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10-28-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #71

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

William J. Snell, III	)	
	)	
Petitioner,	)	Cancellation No. 31,365
	)	
vs.	)	Reg. No. 1,947,473
	)	Issued: January 9, 1996
Priority Healthcare Benefits, Inc.	)	
	)	
Registrant,	)	

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**RESPONSE TO CONSENTED REQUEST FOR  
RELIEF FROM FINAL JUDGMENT**

Petitioner, in response to the Consented Request for Relief From Final Judgment filed by Priority Healthcare Benefits, Inc. ("PHB") on October 18, 2002 states as follows:

1. Petitioner filed an application to register its mark WILL POWER (Serial No. 75/761,026) for use in connection with estate planning services. In response, the Examining Attorney cited PHB's Registration No. 1,947,473.
2. Petitioner was unable to convince the Examining Attorney that there was no likelihood of confusion between the two marks. Inasmuch as Petitioner had prior use of its WILL POWER mark to the PHB mark, Petitioner was left with no choice but to file a Petition to Cancel PHB's registration.
3. Petitioner believes that the notice of default was issued because PHB had changed its address.


4. The parties are in the process of obtaining a settlement which will result in a consent to use and registration agreement. Thus, the Petitioner will consent to this request only on the condition that the settlement is finalized and a consent to use and registration agreement, which will allow Petitioner's registration to issue, is approved by the Examining Attorney.

Therefore, Petitioner would request that PHB's Request be suspended for a sufficient period of time in which to allow the parties to arrive at a final settlement of all differences. Petitioner would also state that the time during which PHB's Request is suspended not indicate a failure by PHB in any way to act promptly upon discovery of the cancellation of its registration.

Wherefore, Petitioner requests that PHB's Request for relief be suspended while the parties reach a final settlement and agreement to present to the Examining Attorney which will allow Petitioner's application to proceed to registration.

Respectfully submitted,  
Shughart, Thomson & Kilroy, P.C.

Dated: October 24, 2002

By:   
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ATTORNEY FOR PETITIONER

I hereby certify that this Response to Consented Request for Relief From Final Judgment is being deposited with the United States mail in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on October 24, 2002.

William J. Snell III

Petitioner



Michael Elbein

October 24, 2002

Date of Signature

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been sent via First Class U.S. Mail on October 24, 2002, to Matthew J. Himich, Thompson Coburn LLP, One US Bank Plaza, St. Louis, Missouri 63105, attorney for Registrant.

