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

Proceeding	92054007
Party	Defendant OhioHealth Corporation
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Submission	Answer
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Signature	/Edward A. Matto/
Date	06/27/2011
Attachments	Answer to Petition for Cancellation.PDF (7 pages)(201245 bytes)

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

Cancellation Proceeding Against United States Trademark Registration No. 3,181,639 for VCU

_____)	
VIRGINIA COMMONWEALTH)	
UNIVERSITY,)	Cancellation No.: 92054007
)	
Petitioner,)	Registration No.: 3,181,639
v.)	Registration Date: December 5, 2006
)	
OHIOHEALTH CORPORATION,)	
)	
Respondent.)	
_____)	

ANSWER TO PETITION FOR CANCELLATION

OhioHealth Corporation, an Ohio not for profit corporation (“Respondent”), hereby files its answer and affirmative defenses to the Petition for Cancellation (the “Petition”) filed by Petitioner relating to Respondent’s United States Trademark Registration No. 3,181,639 for the mark VCU.

Respondent hereby answers as follows:

1. Respondent admits the allegations in Paragraph 1 of the Petition.
2. In response to Paragraph 2 of the Petition, Respondent admits upon information and belief that Petitioner has filed United States Trademark Application Serial No. 85/294,938 seeking to register the mark VCU for the services identified in Paragraph 2 of the Petition. Respondent denies that Petitioner’s date of first use of VCU was January 31, 1969 for services described as “medical and scientific research, including conducting clinical trials,” and/or

“medical services; medical information; hospitals” and/or services that include “health care education services, namely conducting classes, symposiums, seminars, workshops, conferences and programs in the field of clinical patient diagnosis, treatment and care” (collectively “Health Care Services”) and Respondent affirmatively asserts that the date of first use by Petitioner for any services contained within said Health Care Services is a much later date. Respondent is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and accordingly denies same.

3. Respondent denies Petitioner’s allegations in Paragraph 3 of the Petition that its use of the mark VCU in connection with Health Care Services predates the filing date and priority date of Respondent’s VCU mark. Respondent is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 3 and accordingly denies same. In the alternative, Respondent alleges that if Petitioner did have prior use of the mark VCU in connection with any of the relevant Health Care Services that predates the filing date and claimed priority date of Respondent’s VCU mark, such prior use was limited to the geographic area of Richmond, Virginia.

4. In response to Paragraph 4, Respondent admits that the United States Patent and Trademark Office (“USPTO”) has allowed Respondent’s VCU mark to register. Respondent denies that there was prior use by and prior rights of Petitioner to the VCU mark in said health care educational services set forth in Respondent’s Registration. Respondent is without knowledge as to whether or not Petitioner reasonably believes that the registration of its VCU Application will be denied on the grounds that the application is likely to cause confusion with Respondent’s VCU registration, but Respondent denies that there is any likelihood of confusion with Respondent’s registered mark.

5. In response to Paragraph 5 of the Petition, Respondent has no knowledge as to what Petitioner reasonably expects as a result of Respondent's VCU registration and the USPTO's action relating to Petitioner's Application and accordingly denies same. Further, Respondent is without knowledge as to whether Petitioner reasonably believes that there is a likelihood of confusion between Respondent's VCU mark and Petitioner's alleged VCU mark. Respondent denies that there is a likelihood of confusion between the two marks.

6. Respondent denies the allegations in Paragraph 6 of the Petition to the extent that Petitioner is seeking to register the VCU mark for "educational services, entertainment services, namely providing courses of instruction at the university level and distributing course materials in connection therewith and organizing and conducting sports and arts competitions and events" that do not include any Health Care Services. Respondent is without sufficient information or knowledge as to whether Petitioner's described services in International Class 42 and International Class 44 are closely related to the services provided by Respondent in connection with its registered VCU mark relating to "health care educational services, namely conducting classes, symposiums, seminars, workshops, conferences and programs in the field of clinical patient diagnosis, treatment and care." Respondent further states that to the extent that Petitioner's intended use of the VCU mark is in the same line of business as Respondent's use of its registered mark, Respondent denies any likelihood of confusion, and further alleges that Respondent's registered mark has priority over any use by Petitioner in Health Care Services.

7. Respondent denies the allegations in Paragraph 7 of the Petition and further states that it is without knowledge as to Petitioner's expectation as to whether or not the USPTO will refuse Petitioner's application to register VCU and, if so, on what grounds.

8. Respondent's denies the allegations in Paragraph 8 of the Petition.

9. In response to Paragraph 9, Respondent denies that Respondent's registered mark VCU should be cancelled on any grounds and affirmatively asserts that Petitioner has no rights hereunder and the Petition for Cancellation should be dismissed.

10. Further answering, Respondent denies each and every other allegation contained in the Petition not heretofore specifically admitted.

ADDITIONAL DEFENSES

Further answering the Petition, Respondent asserts the following additional defenses, without assuming the burden of proof when such burden would otherwise be on Petitioner. Respondent specifically reserves the right to amend its answer as additional information becomes available and/or is otherwise discovered.

FIRST AFFIRMATIVE DEFENSE – Failure to State a Claim

11. Respondent's use of its registered mark VCU is used in relation to or in reference to its VIRTUAL CARE UNIT, which is also a federally registered mark, federal registration 3,134,031, and said VIRTUAL CARE UNIT consists of four separate clinical areas with several human patient simulators and is physically located at one of its hospitals in Columbus, Ohio. Therefore, Respondent's use of the VCU mark with its prior rights in Class 41 is never used in reference to the Respondent itself but rather to its VIRTUAL CARE UNIT and the services provided therein.

12. Petitioner has failed to allege any basis for cancellation of Respondent's registered mark VCU and, thus, has failed to allege a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE – Equitable Estoppel

13. Respondent incorporates by reference the allegations in Paragraph 11 and 12 above.

14. Respondent's use of the mark VCU in relation to its VIRTUAL CARE UNIT has been publicized nationally and internationally since 2004 and Petitioner knew, or should have known, at least since the year 2004 that Respondent was using the mark VCU and Petitioner took no steps to object in any way to Respondent's usage.

15. Petitioner had constructive notice of Respondent's registered mark VCU at least as of December 5, 2006.

16. Petitioner had actual knowledge of Respondent's facilities in Columbus, Ohio, including its use of its registered mark VCU in relation to its VIRTUAL CARE UNIT, since at least January 2007 and Petitioner failed to object to the use of the mark VCU at those times or later.

17. Respondent has expended significant money and effort since 2005 in growing its registered marks VIRTUAL CARE UNIT and VCU and Respondent will be substantially damaged if its registered mark VCU is cancelled.

18. Petitioner has exercised unreasonable delay in filing this Petition to Respondent's prejudice and damage.

19. Petitioner is barred from the relief it seeks based upon the principles and doctrine of equitable estoppel.

THIRD AFFIRMATIVE DEFENSE - Laches

20. The allegations made in Paragraphs 11 through 19, above, are hereby incorporated by reference.

21. Petitioner is barred from the relief that it seeks based upon the principles and doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE - Acquiescence

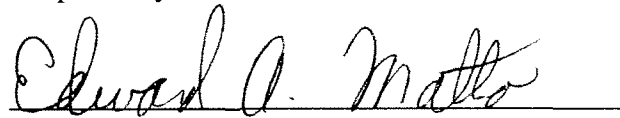
22. The allegations made in Paragraphs 11 through 21, above, are hereby incorporated by reference.

23. Petitioner is barred from the relief that it seeks based upon the principles and doctrine of acquiescence.

WHEREFORE, Respondent denies that Petitioner is entitled to any relief as prayed for in its Petition for Cancellation or otherwise and, accordingly, Respondent respectfully prays for entry of judgment dismissing the Petition with prejudice, awarding Respondent its attorneys' fees and costs, and for such other and further relief as may be just and proper under the circumstances.

Dated: June 27, 2011

Respectfully submitted,



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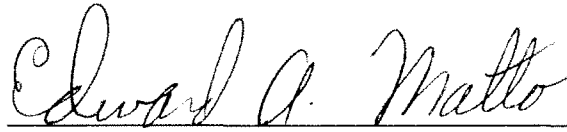
Counsel for OhioHealth Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June, 2011, a true and correct copy of the Answer to Petition for Cancellation was served by first class mail, postage prepaid, to the following:

Peter E. Broadbent, Jr.
Belinda D. Jones
Noelle M. James
Christian & Barton, LLP
909 East Main Street, Suite 1200
Richmond, VA 23219
*Counsel for Virginia Commonwealth
University*

A courtesy copy was also emailed to Peter E. Broadbent, Jr. on this date.

A handwritten signature in cursive script that reads "Edward A. Matto". The signature is written in black ink and is positioned above a horizontal line.

Edward A. Matto