

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

HORIZON HEALTHCARE SERVICES, INC.)
)
Petitioner,)
)
)
v.)
)
ALLIED NATIONAL, INC.)
)
Registrant)

Cancellation No. 92043195



06-23-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

MOTION TO STRIKE REGISTRANT'S AFFIRMATIVE DEFENSE OF LACK OF BAD FAITH CONTAINED IN ANSWER TO FIRST AMENDED PETITION TO CANCEL U.S. REG. NO. 2,724,437

Petitioner, Horizon Healthcare Services, Inc., hereby moves to strike Registrant's affirmative defense of lack of bad faith as shown in Paragraph No. 38, which states:

"38. Registrant, further answering, alleges that its trademark application which matured into U.S. Trademark Registration No. 2,724,437 was filed and prosecuted without any bad faith intent and therefore, the Petition to Cancel should be dismissed."

as follows:

The Registrant's claim that it filed and prosecuted the subject registration without any bad faith intent is not an affirmative defense. *See* TBMP § 311.02(b); 37 CFR §§ 2.106(b)(1) and § 2.114(b)(1). The defense should be stricken as redundant, that is, as nothing more than a restatement of a denial in the answer and does not add anything to that denial. *Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995).

It is hereby requested that the Board strike the Registrant's claim of lack of bad faith intent as redundant and having no bearing upon the issues of likelihood of confusion and priority contained in the Petitioner's Amended Petition to Cancel. TBMP §506.01. The Board may

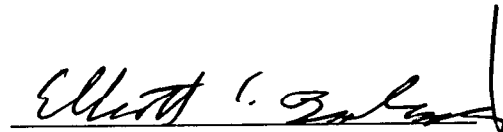
order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. *See* Fed. R. Civ. P. § 12(f). The Board also has authority to strike impermissible or insufficient claims. *See Ohio State University v. Ohio University, supra* and *Western Worldwide Enterprises Group Inc. v. Qinqdao Brewery*, 17 USPQ2d 1137 (TTAB 1990).

In conclusion, Registrant's alleged affirmative defense of lack of bad faith contained in Paragraph No. 38 in Registrant's Answer to the Amended Petition to Cancel should be stricken as redundant, insufficient and/or impermissible.

Respectfully submitted,

HORIZON HEALTHCARE SERVICES, INC.

By:



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Dated: June 23, 2004

CERTIFICATE OF SERVICE

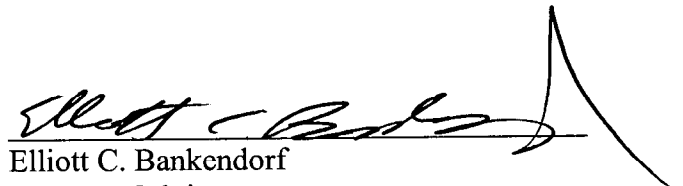
I hereby certify that I am a member of and/or employed by the law firm of WELSH & KATZ, LTD., 120 South Riverside Plaza, 22nd Floor, Chicago, Illinois 60606, and that in said capacity, a true copy of the attached documents:

Motion to Strike Registrant's Affirmative Defense of Lack of Bad Faith Contained in Answer to First Amended Petition to Cancel U.S. Reg. No. 2,724,437

was caused to be served upon:

D.A.N. Chase
Mark Brown
CHASE LAW FIRM, L.C.
4400 College Boulevard
Suite 130
Overland Park, Kansas 66211

by first-class mail on this 23rd day of June, 2004.


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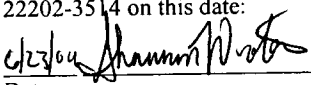
DONALD L. WELSH (1925-1998)

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** ALSO ADMITTED IN ALABAMA

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Re: Horizon Healthcare Services, Inc., Petitioner v.
Allied National, Inc., Registrant
Cancellation No. 92043195
Our File No. 6587-90316

I hereby certify that this paper is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on this date:


Date
Express Mail No. EV337063452US

Dear Sir or Madam:

Enclosed is the following document:

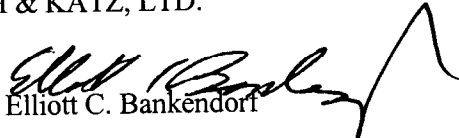
1. Motion to Strike Registrant's Affirmative Defense of Lack of Bad Faith Contained in Answer to First Amended Petition to Cancel U.S. Reg. No. 2,724,437;

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment to Deposit Account No. 23-0920. A duplicate copy of this sheet is enclosed.

Very truly yours,

WELSH & KATZ, LTD.

By:


Elliott C. Bankendorf

06-23-2004

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