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

Proceeding	91227416
Party	Defendant University Health System, Inc.
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Date	04/27/2016
Attachments	Opposition No 91227416 - Answer.pdf(163440 bytes)

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

In the Matter of: U.S. Trademark Application Serial No.: 86/788,939
Mark: TENNESSEE TURNS TEAL (word mark)
Application Filing Date: October 15, 2015

and

Mark: U.S. Trademark Application Serial No.: 86/789,098
Application Filing Date: TENNESSEE TURNS TEAL (composite mark)
October 15, 2015 (composite mark)

TURN THE TOWNS TEAL, INC.)	
)	
Opposer,)	
)	
vs.)	Opposition No. 91/227,416
)	
UNIVERSITY HEALTH SYSTEM,)	
INC. d/b/a UT Medical Center)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

COMES NOW Applicant University Health System, Inc. (“UT Medical Center”) and, for its Answer to the Notice of Opposition filed by Turn The Towns Teal, Inc. (“Opposer”) against UT Medical Center’s applications for registration of the “Tennessee Turns Teal” marks, states as follows:

**RESPONSES TO SPECIFIC ALLEGATIONS
CONTAINED IN THE NOTICE OF OPPOSITION**

1. In response to the allegations contained in paragraph 1 of the Notice of Opposition, Applicant admits that Opposer appears to be a limited liability company organized

and existing under the laws of the State of New Jersey. Applicant denies that Opposer's "Turn The Towns Teal" mark is "well-known." Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the averment concerning the late Gail MacNeil, but does extend its condolences.

2. In response to the allegations contained in paragraph 2 of the Notice of Opposition, UT Medical Center admits that September is recognized as National Ovarian Cancer Awareness Month. Applicant is a hospital system and is generally familiar with this designation. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 2 and, therefore, denies such allegations.

3. In response to the allegations contained in paragraph 3 of the Notice of Opposition, UT Medical Center denies that Opposer's "Turn the Towns Teal" mark has been the subject of "many" campaigns in Tennessee or that Opposer has distributed clothing goods bearing the "Turn The Towns Teal" mark "for many years," and demands proof of same. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 3 and, therefore, denies such allegations.

4. In response to the allegations contained in paragraph 4 of the Notice of Opposition, UT Medical Center states that U.S. Registration No. 3,638,744 speaks for itself.

5. UT Medical Center denies the truth of the allegations contained in paragraph 5 of the Notice of Opposition.

6. UT Medical Center is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 6 of the Notice of Opposition concerning the amount of "time, money and other resources" devoted by Opposer in "advertising, promoting, and marketing its services" provided under the [Turn The Towns Teal]

mark and, therefore, denies same. UT Medical Center denies the truth of the remaining allegations contained in paragraph 6 of the Notice of Opposition.

7. In response to the allegations contained in paragraph 7 of the Notice of Opposition, UT Medical Center admits that U.S. Serial No. 86/788,939 is the subject of Opposer's Notice of Opposition. UT Medical Center states that U.S. Serial No. 86/788,939 is for the word mark "Tennessee Turns Teal," and otherwise speaks for itself.

8. In further response to the allegations in paragraph 7 of the Notice of Opposition, UT Medical Center admits that U.S. Serial No. 86/789,098 is also the subject of Opposer's Notice of Opposition. UT Medical Center states that U.S. Serial No. 86/789,098 is for the composite mark:



wherein certain colors are claimed as features of the mark, and otherwise speaks for itself.

9. UT Medical Center denies any allegations contained in paragraph 7 that are inconsistent with U.S. Serial Nos. 86/788,939 and 86/789,098.

10. Paragraph 8 of the Notice of Opposition consists of a statement, argument, or conclusion of law to which no admission or denial is required. To the extent a response is required, UT Medical Center denies all averments presented in paragraph 8 and demands strict proof thereof. Applicant would add that it has searched Opposer's mark diligently and has yet to see where the outline of the State of Tennessee is shown or where the word "Tennessee" is used.

11. Paragraph 9 of the Notice of Opposition consists of a statement, argument, or conclusion of law to which no admission or denial is required. To the extent a response is

required, UT Medical Center denies all averments presented in paragraph 9 and demands strict proof thereof.

12. UT Medical Center admits that the date of filing of its applications is October 15, 2015. UT Medical Center is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 10 of the Notice of Opposition concerning Opposer's date of first use and priority and, therefore, denies same.

13. In response to the allegations contained in paragraph 11 of the Notice of Opposition, UT Medical Center admits that its U.S. Serial No. 86/788,939 and U.S. Serial No. 86/789,098 claim goods in Class 025 and services in Classes 035 and 036. UT Medical Center denies any allegations contained in paragraph 11 that are inconsistent with U.S. Serial Nos. 86/788,939 and 86/789,098, which speak for themselves. All other allegations presented in paragraph 11 are denied.

14. UT Medical Center denies the truth of the allegations contained in paragraph 12 of the Notice of Opposition. UT Medical Center would add that it is a not-for-profit organization dedicated to providing medical services to a large region in Appalachia, much of which is remote, poor and under-served. The inference that UT Medical Center would seek to harm the reputation of another non-profit organization is as unnecessary as it is untrue.

15. UT Medical Center denies the truth of the allegations contained in paragraph 13 of the Notice of Opposition. UT Medical Center denies any assertion or implication that its marks at issue are likely to cause confusion with Opposer's asserted "Turn The Towns Teal" mark.

16. The remainder of the allegations in the Notice of Opposition being merely prayers for relief requires no response. Notwithstanding, UT Medical Center denies that Opposer is entitled to any relief whatsoever against it.

17. Any allegations contained in the Notice of Opposition that UT Medical Center has not expressly admitted above are hereby denied.

DEFENSES

18. UT Medical Center sets forth the following defenses. Characterizing the defenses below as “Affirmative Defenses” does not shift the burden of proof to UT Medical Center with respect to any issues for which Opposer carries the burden of proof.

19. The Notice of Opposition fails to state a claim for which relief may be granted.

20. Opposer’s claims may be barred by the doctrines of estoppel, waiver, and/or laches.

21. Opposer does not have priority over or rights superior to UT Medical Center’s rights in the TENNESSEE TURNS TEAL marks or U.S. Serial Nos. 86/788,939 and 86/789,098 for the goods and services intended in good faith to be provided by UT Medical Center.

22. The term “teal” and the color are indicative of the cause to cure gynecological cancers, and to support those who are being and have been affected by gynecological cancers. As such, the term “teal” is admittedly a descriptive term and no one entity may claim this term as a trademark exclusively. In addition, the term “teal” and teal-colored ribbons are frequently used to express a desire to find treatments and cures for gynecological cancers and to raise money for research, much as pink ribbons are used to express a desire to find treatments and cures for breast cancer and to raise money for medical research . To the extent Opposer may claim the term “teal” as a dominant term, Opposer’s mark is weak. Therefore, Opposer’s purported rights

extend no further than to the specific mark that Opposer alleges it owns, which is not the same as or likely to cause confusion with UT Medical Center's proposed marks.

23. Opposer has not and will not be damaged by the registration of the marks in U.S. Serial Nos. 86/788,939 and 86/789,098. Indeed, Opposer and Applicant are non-profit entities "fighting" for the same cause.

24. UT Medical Center reserves the right to assert additional defenses that may be revealed through discovery and as appropriate and necessary.

WHEREFORE, UT Medical Center respectfully requests that registration of the Opposed Marks be permitted.

DATED this 27th day of April 2016.

Respectfully submitted,

/Peter L. Brewer/
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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served by U.S. Priority Mail to Opposer's counsel at the following address:

Ronald L. Israel
Peter E. Nussbaum
Joshua M. Lee
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Dated: April 27, 2016

/Peter L. Brewer/
Peter L. Brewer
Attorney for Applicant