

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

U.S. Department of Health and Human Services)	
)	Attorney Ref: DJB/6217-4
Opposer,)	
)	
v.)	Opposition No. 91225284
)	
Florida Health Choices, Inc.)	Serial No.86/515,931
Applicant.)	(HEALTHCHOICES THE HEALTH INSURANCE MARKETPLACE & Design)
)	

**APPLICANT'S MOTION TO STRIKE UNDER
FED. R. CIV. P. 12(f) AND APPLICANT'S
RESPONSE TO IMPROPER PLEADING**

Pursuant to Fed. R. Civ. P. 8 and 12(f) and Trademark Rules of Practice §§ 2.104 and 2.127, Applicant, Florida Health Choices, Inc. (hereafter "Applicant"), moves the Trademark Trial and Appeal Board to issue an order striking the improperly pleaded Notice of Opposition filed by Opposer, U.S. Department and Health and Human Services ("Opposer"), for the reasons set forth below.

Rule 8 of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Trademark Rule of Practice § 2.116, states in relevant part as follows:

(a) A pleading that states a claim for relief must contain ... (2) a short and plain statement of the claim showing that the pleader is entitled to relief; ... (d)(1) General. Each allegation must be simple, concise, and direct....

Similarly, Trademark Rule of Practice § 2.104(a) states as follows regarding the contents of an opposition:

The opposition must set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark and state the grounds for the opposition.

Further, the Trademark Trial and Appeal Board Manual of Procedure states that the "elements of each claim should be stated simply, concisely, and directly" and "should include enough detail to give the defendant fair notice of the basis for each claim." TBMP § 309.03(a)(2). "Evidentiary matters (such as, for example, lists of publications or articles

in which a term sought to be registered ... is alleged to be used descriptively) should not be pleaded in a complaint. They are matters for proof, not for pleading.” *Id.*

The Notice of Opposition filed by Opposer violates these rules. Rather than setting forth a “short and plain” statement of the reasons why Opposer believes it would be damaged by the registration of Applicant’s mark, the 64-paragraph opposition is vague and unclear and consists primarily of disjointed, random, irrelevant and redundant statements and assertions to which no responsive pleading can be reasonably prepared. In addition to the 64 paragraphs, the opposition includes 36 pages of exhibits. The opposition contains references to a long-dead registration of a different mark and office actions in connection therewith (see ¶¶ 6-8 and Exhibit A); recitations of dictionary definitions of individual terms and attached exhibits (see ¶¶ 9-11 and Exhibits B-C); references to searches and print-outs from “Google®” and elsewhere on the Internet with multiple pages of exhibits (see, e.g., ¶¶ 12-14, Exhibits D-E); reference to a Congressional bill and attached exhibit (see, ¶15 and Exhibit F). The opposition also includes dozens of assertions which amount to improper and untimely discovery requests for admission (see, e.g., ¶¶ 9, 10, 11, 15, 17, 23-62) in violation not only of the pleading rules under the Federal Rules of Civil Procedure and the Trademark Rules of Practice discussed above, but also of the discovery rules set forth in Fed. R. Civ. P. 26, Trademark Rule of Practice § 2.120 and the Trademark Trial and Appeal Board Scheduling Order in this case. This combination of irrelevant, redundant and untimely assertions makes it virtually impossible for Applicant to appreciate the basis for the opposition and to prepare an appropriate response.

Applicant submits that it should not be required to analyze each of the 64 paragraphs and multiple pages of exhibits included in the opposition to try and divine the basis for the opposition. Instead, Opposer should provide an amended pleading in proper form to which Applicant can respond. Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, the Board may order stricken from any pleading “any redundant, immaterial, impertinent or scandalous matter.” See *Ohio State University v. Ohio University*, 51 USPQ2d 1289, 1292 (TTAB 1999). Applicant respectfully submits that this is a situation in which this rule should be applied.

Accordingly, Applicant requests that Opposer be ordered to file an amended pleading that complies with the Federal Rules of Civil Procedure and Trademark Rules of Practice to which Applicant will be able to prepare an appropriate response.

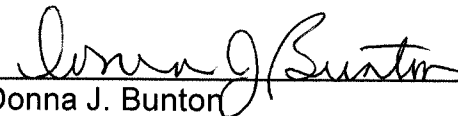
Nevertheless, in the event that the motion is denied in any respect, Applicant responds to the opposition by generally denying any and all allegations that Applicant's mark HEALTHCHOICES THE HEALTH INSURANCE MARKETPLACE & Design (with the wording "THE HEALTH INSURANCE MARKETPLACE" disclaimed) is likely to cause confusion with Opposer's use of the term HEALTH INSURANCE MARKETPLACE; that Opposer has priority of use of the wording "HEALTH INSURANCE MARKETPLACE"; that Opposer has any exclusive rights to the use or registration of the descriptive/generic term "HEALTH INSURANCE MARKETPLACE"; that the term HEALTHCHOICES in Applicant's mark HEALTHCHOICES THE HEALTH INSURANCE MARKETPLACE & Design is merely descriptive or generic; or that Opposer will be damaged by use or registration of the mark HEALTHCHOICES THE HEALTH INSURANCE MARKETPLACE & Design by Applicant for the services covered by Application Serial No. 86/515,931.

In summary and for the reasons set forth above, Applicant requests that the present Motion to Strike be granted and that Opposer be required to submit an amended opposition which conforms to the notice of opposition pleading requirements.

Applicant also requests that proceedings be suspended pending the disposition of the foregoing motion and that deadlines be reset thereafter.

Respectfully submitted,

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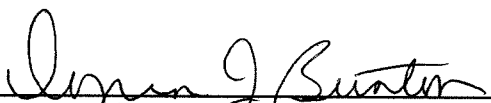
Attorneys for Opposer

Dated: January 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Applicant's Motion to Strike under Fed. R. Civ. P. 12(f) and Applicant's Response to Improper Pleading" was served via first-class mail, postage prepaid, on Applicant's attorneys on January 19, 2016.

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