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

Proceeding	91193046
Party	Defendant Secure Medical, Inc.
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Submission	Answer
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Date	01/25/2010
Attachments	Answer to Notice of Opposition.pdf (18 pages)(72567 bytes)

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

In re Application Serial No.: **77/519,559**

For the Mark: **EDRUGSTORE.MD**

Date Published: **October 27, 2009**

INTOUCH COMMUNICATIONS, LLC,)	
)	
)	Opposition No.
Opposer,)	
)	91193046
v.)	
)	
SECURE MEDICAL, INC.,)	
)	
Applicant.)	
_____)	

Applicant's Answer to Notice of Opposition

In response to the Notice of Opposition filed on December 16, 2009, Applicant Secure Medical, Inc. (hereinafter "Secure Medical"), by and through its undersigned counsel, answers the Notice of Opposition identified above as follows:

1. In response to the allegations of paragraph 1 of the Notice of Opposition, Applicant admits the allegations of this paragraph.
2. In response to the allegations of paragraph 2 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 and therefore denies those allegations and demands proof thereof.
3. In response to the allegations of paragraph 3 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

4. In response to the allegations of paragraph 4 of the Notice of Opposition, Applicant admits the allegations of this paragraph.
5. In response to the allegations of paragraph 5 of the Notice of Opposition, Applicant admits the allegations of this paragraph.
6. In response to the allegations of paragraph 6 of the Notice of Opposition, Applicant admits the allegations of this paragraph.
7. In response to the allegations of paragraph 7 of the Notice of Opposition, Applicant admits the allegations of this paragraph.
8. In response to the allegations of paragraph 8 of the Notice of Opposition, Applicant admits the allegations of this paragraph. Applicant specifically notes, however, that although a non-final office action dated September 24, 2008 rejected Applicant's submission on July 10, 2008 claiming acquired distinctiveness, the Examiner stated that while Applicant's claim of ownership of a prior registration is insufficient evidence of acquired distinctiveness and apparently did not rely on the prior registration as support, additional evidence may be submitted to make such a showing. In a response to the non-final office action dated March 24, 2009, Applicant submitted a declaration from John Rao, President of Secure Medical, Inc. stating that over \$1.75 million dollars has been spent in advertising and marketing efforts for its exclusive use or its licensed use to others of the mark EDRUGSTORE.MD since November, 2002 to establish recognition of the mark and its source of goods. The declaration further stated that the aforementioned marketing efforts resulted in a brand having sales of approximately \$750,000 per month in total sales under that mark. In a subsequent office action dated August 12, 2009, the Examiner did not maintain this rejection and a Notice of Publication issued on October 27, 2009.

9. In response to the allegations of paragraph 9 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and therefore denies those allegations and demands proof thereof. Applicant also specifically notes, however, that although the domain name may or may not have been purchased previously, the web site E-DRUGSTORE-MD.COM was made available to the public on February 2, 2004 as an affiliate under an affiliate program licensed by EDRUGSTORE.MD and did not use the trademark EDRUGSTORE.MD on the site except to identify Applicant and to direct customers to Applicant's web site with the statement, "Click here to enter our Online Pharmacy – eDrugstore.md". Both the "here" and "eDrugstore.md" words included a hyperlink to Applicant's web site at www.edrugstore.md.

10. In response to the allegations of paragraph 10 of the Notice of Opposition, Applicant admits that InTouch Communications was an affiliate for Applicant but currently is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10 and therefore denies those allegations and demands proof thereof.

11. In response to the allegations of paragraph 11 of the Notice of Opposition, Applicant admits that a person who used the name Thomas Parker was at one time the Affiliate Manager of EDRUGSTORE.MD but currently is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11 and therefore denies those allegations and demands proof thereof.

12. In response to the allegations of paragraph 12 of the Notice of Opposition, Applicant admits that InTouch Communications was an affiliate for Applicant for a time but currently is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 12 and therefore denies those allegations and demands proof thereof.

13. In response to the allegations of paragraph 13 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 and therefore denies those allegations and demands proof thereof.

14. Applicant does not object to Opposer's incorporation by reference of the allegations of Paragraphs 1 through 13 of the Notice of Opposition and admits or denies these allegations in accordance with Applicant's response to these allegations addressed above.

15. In response to the allegations of paragraph 15 of the Notice of Opposition, Applicant denies that Applicant's purported predecessors abandoned any rights to the mark prior to the June 12, 2008 assignment of the mark to Applicant.

16. In response to the allegations of paragraph 16 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 and therefore denies those allegations and demands proof thereof.

17. In response to the allegations of paragraph 17 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 and therefore denies those allegations and demands proof thereof.

18. In response to the allegations of paragraph 18 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 and therefore denies those allegations and demands proof thereof.

19. In response to the allegations of paragraph 19 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 and therefore denies those allegations and demands proof thereof.

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