

**United States Patent and Trademark Office**  
**Trademark Trial and Appeal Board**  
P.O. Box 1451  
Alexandria, VA 22313-1451

MBA

Mailed: November 14, 2008

Concurrent Use No. 94002255

Children's Chance

v.

The Children's Chance, Inc.

v.

Children's Change

**Before Zervas, Cataldo and Bergsman, Administrative  
Trademark Judges**

**By the Board:**

Children's Chance ("applicant") filed application Serial No. 78384127 for concurrent use registration of the mark CHILDREN'S CHANCE & Design for "Charitable fundraising services." Applicant seeks concurrent use registration of the mark for the states of South Carolina, North Carolina, Virginia, West Virginia, Kentucky, Tennessee, Alabama, Florida, Mississippi, Arkansas and Louisiana.

Applicant identified The Children's Chance, Inc. of Hopkins, Minnesota and Children's Change of Westport, Connecticut as exceptions to its exclusive right to use the mark in commerce.

On February 21, 2008, the Board issued an order entering default judgment against both excepted users, and allowing applicant to prove its entitlement to registration of its mark by an *ex parte* showing. Trademark Rule 2.99(d)(3); Precision Tune Inc. v. Precision Auto-Tune Inc., 4 USPQ2d 1095 (TTAB 1987).

In response and as proof of its entitlement to registration, applicant submitted the Declaration of DeeAnn Jones, its Executive Director. In it, Ms. Jones testified that to the best of her knowledge "the two exceptions to the exclusive use of the Mark are parties with single locations in Hopkins, Minnesota (THE CHILDREN'S CHANCE, INC.), owned by The Children's Chance, Inc., and Westport, Connecticut (CHILDREN'S CHANGE), owned by Lorene Loletar." Ms. Jones further testified that there would be no likelihood of confusion from applicant's use of its mark "because [applicant] will not use or advertise the Mark in either Minnesota or Connecticut, unless it is after making a determination that one or both of the parties have abandoned their trademark rights." Furthermore, because the excepted users have defaulted, they are precluded from claiming any right more extensive than that acknowledged in the application, and applicant has been using its mark since at least as early as July 29, 1997, and according to Ms. Jones, "such use has not resulted in any actual confusion." Finally, "[i]n the unlikely event of any

actual consumer confusion, Children's Chance will cooperate reasonably with the common law users thereafter to avoid any confusion."

Based upon the foregoing, we are convinced that applicant has established *prima facie* that concurrent use of the involved marks is not likely to cause confusion, mistake or deception under 15 U.S.C. § 1052(d). Accordingly, applicant is entitled to concurrent use registration of the mark CHILDREN'S CHANCE & Design for "Charitable fundraising services" for the area comprising the states of South Carolina, North Carolina, Virginia, West Virginia, Kentucky, Tennessee, Alabama, Florida, Mississippi, Arkansas and Louisiana.

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