UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

KSK

Mailed: November 26, 2002

Concurrent Use No. 935

Promedica Health Systems, Inc.

v.

Worldwide Promedica, Inc. dba Promedica

v.

Promedica International, Inc.

Before Hairston, Holtzman and Rogers, Administrative Trademark Judges.

By the Board:

On April 26, 2002, the Board issued an order finding that: (1) Promedica Health Systems, Inc.'s (PHS) ex parte showing of entitlement to registration as to Worldwide Promedica, Inc. (WPI) was not sufficient to support a finding of no likelihood of confusion; and (2) the settlement agreement between PHS and Promedica International Inc. (PII) does not support issuance of a concurrent use registration. The Board allowed PHS time in which to show cause why judgment should not be entered against PHS and

concurrent use registration refused as to Application Serial No. 73/784,209.

On June 25, 2002, PHS filed its response to the Board's show cause order.[1]

PHS v. WPI

PHS states that WPI's allowance of its registration to lapse and failure to file an answer in this concurrent use proceeding makes it "apparent that WPI's rights to the Promedica mark are no longer in issue."

By this statement, it is unclear if PHS is asserting that WPI has abandoned all use of the mark. If, in fact, WPI has abandoned all use of the mark, then its rights to the PROMEDICA mark would indeed no longer be an issue. However, the fact that WPI allowed its registration to lapse is not evidence that WPI abandoned use of the mark. Moreover, the only effect of WPI's failing to answer in this case is that WPI is precluded from claiming any right more extensive than the rights acknowledged in the concurrent use application. Therefore, inasmuch as PHS has not stated that WPI has abandoned *use* of the mark, the Board's findings in the April 26, 2002 order stand.

[1] PHS's motion (filed May 22, 2002) for an extension of time to file its response is granted.

PHS v. PII

With regard to the stipulated motion to dismiss and the settlement agreement between PHS and PII, we reaffirm our decision in the April 26, 2002 order. Moreover, we note that the settlement agreement between PHS and PII only restricts PII's use of the mark. Under this agreement, PHS would be allowed to use its mark in any way, including the same "manner or mode" of use as PII.

ORDER

In view of the above, PHS is allowed until **THIRTY DAYS** from the mailing date of this order to overcome the deficiencies noted above, failing which judgment will be entered against PHS as to WPI and concurrent use registration refused as to application Serial No. 73/784,209.[2]

Proceedings herein remain otherwise suspended.

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[2] In the event applicant chooses to file an abandonment of its concurrent use application, it would only need the written consent of PII.