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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.
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Submission	Motion for Summary Judgment
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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

FARMACO-LOGICA B.V.,)	
)	
Opposer.)	Opposition No. 91184047
)	
vs.)	
)	
THE TRIZETTO GROUP,)	
)	
Applicant.)	
)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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

COMES NOW Applicant The TriZetto Group, Inc. ("TriZetto"), by and through its attorneys and pursuant to Fed. R. Civ. P. 56, respectfully moves the Trademark Trial and Appeal Board ("Board") for summary judgment dismissing Opposition No. 91184047. In support of said motion, TriZetto states:

1. Opposer Farmaco-Logica B.V. ("Farmaco") is judicially estopped from asserting that a likelihood of confusion exists between its PHACET registration (Reg. No. 3,482,938) and TriZetto's FACETS mark, as a result of inconsistent positions and representations made to the Board and TriZetto in the course of prior Trademark Opposition No. 91175355.

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: 

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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
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Representative for Opposer Farmaco-Logica B.V.



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**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")^{1/} 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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