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

Proceeding	91184047
Party	Defendant The TriZetto Group, Inc.
Correspondence Address	Daniel A. Crowe, Esq. Bryan Cave LLP One Metropolitan Square, 211 N. Broadway, Suite 3600 St. Louis, MO 63102-2733 UNITED STATES mapaskar@bryancave.com
Submission	Motion for Summary Judgment
Filer's Name	Mark A. Paskar
Filer's e-mail	mapaskar@bryancave.com, dacrowe@bryancave.com
Signature	/Mark A. Paskar/
Date	06/15/2009
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In the Matter of Application Serial Nos. 77/029,672  
Filed on October 26, 2006  
Published in the Trademark Official Gazette on May 29, 2007

Opposition No. 91184047

**APPLICANT THE TRIZETTO GROUP, INC.'S CROSS MOTION  
FOR SUMMARY JUDGMENT**

2. Even in the event Farmaco is allowed to continue to assert its ill-gotten PHACET registration (Reg. No. 3,482,938) in this proceeding, under Morehouse Mfg. Corp. v. J. Strickland & Co., Farmaco will not be further damaged by another registration for FACETS by TriZetto because TriZetto

already owns numerous existing registrations for its FACTS mark (and variations thereof) in connection with identical software, including but not limited to, U.S. Reg. No. 3,482,938.

A Memorandum In Support of Cross Motion For Summary Judgment (the "Memorandum") is filed herewith, together with the Declarations of James J. Sullivan, Terry Ann Mayer, Linda M. Merritt, and Kendall Thiessen, and exhibits thereto, in support of the motion (the "Declarations"). The Declarations and Memorandum demonstrate that there is no dispute as to any material fact that would preclude the award of summary judgment dismissing Opposition No. 91184047.

WHEREFORE, Applicant, The TriZetto Group, Inc. respectfully requests that the Board grant Applicant's Cross Motion for Summary Judgment and grant any other relief that the Board deems necessary and proper.

Respectfully submitted,

By:



Daniel A. Crowe  
Mark A. Paskar  
Walter P. Opaska  
BRYAN CAVE LLP  
211 N. Broadway, Suite 3600  
St. Louis, Missouri 63102  
Tele: (314) 259-2488

Attorneys for Applicant The TriZetto Group, Inc.

CERTIFICATE OF FILING

I hereby certify that this Applicant The TriZetto Group, Inc.'s Cross Motion For Summary Judgment is being filed via the Board's ESTTA electronic filing procedure, on June 15, 2009.



Mark A. Paskar

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and accurate copy of Applicant The TriZetto Group, Inc.'s Cross Motion For Summary Judgment was transmitted by FedEx International and electronic mail on June 15, 2009, to the following party/representative of record:

Mr. Paul Kuks  
Farmaco-Logica B.V.  
Wolkendek 17  
3454 TG DE MEERN  
The Netherlands  
[Paul.kuks@farmlog.net](mailto:Paul.kuks@farmlog.net)

*Representative for Opposer Farmaco-Logica B.V.*

  
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In the Matter of Application Serial Nos. 77/029,672  
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Applicant.

Opposition No. 91184047

**MEMORANDUM IN SUPPORT OF APPLICANT THE TRIZETTO GROUP, INC.'S  
CROSS MOTION FOR SUMMARY JUDGMENT**

COMES NOW Applicant The TriZetto Group, Inc. (“TriZetto”) and files its Memorandum in Support of its Cross Motion For Summary Judgment. Farmaco-Logica B.V. (“Farmaco”) is judicially estopped from asserting that a likelihood of confusion exists between its U.S. Trademark Reg. No. 3,395,039 (the “PHACET Registration”)<sup>1/</sup> and TriZetto’s FACETS application because the Trademark Trial and Appeal Board (“Board”) previously ruled in a prior opposition between the parties that no likelihood of confusion exists between these very marks for identical goods. In the previous opposition, Farmaco achieved registration of the very PHACET Registration it now asserts by repeatedly and consistently taking the position that no likelihood of confusion existed between its PHACET Registration

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