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Filing date: **04/13/2012**

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

|                           |   |
|---------------------------|---|
| Proceeding                | 92055267  |
| Party                     | Defendant<br>Code Blue, LLC   |
| Correspondence<br>Address | CODE BLUE LLC<br>404 S BARSTOW<br>EAU CLAIRE, WI 54701<br>UNITED STATES |
| Submission                | Answer  |
| Filer's Name              | Andrea F. Sellers   |
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| Signature                 | /Andrea F. Sellers/   |
| Date                      | 04/13/2012  |
| Attachments               | Answer to Petition for Cancellation.pdf ( 6 pages )(57300 bytes )       |

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

In the matter of Trademark Registration No.: 3,282,974  
Mark: CODEBLUE  
Filing Date: June 14, 2006  
Registration Date: August 21, 2007

|                        |   |                                   |
|------------------------|---|-----------------------------------|
| POLYGON US CORPORATION | ) |                                   |
|                        | ) |                                   |
| Petitioner,            | ) |                                   |
|                        | ) |                                   |
| v.                     | ) | Cancellation No.: <b>92055267</b> |
|                        | ) |                                   |
| CODE BLUE, LLC,        | ) |                                   |
|                        | ) |                                   |
| Respondent.            | ) |                                   |

**ANSWER**

Pursuant to 37 C.F.R. § 2.114, Respondent Code Blue, LLC (hereinafter "Respondent"), through its attorneys, answers Petitioner Polygon US Corporation's (hereinafter "Petitioner") Petition for Cancellation of U.S. Trademark Reg. No. 3,282,974 as follows.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Petitioner's incorporation status and principal place of business in the first unnumbered paragraph of the Petition and therefore denies the same. Respondent admits that it is the owner of the trademark CODEBLUE and is the assignee of U.S. Trademark Reg. No. 3,282,974 for CODEBLUE for "insurance claims processing" in International Class 36. Respondent denies the remaining allegations in the first unnumbered paragraph of the Petition.

The following numbered paragraphs correspond to the numbered paragraphs of the Petition:

1. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 and therefore denies the same.

2. Respondent denies that Petitioner is the owner of record for U.S. Trademark Reg. No. 3,704,069. According to the U.S. Patent and Trademark Office databases, the CODE BLUE mark was assigned from Munters Corporation to MCS US Corporation in September 2010. There is no recorded assignment of the mark from MCS US Corporation to Petitioner. Respondent admits that a copy of a document purporting to be a certificate of registration for U.S. Trademark Reg. No. 3,704,069 was appended to the Petition. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2 and therefore denies the same.

3. Admitted.

4. Respondent admits it is in the business of insurance claims processing for third party insurance companies and has used the mark CODEBLUE in connection with its services since at least as early as June 13, 2006. Respondent denies the remaining allegations in paragraph 4.

5. Denied.

6. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and therefore denies the same.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 regarding Petitioner's and its predecessors' advertising and promotional activities for services under the CODE BLUE mark and therefore denies the same. Respondent denies that the CODE BLUE mark has become identified in the minds of the public and trade as evidencing services that emanate solely from Petitioner.

8. Respondent admits that it is offering its insurance claims processing services under the CODEBLUE mark but denies that it offers or performs those services in the same or

similar channels of trade and to the same or similar class of consumers as Petitioner's services offered under its CODE BLUE mark.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

Respondent denies the allegations in the unnumbered paragraph following numbered paragraph 12 and denies that Petitioner is entitled to any of the relief sought or any relief whatsoever.

#### **FIRST DEFENSE**

13. The Petition fails to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

14. There is no likelihood of confusion, mistake or deception of the consuming public with regard to the services Respondent provides under its mark and the services Petitioner provides under its mark.

15. Petitioner's services are not competitive with Respondent's services. Upon information and belief, the respective services of the parties are offered and sold through different channels of trade to different ultimate purchasers.

16. Upon information and belief, no member of the consuming public has been confused as to the source or origin of the parties' respective services nor has any member of the consuming public mistakenly believed that the parties were affiliated with or sponsored by one another.

**THIRD DEFENSE**

17. Petitioner's claims are barred by the equitable doctrines of laches and acquiescence.

18. At a minimum, Petitioner had constructive knowledge of Respondent's mark at least as early as the date of registration of Respondent's mark, namely, August 21, 2007.

19. For over four years, Respondent has invested considerable time and resources in building a valuable, nationwide business and establishing goodwill under its CODEBLUE mark in reliance on Petitioner's silence and failure to object.

20. Petitioner unreasonably delayed in filing this Petition and Respondent has been unduly prejudiced as a result of the delay.

**FOURTH DEFENSE**

21. Upon information and belief, Respondent established rights in its CODEBLUE mark prior to any rights Petitioner owns in its CODE BLUE mark.

22. Respondent began using the CODEBLUE mark on insurance claims processing services at least as early as June 13, 2006.

23. According to the U.S. Patent and Trademark Office databases, at the time Munters (the original owner of U.S. Trademark Reg. No. 3,704,069) purportedly assigned its rights in the CODE BLUE mark to Petitioner in March 2011, it had no trademark rights in the CODE BLUE mark to assign given that it had previously assigned all rights in the mark to MCS US Corporation in September 2010. Upon information and belief, MCS US Corporation never assigned its rights in the mark to Petitioner.

24. Upon information and belief, Petitioner began using the CODE BLUE mark in March 2011, well after Respondent began using its CODEBLUE mark in 2006.

**FIFTH DEFENSE**

25. Petitioner's rights, if any, are narrow in scope in view of third party use of and registrations for marks that include CODE BLUE or similar names. Such third party use is evidenced in part by the following federal trademark applications and registrations:

|                       |  |
|-----------------------|--|
| CODE BLUE PROTECTION  | U.S. Trademark Application Serial No. 85577924 |
| CODE BLUE             | U.S. Trademark Application Serial No. 85529856 |
| CODE BLUE             | U.S. Trademark Registration No. 3416123        |
| CODE BLUE             | U.S. Trademark Registration No. 3185753        |
| CODE BLUE             | U.S. Trademark Registration No. 3155152        |
| CODE BLUE             | U.S. Trademark Registration No. 3082125        |
| CODE BLUE PRODUCTIONS | U.S. Trademark Registration No. 3176114        |
| CODE BLUE             | U.S. Trademark Registration No. 3606961        |
| CODE BLUE             | U.S. Trademark Registration No. 3530180        |
| CODEBLUENOW!          | U.S. Trademark Registration No. 3405079        |
| CODE BLUE             | U.S. Trademark Registration No. 2822886        |
| CODE BLUE             | U.S. Trademark Registration No. 2659134        |
| CODE BLUE             | U.S. Trademark Registration No. 2271708        |
| CODE BLUE             | U.S. Trademark Registration No. 2106259        |

26. As a result of the prolific use of trademarks that consist essentially of the words "code" and "blue," the public has become accustomed to carefully discerning the source of the goods and services offered under these identical and nearly identical marks.

27. Accordingly, Petitioner has not been damaged by and is foreclosed from cancelling Respondent's registration for services that are arguably less similar to Petitioner's services than those identified in the applications and registrations listed above.

WHEREFORE, Registrant asks the Board to dismiss the Petition with prejudice.

Respectfully submitted,

Dated: April 13, 2012


By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Answer to Petition for Cancellation was served upon Petitioner by depositing the same in the United States mail, first class postage prepaid, on this 13<sup>th</sup> day of April 2012, addressed to:

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