

THIS DECISION IS NOT A
PRECEDENT OF THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: September 27, 2018

Concurrent No. 94002768

Heritage Senior Care, Inc.

v.

*Alacare Home Health Services, Inc. and Wild
Karma, Inc.*

Before Ritchie, Gorowitz and Pologeorgis,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Heritage Senior Care, Inc. (hereinafter “Heritage”) seeks to register the mark YOUR HOME, YOUR WAY. SINCE 1983 (in standard characters; SINCE 1983 disclaimed) for “Non-medical in-home personal care services for assisting with daily living activities of the elderly, including light housekeeping and meal preparation; In-home social service, namely, companionship services for the elderly” in International Class 45 for the area comprising southern California, the division line being defined as the line following the southern border of Monterey, Kings, Tulare and Inyo counties.¹

¹ Application Serial No. 86795334, filed on October 21, 2015, based on allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming May 1, 1983 as both the date of first use and the date of first use in commerce.

Alacare Home Health Services, Inc. (hereinafter “Alacare”) is the owner of the registered mark YOUR HOME. YOUR CARE. YOUR WAY (in standard characters), for “Home health care services, namely, hospice services, palliative care, diabetic care, rehabilitation services, wound care, dietary and nutritional guidance, clinical social work services, psychiatric services, cardiac care services, infusion therapy, chronic obstructive pulmonary disease (COPD) therapy, coumadin therapy monitoring; remote patient telemonitoring services, namely, remote monitoring of patient information, namely, heart rate, blood pressure, oxygen saturation, temperature and weight; rental and provision of home medical equipment and non-medical home assistance services” in International Class 44.² Heritage has named Alacare as an exception to Heritage’s exclusive right to use its mark, and has identified Alacare’s area as comprising “the entire United States except the state of California.”

Wild Karma, Inc. d/b/a Divine Home Care (hereinafter “Wild Karma”) is the owner of the registered mark YOUR LIFE. YOUR WAY. YOUR HOME. (in standard characters) for “In-home support services to senior persons, namely, geriatric care management services in the nature of the coordination of necessary services and personal care for older individuals; Providing non-medical in-home personal services for individuals including checking home condition, supplies and individual well-being, scheduling appointments, running errands, making safety checks, and

² Registration No. 3255474, issued on June 26, 2007; claiming September 30, 2002 as both the date of first use and the date of first use in commerce; Section. 8 Affidavit (10-YR) accepted/Section 9 Affidavit granted on September 27, 2016.

providing on-line information related to these personal services” in International Class 45.³ Heritage has also named Wild Karma as an exception to Heritage’s exclusive right to use its mark, and has identified Wild Karma’s area as comprising “northern California, being more particularly defined as all counties north of, and including, Monterey, Kings, Tulare and Inyo counties.”

On September 4, 2018, the parties filed a concurrent use agreement involving their respective marks.⁴

Upon careful consideration of the agreement between the parties, which supports each party’s right to a concurrent use registration, the Board is persuaded that under the circumstances of this case, concurrent use by the parties of their involved marks is not likely to cause confusion.

In making this determination, the Board has taken into account not only the provisions of the agreement and the actual geographic restrictions of the areas of use, but also the voluntary entrance by the parties into an agreement which includes provisions for concurrent use when it would be clearly against their business interests to cause confusion on the part of the public. *See Amalgamated Bank of New York v. Amalgamated Trust & Savings*, 842 F.2d 1270, 6 USPQ2d 1305 (Fed. Cir. 1988). In particular, the Board notes that the parties have agreed, inter alia, to identify the geographic areas in which they offer their respective services under their respective marks on their individual websites, as well as in conjunction with their Internet

³ Registration No. 4210179, issued on September 8, 2012, claiming December 1, 2011 as both the date of first use and the date of first use in commerce.

⁴ 14 TTABVUE.

advertising.⁵ The parties also have agreed not to use or advertise their respective marks outside of their designated geographic territory.⁶ Additionally, the parties have agreed that in the unlikely event that any party learns of any instances of alleged possible confusion, the parties will cooperate with each other and promptly take all commercially reasonable steps to resolve the situation, including but not limited to: (1) promptly notifying the confused person of the true state of affairs; (2) promptly notifying the other affected party or its attorneys; and (3) taking commercially reasonable steps to prevent or avoid such confusion from occurring in the future.⁷

DECISION:

Accordingly, the parties are adjudged entitled to the following concurrent use registrations:

Concurrent use applicant Heritage is entitled to a registration based on its application Serial No. 86795334 for the mark YOUR WAY, YOUR HOME. SINCE 1983, in standard characters, for use in connection with “Non-medical in-home personal care services for assisting with daily living activities of the elderly, including light housekeeping and meal preparation; In-home social service, namely, companionship services for the elderly” in International Class 45 for “the area comprising southern California, the division line being defined as the line

⁵ 14 TTABVUE 7.

⁶ *Id.*

⁷ 14 TTABVUE 10.

following the southern border of Monterey, Kings, Tulare and Inyo counties.”

Registrant Alacare’s Registration No. 3255474 for the mark YOUR HOME. YOUR CARE. YOUR WAY (in standard characters), for “Home health care services, namely, hospice services, palliative care, diabetic care, rehabilitation services, wound care, dietary and nutritional guidance, clinical social work services, psychiatric services, cardiac care services, infusion therapy, chronic obstructive pulmonary disease (COPD) therapy, coumadin therapy monitoring; remote patient telemonitoring services, namely, remote monitoring of patient information, namely, heart rate, blood pressure, oxygen saturation, temperature and weight; rental and provision of home medical equipment and non-medical home assistance services” in International Class 44 is ordered restricted to **“the area comprising the entire United States, except for the state of California.”**

Registrant Wild Karma’s Registration No. 4210179 for the mark YOUR LIFE. YOUR WAY. YOUR HOME. (in standard characters), for “In-home support services to senior persons, namely, geriatric care management services in the nature of the coordination of necessary services and personal care for older individuals; Providing non-medical in-home personal services for individuals including checking home condition, supplies and individual well-being, scheduling appointments, running errands, making safety checks, and providing on-line information related to these personal services” in International Class 45 is ordered restricted to **“the area comprising northern California, being more particularly defined as all**

counties north of, and including, Monterey, Kings, Tulare and Inyo counties.”