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

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| Proceeding | 91184047 |
| Party | Defendant The TriZetto Group, Inc. |
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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
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| FARMACO-LOGICA B.V., |) | |
| |) | |
| Opposer. |) | Opposition No. 91184047 |
| |) | |
| vs. |) | Serial No. 77/029,672 |
| |) | |
| THE TRIZETTO GROUP, |) | |
| |) | |
| Applicant. |) | |
| |) | |

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

**BRIEF IN OPPOSITION TO OPPOSER FARMACO-LOGICA'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Applicant The TriZetto Group, Inc. ("TriZetto") and files its Brief in Opposition to Opposer Farmaco-Logica B.V.'s ("Farmaco") Motion For Summary Judgment.

INTRODUCTION

Genuine issues of material fact preclude a finding of likelihood of confusion as a matter of law under the multi-factor DuPont analysis. The sophistication of the parties' customers, the fame of TriZetto's FACETS mark and the complete lack of fame of Farmaco's PHACET mark, and the absence of any actual confusion all weigh heavily against the existence of likelihood of confusion. Whether the marks at issue are confusingly similar, cover similar goods, or share similar trade channels all hinge on genuine issues of material fact and therefore cannot serve as a basis for summary judgment. Moreover, contrary to its present position in this Opposition proceeding, Farmaco itself previously asserted to the Board that there is no likelihood of confusion between its PHACET mark and TriZetto's FACETS mark

for the goods at issue here. The DuPont analysis is a fact-intensive inquiry, and Farmaco's changed position demonstrates that there are genuine issues of material fact in this case and that Farmaco is not entitled to judgment as a matter of law. Furthermore, undisputed facts support TriZetto's complete defense against Farmaco's claim of likelihood of confusion based on TriZetto's existing registration of the FACETS mark for substantially identical software.

Accordingly, TriZetto respectfully requests that Farmaco's motion for summary judgment be denied.

MATERIAL FACTS

I. Use, Market, and Fame of TriZetto's FACETS Mark.

TriZetto and a predecessor-in-interest have used the FACETS mark since at least as early as 1993 for various goods and services in the field of managed health care. See Declaration of J. Sullivan ("Sullivan Decl.") ¶ 3 (attached as Ex. 1). Among other uses, TriZetto has used the mark continuously since at least as early as July 12, 1993 in connection with computer software for health care plan management and administration and for computer software for claims and benefits administration for Medicare and Medicaid managed care. See id.; Declaration of T. Mayer ("Mayer Decl.") ¶¶ 4-7 (attached as Ex. 2). TriZetto distributes its FACETS software to customers in two ways. See id. at ¶ 9. First, TriZetto will provide a customer with a copy of the FACETS software, and the customer will install the software at the customer's or a third party's data center. See id. Alternatively, TriZetto will offer to "host" its FACETS software for the customer at TriZetto's data center and will provide the customer with remote access to the software. See id. In either case, the user interface and functionality of the software is identical; the alternatives are merely different ways for TriZetto to distribute, and for the customer to access and use the software. See id. at ¶ 11. The "hosted" method of delivery, involving the installation of the software at TriZetto's facilities, sometimes is referred to by TriZetto and others in the industry as "application service provider (ASP)" services, which are reflected in, among others, TriZetto's U.S. Trademark Reg. No. 3,482,938 (the "938 Registration"), a status and

title copy of which is attached to the Sullivan Declaration as Exhibit A. See Sullivan Decl. ¶ 6 and Ex. A thereto.

TriZetto owns several registrations for its FACETS mark (and variations thereof). See Sullivan Decl. ¶ 7 and Ex. B thereto. Among said registrations, TriZetto owns the '938 Registration for the mark FACETS in standard characters for “application service provider (ASP) featuring **software for health care plan management and administration; implementation, maintenance and support of computer software; application service provider (ASP) featuring software for claims and benefits administration for Medicare and Medicaid managed care**” in International Class 42, claiming a date of first use of July 12, 1993. See id. at ¶ 6 and Ex. A thereto.

TriZetto filed U.S. Trademark Application No. 77/029,672 (the '672 Application) with the U.S. Patent and Trademark Office (“PTO”) on November 1, 2006 seeking to register the mark FACETS in standard characters for “**computer software for health care plan management and administration; computer software for claims and benefits administration for Medicare and Medicaid managed care,**” in International Class 9, claiming a date of first use of July 12, 1993. The '672 Application is the subject of the present opposition.

TriZetto’s customers include large- and medium-sized health plans and third-party administrators in the United States. Declaration of Robert Renzi (“Renzi Decl.”) ¶ 9 (attached as Ex. 3). FACETS is an enterprise software system that helps TriZetto’s customers automate and manage many of their key business functions. Id. at ¶ 8. In short, the FACETS software is core and critical to the business of TriZetto’s customers, who are very sophisticated and represent some of the largest companies in the United States. Id. at ¶ 9. Given the importance of the software to TriZetto’s customers, these professional buyers, with the help of their procurement and legal departments, make software purchases only after conducting extensive research, submitting detailed requests for information and proposals, and participating in lengthy contractual negotiations. Id. at ¶ 9; Declaration of David Arnold (“Arnold Decl.”) ¶ 5 (attached as Ex. 4). The sales cycle often can be as long as two years, and in some cases

longer. Renzi Decl. ¶ 9. Many customers also engage third-party consultants that advise them during the negotiation process. Id.; Arnold Decl. ¶ 5. The primary purchasing market for TriZetto's FACETS products does not include medical practitioners who provide direct medical services to individual patients, a much more fragmented market. Renzi Decl. ¶¶ 6-7; Arnold Decl. ¶ 3. Moreover, vendors in the managed health care field such as TriZetto do not typically provide software in the health care field. Arnold Decl. ¶ 4.

TriZetto and a predecessor-in-interest have expended significant amounts of time, money and effort in advertising and promoting all of the FACETS marks, both registered and common law, and the goods and services offered under them, and have thus developed substantial goodwill in the marks. Renzi Decl. ¶ 3. Over the past five years, TriZetto has invested approximately \$500,000 to \$1 million annually in advertising its FACETS product line, resulting in approximately \$600 million in sales. Id. Based on such extensive use and exposure, TriZetto's customers in the field of managed care recognize the FACETS marks and associate TriZetto's FACETS computer software with TriZetto. Arnold Decl. ¶¶ 6-7.

II. The Prior Opposition Between TriZetto and Farmaco.

In 2005, well over a decade after TriZetto began using its FACETS mark in connection with, inter alia, software used in the managed health care field, Farmaco applied to register PHACET on the basis of Trademark Act Section 66(a) for, among other things, “[c]entral processing units and data processors for the reproduction, storage and archiving of data in the health care field; computers, computer peripherals, and computer software for recording patient health data, in the health care field” in Class 09. See Declaration of P. Kuks in Support of Farmaco-Logica's Motion For Summary Judgment and Ex. A thereto; Sullivan Decl. ¶¶ 3-5; Mayer Decl. ¶¶ 4-7. Prior to its 2005 filing, Farmaco had never used the PHACET mark in the United States, in connection with goods or services of any kind. See Declaration of L. Merritt (“Merritt Decl.”) ¶ 7 (attached as Ex. 5) and Ex. C thereto, Response Nos. 36-40 at p. 13-14.

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