7. HUMANA objects to AETNA's requests to the extent they seek confidential and/or proprietary information.

8. HUMANA objects to AETNA's requests to the extent they request irrelevant information or information that is outside the scope of the Federal Rules.

9. HUMANA objects to AETNA's requests to the extent they are vague, ambiguous, overly broad, fail to reasonably identify the information sought, unduly burdensome, and posed for improper purposes, including, without limitation, embarrassment, undue annoyance, harassment, delay, or to increase the expense of litigation or to the extent they call for a legal conclusion or opinion.

10. Discovery is ongoing and HUMANA reserves the right to supplement its responses as more information becomes available.

RESPONSES TO INTERROGATORIES

1. Identify the persons most knowledgeable concerning use of the

HUMANAONE mark.

RESPONSE:

- Ryan Staniak

Consultant, HumanaOne Marketing

Humana Insurance Company

Westchester Sales

One Westbrook Corp. Center

Suite 400

Westchester, IL 60154

- Karen Duff

Planner, Commercial Marketing

Humana Inc.

Humana Tower

500 West Main Street

Louisville, KY 40202

- Brian Schumacher

Project Manager

Humana Insurance Company

Milwaukee Market Office

N019 W24133 Riverwood Drive

Waukesha, WI 53188

- Nikki Bonifer

Director Corporate Marketing

Humana Inc.

Humana Tower

500 West Main Street

Louisville, KY 40202

- Betsy Shirey

Manager Corporate Marketing
Humana Inc.
Humana Tower
500 West Main Street
Louisville, KY 40202

- Tami Quiram

Segment Vice President, Small Group
Humana Insurance Company
Milwaukee Market Office
N019 W24133 Riverwood Drive
Waukesha, WI 53188

- Lisa Yursis

Consultant, Competitive Intelligence
Humana Insurance Company
Green Bay Market Office
1100 Employers Blvd.
Green Bay, WI 54344

- Therese Barry-Tanner

Director, Competitive Intelligence
Humana Insurance Company
Green Bay Market Office
1100 Employers Blvd.
Green Bay, WI 54344

- Steve Cindrich

He was involved with logo design and name
Formerly employed by Humana Insurance Company
6119 West Wisconsin Avenue
Wauwatosa, WI 53210

- Cathy Brocksmith

Marketing consultant – outside use

Formerly employed by Humana Insurance Company

4131 S. Katherine Drive

New Berlin, WI 53151

- Kim Allen

Formerly Director of Marketing, HumanaOne

Currently Segment Leader for Voluntary Benefits

Humana Insurance Company

Green Bay Market Office

1100 Employers Blvd.

Green Bay, WI 54344

- Jacqueline Shamrock, Associate

Humana Insurance Company

Green Bay Market Office

1100 Employers Blvd.

Green Bay, WI 54344

2. Identify the persons most knowledgeable concerning promotion and advertising of the HUMANAONE mark.

RESPONSE:

- Betsy Shirey
- Ryan Staniak
- Nikki Bonifer
- Erica Hissong
Humana Insurance Company

Waterfront Plaza
321 W. Main Street
Louisville, KY 40202

3. Identify the persons most knowledgeable concerning marketing of services under the HUMANAONE mark.

RESPONSE:

See Response to Interrogatory #2.

4. Identify the persons most knowledgeable concerning sales of services under the HUMANAONE mark.

RESPONSE:

- Ryan Staniak
- Lisa Yursis
- Gil Roberts (VP Sales)

Humana Insurance Company
320 Seven Springs Way
Brentwood, TN 37027

- Amy Powers (oversees wholesale)
- Humana Insurance Company
Milwaukee Market Office
N019 W24133 Riverwood Drive
Waukesha, WI 53188

5. Identify the persons most knowledgeable concerning public recognition of and perception of the HUMANAONE mark.

RESPONSE:

- Betsy Shirey

- Gordon Campbell
Humana Insurance Company
NCT-Emphesys
101 S. 5th St.
Louisville, KY 40202

- Paul Hoida
Humana Insurance Company
Green Bay Market Office
1100 Employers Blvd.
Green Bay, WI 54344

6. Identify the third party programs Opposer considers to be competitive with the HUMANAONE program.

RESPONSE:

Without limiting the scope of the foregoing General Objections or the application of such Objections to this request, Humana specifically objects on the grounds that this request is overly broad and vague. Subject to the foregoing objections, Humana states it has documents that contain information relevant to this interrogatory. The burden of discerning the answer to this interrogatory based upon the documents is the same for Aetna as it is for Humana. Therefore, Humana will produce documents responsive to this interrogatory.

7. Identify all third party users of marks or names which contain or comprise the term ONE and are used in connection with financial services, insurance and/or healthcare services.

RESPONSE:

Without limiting the scope of the foregoing General Objections or the application of such Objections to this request, Humana specifically objects on the grounds that this request is overly broad and unduly burdensome to the extent that it seeks the disclosure of information existing in the public domain. Such information is as available to AETNA as it is to HUMANA. Humana further objects to this request on the grounds that it calls for information protected by the attorney-client privilege and attorney work-product doctrine. Without waiving such objections, Humana responds as follows:

Upon information and belief, no such information exists.

8. Identify all third party users of marks or names which contain the term ONE and are used in connection with individual insurance products.

RESPONSE:

Without limiting the scope of the foregoing General Objections or the application of such Objections to this request, Humana specifically objects on the grounds that this request overly broad and unduly burdensome to the extent that it seeks the disclosure of information existing in

the public domain. Such information is as available to AETNA as it is to HUMANA. Humana further objects to this request on the grounds that it calls for information protected by the attorney-client privilege and attorney work-product doctrine. Without waiving such objections, Humana responds as follows:

Upon information and belief, no such information exists.

9. Identify all market research and/or consumer studies which refer or relate to consumer response to and/or recognition of HUMANAONE as a mark.

RESPONSE:

Without limiting the scope of the foregoing General Objections or the application of such Objections to this request, Humana specifically objects on the grounds that this request overly broad and unduly burdensome. Subject to the foregoing objections, Humana states it has documents that contain information relevant to this interrogatory. The burden of discerning the answer to this interrogatory based upon the documents is the same for Aetna as it is for Humana. Therefore, Humana will produce documents responsive to this interrogatory.

10. Identify all market research and/or consumer or industry studies which refer or relate to recognition of the HUMANA mark.

RESPONSE:

Without limiting the scope of the foregoing General Objections or the application of such Objections to this request, Humana specifically objects on the grounds that this request overly broad, unduly burdensome and irrelevant. Humana will respond with information regarding consumer response and recognition within its possession that relates to HUMANAONE only. As such, see response to Interrogatory #9.

11. State the intended significance of “one” in the HUMANAONE mark.

RESPONSE:

Without limiting the scope of the foregoing General Objections or the application of such Objections to this request, Humana specifically objects on the grounds that this request is vague. Without waiving such objections, Humana responds as follows:

It is intended to reflect products and services for an individual person.

12. Identify all persons who have provided any information or any documents responsive to Applicant's First Set of Interrogatories and/or first request for production of documents.

RESPONSE:

- Betsy Shirey
- Ryan Staniak

Dated: March 22, 2010

By: /s/ Sarah Bansal

Jeffrey S. Standley

Cheryl S. Scotney
Sarah Bansal
Attorneys for Opposer
STANDLEY LAW GROUP LLP
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Dublin, OH 43017
614-792-5555 (phone)
614-792-5536 (fax)
jstandley@standleyllp.com
cscotney@standleyllp.com
sbansal@standleyllp.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of March 2010 a true and accurate copy of the foregoing HUMANA INC.'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER was served via email upon:

Robert Jacobs-Meadway
Eckert Seamans
rjacobsmeadway@eckertseamans.com

/s/ Sarah Bansal _____
Sarah Bansal

3. Opposer objects to Applicant's Requests to the extent that they seek information or identification or production of documents protected by the attorney-client privilege, work product immunity doctrine, and/or which are otherwise protected from discovery by the Federal Rules of Civil Procedure or any other privilege or immunity.
4. Opposer objects to Applicant's Requests to the extent they improperly seek to require Opposer to marshal all of its available proof and limit the evidence that Opposer may present at the hearing for this matter. Opposer reserves the right to introduce all admissible evidence at any trial or hearing, including physical and documentary evidence, as well as oral testimony. .
5. Opposer objects to Applicant's Requests on the ground that they seek information or identification or production of documents related to confidential business and technical information to Applicant as unduly burdensome and oppressive.
6. Opposer objects to Applicant's Requests to the extent that they attempt to impose any obligation on Opposer to search literature and third party materials that are not under the possession and/or control of Opposer.
7. Opposer objects to the extent the Requests purport to require information that is not within the possession, custody or control of Opposer.

RESPONSES TO REQUESTS FOR ADMISSION

1. The HumanaOne program is not offered in the State of California.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of California.

2. The HumanaOne Program is not offered in the State of New Jersey.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of New Jersey.

3. The HumanaOne Program is not offered in the State of Pennsylvania.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of Pennsylvania.

4. The HumanaOne Program is not offered in the State of New York.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of New York.

5. The HumanaOne Program is not offered in the State of Connecticut.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of Connecticut.

6. The HumanaOne Program is not offered in the State of Massachusetts.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of Massachusetts.

7. The HumanaOne Program is not offered in the State of Washington.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of Washington.

8. The HumanaOne Program is not offered in the State of Oregon.

RESPONSE: Opposer objects to this request on the grounds that the phrase "HumanaOne program" is undefined and, therefore, ambiguous. Opposer admits it does not sell any HUMANAONE insurance products in the State of Oregon.

9. On December 12, 2008, Humana filed application serial no. 77628558 for registration of HUMANA MYCARE.

RESPONSE: Denied.

10. On March 12, 2009, the Trademark Office issued an Office action in connection with Humana's application Serial No. 77/628,558, a copy of which is attached as Exhibit A.

RESPONSE: Admitted.

11. On August 17, 2009 Humana's response to the Office action was filed in support of application Serial No. 77/628,558, a copy of which response is attached as Exhibit B.

RESPONSE: Admitted.

12. In responding to the March 12, 2009 Office action, argument was made on behalf of Humana that the mark of application Serial No. 77/628,558 was not likely to cause confusion with the marks of Registrations No.s 2,862,106 for MYCAREPORTAL and 3,099,054 for MYCARE.

RESPONSE: Admitted.

13. In responding to the March 12, 2009 Office action, Humana represented to the Trademark Office that: "As a general rule, consumers are more inclined to focus on the first word, prefix or syllable in any trademark or service mar. Humana then quoted *Presto Prodt, Inc.*: "it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered."

RESPONSE: Admitted.

14. In responding to the March 12, 2009 Office action, Humana represented to the Trademark Office that: "... 'HUMANA' is an arbitrary or fanciful term that causes ... Applicant's mark to differ from the mark MY CARE at least as much as the mark MYCAREPORTAL, which differs only by the descriptive element 'PORTAL'.

RESPONSE: Admitted.

15. In responding to the March 12, 2009 Office action, Humana represented to the Trademark Office that: “. . . the element ‘MY CARE’ is weak and when used in connection with health insurance and other healthcare-related services.” Humana proceeded to submit that its mark “should be evaluated as a whole, without undue weight given to the weak element ‘MY CARE’”.

RESPONSE: Admitted.

16. In responding to the March 12, 2009 Office action, Humana represented to the Trademark Office that its mark and the cited marks “share only one common feature, that is the weak element ‘MYCARE’, and therefore, as a whole, are not likely to be confused.”

RESPONSE: Admitted.

17. In responding to the March 12, 2009 Office action, Humana represented to the Trademark Office that: “It is a well accepted notion that ‘there is always less likelihood of confusion where goods are expensive and purchased after careful consideration’”.

RESPONSE: Admitted.

18. In responding to the March 12, 2009 Office action, Humana represented to the Trademark Office that: “the coexistence of multiple marks incorporating the element ‘MY CARE’ or variations thereof) in connection with healthcare-related services indicates that none of the marks are particularly distinctive or strong, and these only deserve a narrow scope of protection.


RESPONSE: Admitted.

19. In responding to the March 12, 2009 Office action, Humana represented to the Trademark Office that: "Marks including the element 'MY' and used in connection with related services have been allowed to coexist." Humana further stated: Where similar marks exist for similar goods or services, customers will not likely be confused, because they have learned to look to other elements of the mark in order to distinguish such marks. Hence, consumers will be more likely to focus on the other elements of Applicant's mark, particularly the element 'HUMANA', which immediately and clearly indicates the source of Applicant's services."

RESPONSE: Admitted.

Dated: 3/8/10

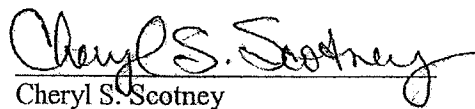
By:


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sbansal@standleyllp.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of March 2010 a true and accurate copy of the foregoing HUMANA INC.'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR ADMISSIONS was served via email upon:

Robert Jacobs-Meadway
Eckert Seamans
riacobsmeadway@eckertseamans.com


Cheryl S. Scotney