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Filing date: **07/07/2011**

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

Proceeding	92052514
Party	Defendant Medrecon
Correspondence Address	DOREEN JAMES WISE MEDRECON 10114 WEST SAM HOUSTON PKWY SOUTH HOUSTON, TX 77099 UNITED STATES
Submission	Defendant's Notice of Reliance
Filer's Name	CHRISTOPHER D. KEIRS
Filer's e-mail	ckeirs@counselip.com
Signature	/Christopher Keirs/
Date	07/07/2011
Attachments	Respondent's_Second_Notice_of_Reliance.pdf (17 pages)(3432392 bytes)

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

Registration No. 3,778,980
Trademark: MEDDETECT

Medimpact Healthcare Systems, Inc.,
Petitioner,

v.

Medrecon D. Wise Management Corp.,
Respondent.

Cancellation No. 92052514

RESPONDENT'S SECOND NOTICE OF RELIANCE

Pursuant to 37 CFR 2.120 and 2.122, MEDRECON L.P. ("Medrecon" or "Respondent")
hereby introduces the following into evidence:

1. Exhibit C

Petitioner's Responses to First Set of Interrogatories by Respondent.

2. Exhibit D

Petitioner's Responses to First Set of Requests for Admission by Respondent.

Exhibit C is a copy of Medimpact Healthcare Systems, Inc.'s Responses to First Set of Interrogatories by Respondent that were served on April 7, 2011. It is relevant to the claimed use of the subject mark by Petitioner and the comparison of the services offered under Petitioner's and Respondent's marks under the likelihood of confusion analysis.

Exhibit D is a copy of Medimpact Healthcare Systems, Inc.'s Responses to First Set of Requests for Admission by Respondent that were served on April 7, 2011. It is relevant to the claimed use of the subject mark by Petitioner and the comparison of the services offered under Petitioner's and Respondent's marks under the likelihood of confusion analysis.

Respectfully submitted:

/Christopher Keirs/

Date: July 7, 2011

Christopher D. Keirs
Attorney for Respondent

Wong Cabello Lutsch Rutherford & Brucculeri, LLP
20333 State Hwy. 249 Suite 600
Houston, TX 77070
832 446-2400
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ckeirs@counselip.com

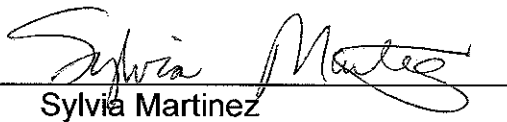
Certificate of Mailing by Overnight Courier Service

I hereby certify that a copy of this Second Notice of Reliance is being served by Federal Express overnight courier service to Attorney for Petitioner on July 7, 2011, at the address shown below:

Susan B. Meyer
Gordon & Rees LLP
101 W. Broadway
Suite 2000
San Diego, CA 92101

Federal Express Tracking No. [insert]

Signature: _____


Sylvia Martinez

TTAB

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

In the Matter of Trademark Registration
Registration No.: 3778980
Serial No. 77/607899
Filed: October 2, 2008
By: Medrecon D. Wise Management Corp.
For the Trademark: MEDDETECT

MEDIMPACT HEALTHCARE SYSTEMS, INC.,
a California Corporation,

Petitioner,

v.

Medrecon D. Wise Management Corp.,
a Texas Limited Partnership

Respondent.

Cancellation No. 92052514

**MEDIMPACT HEALTHCARE
SYSTEMS, INC.'S RESPONSES
TO FIRST SET OF
INTERROGATORIES BY
RESPONDENT**

PROPOUNDING PARTY: MEDRECON D. WISE MANAGEMENT CORP.

RESPONDING PARTY: MEDIMPACT HEALTHCARE SYSTEMS, INC.

SET NO.: **ONE (1)**

MEDIMPACT HEALTHCARE SYSTEMS, INC. (“MedImpact” or “PETITIONER”) hereby provides the following responses to MEDRECON L.P. (“Medrecon” or “RESPONDENT”) First Set of Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.116(a) and C.F.R. 2.120(d)(2). MedImpact provides these responses based on its current knowledge and information reasonably available at this time. MedImpact’s investigation is ongoing and discovery is not yet complete. Pursuant to F.R.C.P. 26(e), MedImpact reserves the right to supplement or correct its responses as information is acquired or becomes available.

GENERAL OBJECTIONS

1. MedImpact objects to these Requests to the extent they call for information protected by the attorney-client or work-product privileges. To the extent any request may be construed as calling for disclosure of information protected by any such privilege or doctrine, a continuing objection to each and every request is hereby interposed.

2. MedImpact objects to these Requests to the extent they are overbroad and unduly burdensome.

3. MedImpact objects to these Requests to the extent they call for information that is irrelevant, and unrelated to the claim or defense of any party.

4. MedImpact objects to these Requests to the extent they are vague and ambiguous.

5. As discovery in this matter is ongoing and without in any way obligating itself to do so, MedImpact reserves the right to modify or supplement its responses hereto with such pertinent information as may be subsequently discovered. Furthermore, these responses are given without prejudice to MedImpact's right to use or rely on at any time, including trial, subsequently discovered information or documents, or information or documents omitted from these responses as a result of, among other things, mistake, error, oversight or inadvertence.

6. MedImpact hereby specifically incorporates each of the foregoing general objections into the answer to each of the Interrogatories, whether or not specific reference is made to the general objections in response to a particular Interrogatory.

INTERROGATORY NO. 1

Please IDENTIFY all PERSONS who participated in, or have knowledge of, any evaluation (including research, testing or surveys) of marks that resulted in adoption by PETITIONER of PETITIONER'S MARK.

RESPONSE TO INTERROGATORY NO. 1:

Dawn Anderson, Dennis Derecho, and Lisa Feltcher; members of the MedImpact proposal services team; members of contracts management team; members of sales and marketing team; and members of fraud, waste and abuse team.

INTERROGATORY NO. 2:

Please state whether YOU, prior to or after adopting and/or using PETITIONER'S MARK in the United States, conducted or caused to be conducted a search or investigation, or other inquiry, of any records such as, but not limited to, United States Patent and Trademark Office records, state or foreign country trademark records, trademark or trade publications, catalogs, sales literature, advertisements, business directories, or the records of any trademark service organization, relating to whether or not PETITIONER'S MARK or any colorable imitation thereof or any mark, trade name, corporate name, or other reference possibly having the same or similar connotation thereof had been or was being used or registered by others.

RESPONSE TO INTERROGATORY NO. 2:

Petitioner objects to this interrogatory as seeking information protected by the attorney-client and/or attorney work product privileges.

INTERROGATORY NO. 3:

Please IDENTIFY and describe in detail the circumstances of each of YOUR uses of PETITIONER'S MARK, including without limitation thereto (a) a complete description of PETITIONER'S MARK as used, stating the manner in which PETITIONER'S MARK is displayed (the medium and exact graphic appearance); (b) a full description of each of the goods and/or services in connection with which YOU claim use of PETITIONER'S MARK, with dates of use with respect to each product or service; (c) the cost of each product or service requested in part (b), at all times that each product or service has been offered for sale; (d) the IDENTITY of all PERSON(S) to whom goods were sold or transported, or services were rendered, in connection with the first use and the first use in commerce of PETITIONER'S MARK; and (e) the IDENTITY of all PERSONS known to PETITIONER as having knowledge of such first use.

RESPONSE TO INTERROGATORY NO. 3:

Petitioner objects as this Interrogatory as seeking information not relevant to this action and not reasonably calculated to lead to the discovery of admissible evidence, overly broad, vague and ambiguous, and unduly burdensome.

Subject to the aforementioned objections, Petitioner answers as follows: Petitioner uses its mark in word and logo format, as shown in the advertising slick and proposals produced concurrently herewith. Petitioner uses the mark as part of its pharmacy benefit management (PBM) services to designate services for maintaining and reporting information related to pharmaceutical prescriptions and claims at the member, pharmacy and prescriber levels. Users can access and analyze data and investigate pharmaceutical information. Extensive historical data regarding previously-filled prescriptions is available. Petitioner has offered services under the MEDDETECT mark since at least as of July 31, 2006. Persons having knowledge of first and early use of the mark include current and former MedImpact employees Rod Wade, Dawn Anderson, Dennis Derecho, and Lisa Feltcher; members of the MedImpact proposal services team; members of contracts management team; members of sales and marketing team; and members of fraud, waste and abuse team.

INTERROGATORY NO. 4:

IDENTIFY all types of advertising or other informational, promotional or merchandising materials of any kind upon which YOU have used PETITIONER'S MARK.

RESPONSE TO INTERROGATORY NO. 4:

The MEDDETECT service has been advertised in advertising slicks and proposals.

INTERROGATORY NO. 5:

For each item of advertising or promotional material identified in INTERROGATORY NO. 4 above, IDENTIFY the preparer and state (a) the period of time and area of use; (b) the

goods and/or services in connection with which it was used; and, (c) for each year the total number used or distributed.

RESPONSE TO INTERROGATORY NO. 5:

Advertising slicks prominently displaying the mark have been distributed since July 2006 and have been in continuous use since that time through the present. Advertising slicks are printed digitally in-house on an as-needed basis and, as such, no count of the number used or distributed is available. Proposals also include promotion of the services and have been sent out, and used on a regular and continuous basis, since at least January 31, 2007.

INTERROGATORY NO. 6:

Describe in complete detail all CIRCUMSTANCES of any inquiry, uncertainty, confusion or mistake by any PERSON as to the affiliation, connection or association of PETITIONER'S goods, services, or commercial activities with any of REGISTRANT'S goods, services, or commercial activities.

RESPONSE TO INTERROGATORY NO. 6:

No such circumstances have come to the attention of Petitioner.

INTERROGATORY NO. 7:

If YOU received any communications (including but not limited to telephone calls, telexes, facsimile transmissions, mail, packages or deliveries) intended for or addressed to the REGISTRANT, identify each such communication separately in complete detail, including without limitation, the date of such communication, the nature of the communication and any DOCUMENTS evidencing it, and each PERSON who received such communication or who has any knowledge or information regarding the communication.

RESPONSE TO INTERROGATORY NO. 7:

No such communications have been received by Petitioner.

INTERROGATORY NO. 8:

Describe in detail how and when YOU first became aware of REGISTRANT'S MARK.

RESPONSE TO INTERROGATORY NO. 8:

Petitioner first became aware of Registrant's Mark in an Office Action sent by a Trademark Examining Attorney dated February 7, 2010.

INTERROGATORY NO. 9:

For each of the products or services YOU identify by PETITIONER'S MARK, describe the type or category of potential customer or purchaser to whom the product or service was or is now marketed, sold or directed, including without limitation, the degree of sophistication of such type or category of person with respect to the product or service.

RESPONSE TO INTERROGATORY NO. 9:

Potential customers include, but are not limited to, sponsors of prescription drug programs such as health plans, employers, self-insurers, third party administrators, and union groups. The degree of sophistication can vary.

INTERROGATORY NO. 10:

For each of the products or services YOU IDENTIFY by PETITIONER'S MARK, describe the conditions under which it is offered and sold.

RESPONSE TO INTERROGATORY NO. 10:

The services are part of Petitioner's core pharmacy benefit management services. The services are contracted to help the plan sponsors to design and administer pharmacy benefits.

INTERROGATORY NO. 11:

Describe in detail the trade channels for each of YOUR products or services identified by PETITIONER'S MARK. Please include in YOUR description the IDENTITY of all licensees,

distributors, wholesalers, retailers, and service providers receiving products, offering or selling products or services, or transporting products, under PETITIONER'S MARK.

RESPONSE TO INTERROGATORY NO. 11:

Trade channels include, but are not limited to, sponsors of prescription drug programs such as health plans, employers, self-insurors, third party administrators, and union groups. The degree of sophistication varies. No licensees, distributors, wholesales, retailers or service providers are involved in the provision of the services.

INTERROGATORY NO. 12:

Please IDENTIFY the PERSON most knowledgeable with respect to PETITIONER'S MARK and all facts surrounding PETITIONER'S use of PETITIONER'S MARK.

RESPONSE TO INTERROGATORY NO. 12:

Rod Wade and Dana Fethouse, both of MedImpact Healthcare Systems, Inc.

INTERROGATORY NO. 13:

Please IDENTIFY all DOCUMENTS YOU used and/or referred to in responding to Interrogatories No. 1 through 12.

RESPONSE TO INTERROGATORY NO. 13:

Marketing, proposal and contract documents, reports, and trademark prosecution materials to and from the USPTO.

INTERROGATORY NO. 14:

If YOUR response to any of the concurrently served Requests for Admission is anything other than an unqualified admission, please IDENTIFY (a) all facts in support of each such response; and (b) all documents in support of each such response.

RESPONSE TO INTERROGATORY NO. 14:

All facts alleged in these Responses to Interrogatories and included within documents produced simultaneously herewith.

DATE: April 7, 2011

Respectfully submitted,

GORDON & REES LLP



Susan Boensch Meyer

Neil F. Martin

Attorneys for Petitioner

MEDIMPACT HEALTHCARE SYSTEMS, INC.

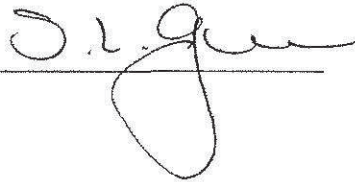
Certificate of Mailing by "Federal Express Delivery"

I hereby certify that a copy of **MEDIMPACT HEALTHCARE SYSTEMS, INC.'S RESPONSES TO FIRST SET OF INTERROGATORIES BY RESPONDENT** is being served by Federal Express service, to Respondent's Correspondent on April 7, 2011, as follows:

CHRISTOPHER D. KEIRS
WONG CABELLO LUTSCH RUTHERFORD & BRUCCUL
20333 STATE HIGHWAY 249 STE 600
HOUSTON, TX 77070-2614
Phone Number: 832 446-2400
ckeirs@counselip.com

Date of Mailing: April 7, 2011
Federal Express No.: 796965025354
Printed Name: Sharee Gill

Signature:

A handwritten signature in black ink, appearing to read "S. Gill", is written over a horizontal line.

THE

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

In the Matter of Trademark Registration
Registration No.: 3778980
Serial No. 77/607899
Filed: October 2, 2008
By: Medrcon D. Wise Management Corp.
For the Trademark: MEDDETECT

MEDIMPACT HEALTHCARE SYSTEMS, INC.,
a California Corporation,

Petitioner,

v.

Medrecon D. Wise Management Corp.,
a Texas Limited Partnership

Respondent.

Cancellation No. 92052514

**MEDIMPACT HEALTHCARE
SYSTEMS, INC.'S RESPONSES
TO FIRST SET OF REQUESTS
FOR ADMISSION BY
RESPONDENT**

PROPOUNDING PARTY: MEDRECON D. WISE MANAGEMENT CORP.

RESPONDING PARTY: MEDIMPACT HEALTHCARE SYSTEMS, INC.

SET NO.: **ONE (1)**

MEDIMPACT HEALTHCARE SYSTEMS, INC. (“MedImpact” or “PETITIONER”) hereby provides the following responses to MEDRECON L.P. (“Medrecon” or “RESPONDENT”) First Set of Requests for Admission pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120(d)(2). MedImpact provides these responses based on its current knowledge and information reasonably available at this time. MedImpact’s investigation is ongoing and discovery is not yet complete. Pursuant to F.R.C.P. 26(e), MedImpact reserves the right to supplement or correct its responses as information is acquired or becomes available.

GENERAL OBJECTIONS

1. MedImpact objects to these Requests to the extent they call for information protected by the attorney-client or work-product privileges. To the extent any request may be construed as calling for disclosure of information protected by any such privilege or doctrine, a continuing objection to each and every request is hereby interposed.
2. MedImpact objects to these Requests to the extent they are overbroad and unduly burdensome.
3. MedImpact objects to these Requests to the extent they call for information that is irrelevant, and unrelated to the claim or defense of any party.
4. MedImpact objects to these Requests to the extent they are vague and ambiguous.
5. As discovery in this matter is ongoing and without in any way obligating itself to do so, MedImpact reserves the right to modify or supplement its responses hereto with such pertinent information as may be subsequently discovered. Furthermore, these responses are given without prejudice to MedImpact's right to use or rely on at any time, including trial, subsequently discovered information or documents, or information or documents omitted from these responses as a result of, among other things, mistake, error, oversight or inadvertence.
6. MedImpact hereby specifically incorporates each of the foregoing general objections into the answer to each of the Requests, whether or not specific reference is made to the general objections in response to a particular Request.

REQUEST FOR ADMISSION NO. 1

Admit that at the time PETITIONER applied for registration the mark MEDDETECT in application serial number 77/607,899, PETITIONER was aware of REGISTRANT'S U.S. Trademark Reg. No. 3,778,980.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

Denied.

REQUEST FOR ADMISSION NO. 2

Admit that YOU are not aware of any instances in which the public has been confused concerning the source, affiliation, origin or sponsorship of the services offered under REGISTRANT'S MARK.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

Petitioner has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request for admission and therefore denies same.

REQUEST FOR ADMISSION NO. 3

Admit that YOU are not aware of any instances in which the public has been confused concerning the source, affiliation, origin or sponsorship of the services offered under PETITIONER'S MARK.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

Petitioner has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request for admission and therefore denies same.

REQUEST FOR ADMISSION NO. 4

Admit that YOU have not received any inquiries from the public concerning services offered by REGISTRANT under REGISTRANT'S MARK.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

Admitted.

REQUEST FOR ADMISSION NO. 5

Admit that YOU do not offer services under PETITIONER'S MARK that are classified in International Class 042.

RESPONSE TO REQUEST FOR ADMISSION NO. 5

Denied. Petitioner's services fall under the International Class 042 description of "Computer, Scientific and Legal."

REQUEST FOR ADMISSION NO. 6

Admit that YOU do not offer services under PETITIONER'S MARK that are classified in International Class 044.

RESPONSE TO REQUEST FOR ADMISSION NO. 6

Denied. Petitioner's services fall under the International Class 044 description of "Medical, Beauty, and Agricultural."

REQUEST FOR ADMISSION NO. 7

Admit that the services designated by REGISTRANT'S MARK and those designated by PETITIONER'S MARK are not offered in the same channels trade.

RESPONSE TO REQUEST FOR ADMISSION NO. 7

Denied.

REQUEST FOR ADMISSION NO. 8

Admit that the services designated by REGISTRANT'S MARK and those designated by PETITIONER'S MARK are not purchased by and marketed to the same consumers.

RESPONSE TO REQUEST FOR ADMISSION NO. 8

Denied.

DATE: April 7, 2011

Respectfully submitted,

GORDON & REES LLP



Susan Boensch Meyer

Neil F. Martin

Attorneys for Petitioner

MEDIMPACT HEALTHCARE SYSTEMS, INC.

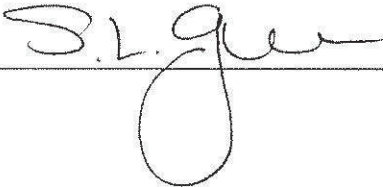
Certificate of Mailing by "Federal Express Delivery"

I hereby certify that a copy of MEDIMPACT HEALTHCARE SYSTEMS, INC.'S
RESPONSES TO FIRST SET OF REQUESTS FOR ADMISSION BY RESPONDENT is
being served by Federal Express service, to Respondent's Correspondent on April 7, 2011, as
follows:

CHRISTOPHER D. KEIRS
WONG CABELLO LUTSCH RUTHERFORD & BRUCCUL
20333 STATE HIGHWAY 249 STE 600
HOUSTON, TX 77070-2614
Phone Number: 832 446-2400
ckeirs@counselip.com

Date of Mailing: April 7, 2011
Federal Express No.: 796965025354
Printed Name: Sharee Gill

Signature:

A handwritten signature in black ink, appearing to read "S. L. Gill", is written over a horizontal line.