

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Alpha Omega Home Health Services, Inc.	§	
	§	
Petitioner,	§	Cancellation No. _____
	§	
v.	§	In the matter of:
	§	U.S. Reg. No. 3,769,164
	§	for AΩ & Design
Alpha Omega Care Hospice, Inc.	§	
	§	
Registrant.	§	

PETITION FOR CANCELLATION

Petitioner, Alpha Omega Home Health Services, Inc., a Texas corporation having a business address of 10461 Commerce Row, Montgomery, Texas 77356 (“Petitioner”), believes that it will be damaged by Registration No. 3,769,164 and hereby petitions to cancel the registration.

07/02/2010 SWILSON 00000003 37649164
01 FC:6401 390.00 DP

As grounds for the cancellation, it is alleged that:

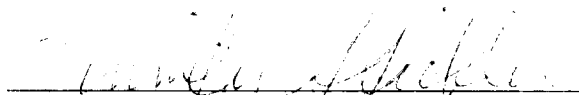
1. To the best of Petitioner’s knowledge, the name and address of the owner of Registration No. 3,769,164 is Alpha Omega Care Hospice, Inc., 3909 Washington Blvd., Suite 206A, Fremont, California 94538 (“Registrant”). Registrant is believed to be a California corporation.
2. On October 28, 2009, Petitioner filed U.S. Trademark Application Serial No. 76/700,095 for “ALPHA OMEGA HOME HEALTH” for “nursing care, physical therapy, speech therapy, and home health aide care”.
3. Since at least as early as September 1999, Petitioner has used, and continues to use the mark “ALPHA OMEGA HOME HEALTH” in connection with those services.

4. According to the U.S. Patent & Trademark Office records, Registrant filed an application for "AΩ & Design" on May 2, 2009, for "hospices". Registrant filed its application on an intent to use basis and later asserted a date of first use of May 1, 2009. Its application registered on March 30, 2010.
5. Petitioner has priority of use. Unless Registration No. 3,769,164 is cancelled, Petitioner will be precluded from obtaining registration of its mark and will be denied the benefits therefrom.

WHEREFORE, Petitioner respectfully requests that this cancellation petition be granted and that Registration No. 3,769,164 be cancelled.

Dated: June 27, 2010

Respectfully submitted,



Jennifer S. Sickler

Reg. No. 36,500

GARDERE WYNNE SEWELL LLP

1000 Louisiana, Suite 3400

Houston, Texas 77002-5007

713.276.5382 (Telephone)

713.276.6382 (Fax)

**ATTORNEYS FOR PETITIONER
ALPHA OMEGA HOME HEALTH
SERVICES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition For Cancellation was served by certified mail, return receipt requested, on this 23rd day of June, 2010, upon the correspondent of record at the correspondence address of record:

ALPHA OMEGA CARE HOSPICE, INC.
3909 Washington Blvd., Suite 206A
Fremont, CA 94538-4998



Jennifer S. Sickler

HOUSTON 1079077v.1

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Alpha Omega Home Health Services, Inc.

Petitioner,

v.

Alpha Omega Care Hospice, Inc.

Registrant.

§
§
§
§
§
§
§
§
§
§

Cancellation No. _____

In the matter of:
U.S. Reg. No. 3,769,164
for AΩ & Design

CERTIFICATE OF EXPRESS MAIL

I hereby certify that the following documents, which are attached, are being deposited under 37 CFR 1.10, with the United States Postal Service "Express Mail Post Office to Addressee" service as Express Mail No. EM 383605972 US in an envelope addressed to: TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

- (1) Petition for Cancellation;
- (2) Credit Card Payment Form; and
- (3) Return Postcard.

Date: 6/29/10

Respectfully submitted,

Marisa Sweeney
Legal Assistant to Jennifer S. Sickler



06-29-2010