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

Proceeding	92067481
Party	Defendant Life Line, Inc. dba 1st Choice Women's Health Center
Correspondence Address	LIFELINE INC DBA 1ST CHOICE WOMEN'S HEALTH CENTER, SUITE 109 19415 DEERFIELD AVENUE LEESBURG, VA 20175 UNITED STATES
Submission	Motion to Dismiss 2.132
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Attachments	MV--Motion to Dismiss.pdf(241361 bytes)

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

RLP VENTURES, LLC,	
Petitioner,	
v.	**Cancellation No.: 92067481**
LIFE LINE, INC. (DBA 1ST CHOICE WOMEN'S HEALTH CENTER)	**Mark: MOSAIC VIRGINIA**
Registrant	**Filed: December 10, 2014** **Published: August 25, 2015** **Registered: November 10, 2015** **Registration No. 4849517**

MOTION TO DISMISS PETITIONER'S PETITION FOR CANCELLATION

COMES NOW the Registrant, Life Line, Inc. (DBA 1st Choice Women's Health Center) (hereinafter the "Registrant"), by and through the undersigned counsel, and responds to Petitioner's Petition for Cancellation by filing its Motion to Dismiss for failure to state a claim upon which relief may be granted under Federal Rules of Civil Procedures Section 12(b)(6).

BACKGROUND

This case concerns a dispute regarding Registrant's registered service mark, MOSAIC VIRGINIA ("Registrant's Mark"), in connection with "charitable fundraising" under International Class 36 ("Registrant's Services"). Registrant's Mark was registered on the Principal Register on December 10, 2014, with a date of first use in commerce of November 6, 2014.

On May 31, 2017, Petitioner submitted a Section 1(a) application with the United States Patent and Trademark Office ("PTO") to register its service mark MOSAEC ("Petitioner's

Mark") in connection with "Fundraising services, by means of sharing profits from the sale of socially responsible products with not-for-profit organizations, schools, and civic groups; Charitable fundraising services for namely, raising funds to support programs related to engagement in entertainment, film, fine art, museums, literature, culture, music, sports, fashion, theater, dance, culinary, recreation and leisure activities; On-line business fundraising services" in International Class 36 ("Petitioner's Services"). *Petition for Cancellation* ¶ 6. The PTO rejected Petitioner's application due to its likelihood of confusion with Registrant's Mark in connection with Registrant's Services. In response to the PTO's rejection, Petitioner now petitions the Board to cancel Registrant's Mark based on an alleged priority first date of use over Registrant's Mark. *Petition for Cancellation* ¶ 8.

STANDARD OF LAW

In order to survive a motion to dismiss for failure to state a claim, the Petition for Cancellation must allege facts which would, if provided, establish 1) the petitioning party has standing to maintain the proceedings; and 2) there is a valid ground for cancelling the registered mark. *Young. V. AGB Corp.*, 152 F.3d 1377, 1379, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998).

With respect to standing, the petitioner must allege facts, which, if ultimately proved, would establish that petitioner has a "real interest," i.e., a "personal stake," in the proceedings. *Richie v. Simpson,* 179 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). Furthermore, the petitioner's allegation that it would be damaged by the other party's registered mark "must have a "reasonable basis in fact.'" *Richie*, 170 F.3d 1092, 50 USPQ2d at 1027.

To sufficiently allege a valid ground for cancellation, the petition must contain sufficient factual matter, as accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v.* Igbal, 556 U.S. 662, 129 S.Ct. 1937 (2009).

ARGUMENT

To establish priority on a likelihood of confusion claim, the moving party must prove that the use of its mark in connection with its alleged services occurs prior to the non-moving party's claimed first date of use. *Giersch v. Scripps Networks, Inc.*, 90 USPQ2d 1020 (TTAB 2009). In the absence of evidence of prior use, a petitioner may only rely upon the filing date of its application as its earliest date of use. *15 U.S.C. §1057(c). See also, Larami Corp. v. Talk to Me Programs, Inc.*, 36 USPQ2d 1840 (TTAB 1995).

Petitioner claims priority use for its Mark in connection with Petitioner's Services in International Class 36. Petitioner for Cancellation ¶6. However, Petitioner has provided no evidentiary support of this claim and relies solely on Petitioner's application for registration of its Mark. *Petition for Cancellation* ¶ 8.

Pursuant to *Trademark Rule 2.122(b)(2)*, "[t]he allegation … in a registration[] of a date of use is not evidence on behalf of the applicant …; a date of use of a mark must be established by competent evidence." As result, Petitioner has not provided any evidence that Petitioner was using its Mark in connection with Petitioner's Services on the claimed date of first use. With no evidentiary proof of prior use, Petitioner could only claim an earliest date of use of its Mark in commerce in connection with Petitioner's Services in International Class 36 would be May 31, 2017. As stated above, Registrant's Mark's date of first use is November 6, 2014 and its filing date for registration with the PTO is December 10, 2014. Thus, Registrant Mark's has priority in terms of date of first use and filing date over Petitioner's Mark. Therefore, Petitioner's Mark

would be junior to Registrant's Mark and Petitioner does not have valid grounds to petition for cancellation of Registrant's Mark.

CONCLUSION

With respect to its claim of priority use, Petitioner has merely alleged that it has used Petitioner's Mark in commerce in connection with the stated goods and services under International Class 36 prior to the date of first use of Registrant's Mark without providing sufficient proof to support such a claim. As such, Petitioner's earliest date of first use of its Mark would be its date of filing, May 31, 2017. Based on this date, Registrant's Mark would maintain its senior date of first use. Therefore, the Registrant, Life Line, Inc. (DBA 1st Choice Women's Health Center) respectfully requests that the Trademark Trial and Appeal Board dismiss this Petition for Cancellation.

Respectfully submitted,
LIFE LINE, INC. (DBA 1ST CHOICE WOMEN'S HEALTH CENTER)

By /s/ Justin R. Coleman

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO DISMISS PETITIONER'S PETITION FOR CANCELLATION was served on Petitioner, this January 17, 2018, by sending the same via email to:

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