

ESTTA Tracking number: **ESTTA673895**

Filing date: **05/22/2015**

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

Proceeding	85798043
Applicant	Doctors on Liens, Inc.
Applied for Mark	DOCTORS ON LIENS
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Submission	Appeal Brief
Attachments	Doctors on Liens - appeal Brief.pdf(66723 bytes)
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Date	05/22/2015

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

In re Application of:)	
)	
Doctors on Liens, Inc.)	Law Office: 104
)	
Serial No. 85/798043)	Examining Attorney:
)	Barney L. Charlton
Filing Date: December 7, 2012)	
)	
Mark: DOCTORS ON LIENS)	

APPLICANT'S APPEAL BRIEF FROM FINAL REFUSAL

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Applicant appeals from the refusal under Trademark Act Section 2(e)(1) that the subject mark (the “Mark”) is merely descriptive and under Section 2(f) that Applicant’s claim of acquired distinctiveness is insufficient, made final in the Office Action issued September 28, 2014. These determinations were reached in error because Applicant’s Mark merely suggests the type of services provided by Applicant, and the evidence cited by the Examiner does not prove otherwise. In the alternative, should Applicant’s Mark be deemed not to be inherently distinctive, the robust evidence submitted by Applicant establishes that the Mark has developed secondary meaning, such that consumers recognize and identify Applicant and its services, entitling it to registration. The Examiner has failed to consider significant portions of the evidence of record, and has improperly discounted highly impactful evidence under the Section 2(f) analysis. As a result, the refusals should be withdrawn and Applicant’s Mark should be allowed to proceed to publication on the Principal Register.

BACKGROUND

Applicant operates a physician referral network connecting attorneys representing injured individuals with qualified medical professionals who specialize in med/legal evaluations and treatments for personal injury and workers’ compensation cases on a lien basis. For nearly twenty years, Applicant has been an industry leader in the field of physician referral services, and during that time has continuously used its Mark in connection with its services, including those as described in the instant application: “Business marketing services; Marketing services; Marketing services for the medical services of others; Marketing services, namely promoting or advertising the goods and services of others; Providing advertising, marketing and promotional services, namely development of advertising campaigns for doctor referrals in print media, on web pages, and on promotional articles” (the “Services”).

Applicant also owns and maintains U.S. Registration No. 2,920,496 for its DOCTORS ON LIENS and Design mark (registered on January 25, 2005 for “marketing and advertising services in the nature of doctor referrals”), which is comprised of the Mark and is now incontestable pursuant to 15 U.S.C. §1065. On December 7, 2012, Applicant filed the instant application for the Mark in standard characters. On April 1, 2013, an Office Action was issued preliminarily refusing to register the Mark on the ground that the Mark is merely descriptive of the Services. On April 1, 2013, Applicant filed a response to the initial Office Action arguing, *inter alia*, that the Mark does not merely describe Applicant’s Services and amending the instant application to the Supplemental Register. On April 18, 2013, one of Applicant’s competitors lodged a Letter of Protest against the registration of the Mark, contending that printouts reflecting a handful of infringements and errant misuses of Applicant’s long-standing Mark somehow diminish Applicant’s rights. On April 23, 2013, the Examiner issued an Office Action refusing to register the Mark on the Supplemental Register on the ground that it is purportedly generic in relation to Applicant’s Services. On October 22, 2013, Applicant filed a response to the Office Action, arguing the error of the genericness refusal and providing evidence of the Mark’s acquired distinctiveness, as well as concurrently amending the application to the Principal Register.

On November 23, 2013, the Examiner issued a further Office Action, reinstating the refusal under Section 2(e)(1). The Office Action also included a single statement, without explanation or addressing the applicable standard, that the Mark appears to be generic in connection with the Services. On February 7, 2014, Applicant filed a response and explicitly stated it would accept registration under Section 2(f) in the alternative, and further argued against the mere descriptiveness refusal under Section 2(e)(1). Applicant also responded to the sole and

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