

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**HEALTH CARE AND RETIREMENT
CORPORATION OF AMERICA,**

Plaintiff,

v.

HEARTLAND HOME CARE, INC.,

Defendant.

CIVIL ACTION

No. 03-2663-KHV

ORDER

This matter is before the Court on Health Care And Retirement Corporation Of America's Motion In Limine Precluding Defendant From Using Or Offering Into Evidence Documents Or Testimony Regarding Its Liability, Defenses, Or Counterclaims Regarding Its Trademark Infringement (Doc. #78) filed February 21, 2006. For reasons set forth at the status conference on February 16, 2006, the Court excludes evidence related to the issues of liability and waiver. The Court previously granted summary judgment in favor of plaintiff on these issues. Accordingly, defendant is precluded from calling as witnesses the following individuals listed on its Final List Of Witnesses And Exhibits And Designations (Doc. #71): Ted J. McDonald, David K. Nees and a foundation witness from the Goodell Stratton law office. As explained at the status conference, to the extent it has additional authority for the Court to consider, defendant may seek reconsideration of this ruling at trial.

Plaintiff's motion in limine also seeks to exclude evidence related to defendant's claim for trademark infringement, which apparently refers to defendant's claim for unfair competition in Case No. 04-4126. The Court already granted summary judgment in favor of plaintiff on that claim. See Memorandum And

Order (Doc. #48) filed November 2, 2005 in Case No. 03-2663. In addition, the Clerk has entered judgment in Case No. 04-4126. The issue on summary judgment related to defendant's unfair competition claim was whether plaintiff's letter to the Kansas Secretary of State constituted a waiver of plaintiff's right to enforce the Heartland mark. Because the Court already decided that issue on summary judgment, the Court excludes evidence related to defendant's unfair competition claim.

IT IS THEREFORE ORDERED that Health Care And Retirement Corporation Of America's Motion *In Limine* Precluding Defendant From Using Or Offering Into Evidence Documents Or Testimony Regarding Its Liability, Defenses, Or Counterclaims Regarding Its Trademark Infringement (Doc. #78) filed February 21, 2006 be and hereby is **SUSTAINED**.

Dated this 23rd day of February, 2006 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge