

ESTTA Tracking number: **ESTTA364379**

Filing date: **08/21/2010**

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

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|------------------------|--|
| Proceeding | 92052735 |
| Party | Defendant Alpha Omega Care Hospice, Inc. |
| Correspondence Address | ALPHA OMEGA CARE HOSPICE, INC. 3909 WASHINGTON BLVD, SUITE 206A FREMONT, CA 94538 UNITED STATES |
| Submission | Answer |
| Filer's Name | Peter R. Bade II, CEO |
| Filer's e-mail | pbade@alphaoch.com |
| Signature | /Peter R. Bade II/ |
| Date | 08/21/2010 |
| Attachments | Answer.pdf (4 pages)(80179 bytes) |

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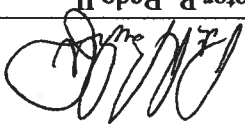
I hereby certify that a copy of the foregoing Answer to Petition for Cancellation was served by

certified mail, return receipt requested, on this 21 day of August, 2010, upon the Petitioner at the

Petitioner's address of record:

Alpha Omega Home Health Services, Inc.
10461 Commerce Row
Montgomery, TX 77356

Attorneys for Petitioner
Jennifer S. Sickler, Esq.
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, TX 77002-5011

By: 
Peter R. Bade II

Alpha Omega Care Hospice, Inc.
3909 Washington Blvd.
Ste. 206A
Fremont, CA 94538

CERTIFICATE OF SERVICE

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7 CEO for Registrant
8 Alpha Omega Care Hospice, Inc.

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

11 Alpha Omega Home health Services, Inc.,)

12 Petitioner,)

13 v.)

14 Alpha Omega Care Hospice, Inc.,)

15 Registrant.)

Cancellation No.: 92052735

**ANSWER TO PETITION FOR
CANCELLATION**

16
17 Commissioner for Trademarks

18 P.O. Box 1451

19 Alexandria, Virginia 22313-1451

20 **ANSWER**

21 Dear Commissioner:

22 Registrant, Alpha Omega Care Hospice, Inc., incorporated in the state of California, whose
23 principal place of business is located at 3909 Washington Blvd., Suite 206A, in the city of Fremont, state
24 of California, county of Alameda, 94538 hereby responds to the Petition for Cancellation as follows:

- 25 1. Registrant admits to the allegations in Paragraph 1 of the Petition for
26 Cancellation.
27
28 2. Registrant has no knowledge of, or information to form a basis of belief for, the

1 claims alleged in Paragraph 2 of the Petition for Cancellation, and hereby denies the allegations in
2 Paragraph 2 of the Petition for Cancellation.

3 3. Registrant has no knowledge of, or information to form a basis of belief for, the
4 claims alleged in Paragraph 3 of the Petition for Cancellation, and hereby denies the allegations in
5 Paragraph 3 of the Petition for Cancellation.

6 4. Registrant admits to the allegations in Paragraph 4 of the Petition for
7 Cancellation.

8 5. Registrant has no knowledge of, or information to form a basis of belief for, the
9 claims alleged in Paragraph 5 of the Petition for Cancellation, and hereby denies the allegations in
10 Paragraph 5 of the Petition for Cancellation.

11 6. Answering the unnumbered and unmarked last paragraph on page 2 of the
12 Petition for Cancellation, Registrant denies that Petitioner is entitled to the relief requested.

13 **AFFIRMATIVE DEFENSES**

14 Registrant Alpha Omega Care Hospice, Inc. alleges the following affirmative defenses to the
15 Petition for Cancellation:

- 16 1. Petitioner has failed to state a claim upon which relief may be granted.
17 2. Petitioner has failed to plead sufficient facts to establish the relief requested.
18 3. Petitioner's claims are barred by laches.
19 4. Petitioner's claims are barred by the statute of limitations.
20 5. Petitioner's claims are barred, either in whole or in part, by the absence of subject
21 matter jurisdiction.

- 22 6. Petitioner's claims are barred by the doctrine of waiver.
23 7. Petitioner's claims are barred by illegality.
24 8. Petitioner lacks U.S. constitutional standing to maintain the claims asserted in the
25 Petition for Cancellation.

- 26 9. Petitioner has failed to satisfy all conditions precedent to bringing the claims and
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1 allegations in their Petitioner for Cancellation.

2 10. Petitioner's claims are barred by the doctrine of estoppel.

3 11. Petitioner's claims are barred by the doctrine of unclean hands.

4 12. Petitioner's claims are barred by mistake.

5 13. Petitioner's claims are barred by fraud.

6 14. Petitioner's claims are barred by prior judgment.

7 15. Registrant is entitled to the prior registration (*Morehouse*) defense.

8 16. Registrant presently has insufficient knowledge or information on which to form a
9 belief as to whether it may have additional, as yet unstated, defenses available. Registrant reserves the
10 right to assert additional defenses that are revealed by further investigation or by discovery.
11

12 **PRAYER**


13 WHEREFORE, Alpha Omega Care Hospice, Inc. prays for judgment or relief against Petitioner
14 as follows:

15 1. That the claims and allegations raised by Petitioner in the Petition for Cancellation
16 be dismissed with prejudice, and that Petitioner takes nothing.

17 2. That the Trademark Trial and Appeal Board awards such other further relief as the
18 Board deems just and proper.

19 Dated: August 18, 2010

20 Respectfully submitted,

21 By: 
22 Peter R. Bade II
23 In Pro Per for Registrant
24 Alpha Omega Care Hospice,
25 Inc.
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