

ESTTA Tracking number: **ESTTA302315**

Filing date: **08/21/2009**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Optima Health Plan
Granted to Date of previous extension	08/23/2009
Address	4417 Corporation Lane Virginia Beach, VA 23462 UNITED STATES

Correspondence information	Optima Health Plan 4417 Corporation Lane Virginia Beach, VA 23462 UNITED STATES ip@williamsmullen.com, wpoynter@williamsmullen.com, amarino@williamsmullen.com
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**Applicant Information**

Application No	77298340	Publication date	02/24/2009
Opposition Filing Date	08/21/2009	Opposition Period Ends	08/23/2009
Applicant	UnitedHealth Group Incorporated 9900 Bren Road East, MN008-T202 Minnetonka, MN 55343 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 036. All goods and services in the class are opposed, namely: Health savings account services, namely, providing banking services and savings account administration for consumer-driven health care plans and defined contribution health care plans; financial management, administration, and underwriting of health savings accounts; medical insurance services, namely, providing a qualified medical insurance plan with a tax advantaged medical savings account; banking services; debit card services; electronic funds transfer; debit card transaction processing services; cash management services; on-line banking services; providing information regarding banking, credit, money management, investing, investments and financial matters
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3241964	Application Date	06/28/2006
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Registration Date	05/15/2007	Foreign Priority Date	NONE
Word Mark	OPTIMA HEALTH		
Design Mark			
Description of Mark	The mark consists of the wording "OPTIMA HEALTH" and an abstract caduceus.		
Goods/Services	Class 036. First use: First Use: 2002/07/01 First Use In Commerce: 2002/07/01 Administration of pre-paid health care plans Class 044. First use: First Use: 2002/07/01 First Use In Commerce: 2002/07/01 Health care in the nature of health maintenance organizations; Providing medical information		

U.S. Registration No.	3039852	Application Date	10/26/2002
Registration Date	01/10/2006	Foreign Priority Date	NONE
Word Mark	OPTIMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1984/12/01 First Use In Commerce: 1984/12/01 administration of pre-paid health care plans Class 044. First use: First Use: 1984/12/01 First Use In Commerce: 1984/12/01 health care in the nature of health maintenance organizations; providing health, wellness and medical information via a global computer network		

Related Proceedings	91183209
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Attachments	78919402#TMSN.jpeg ( 1 page )( bytes ) Optumhealth Esaver Opposition.pdf ( 6 pages )(124941 bytes ) Optima Health Reg. Cert 3,241,964.pdf ( 1 page )(27491 bytes ) Optima Reg. Cert 3,039,852.pdf ( 1 page )(18531 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Amy G. Marino/
Name	Optima Health Plan

Date	08/21/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Optima Health Plan	)	
	)	
v.      Opposer,	)	
	)	Opposition No. _____
	)	Application Serial No. 77/298,340
UnitedHealth Group Incorporated,	)	Mark: OPTUMHEALTH ESAVER
	)	Filed: October 8, 2007
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Optima Health Plan, a corporation organized and existing under the laws of the Commonwealth of Virginia (hereinafter “Opposer”), believes that it will be damaged by registration of the mark shown in application having Serial No. 77/298,340 in International Class 36 and hereby opposes the same. This Notice of Opposition has been timely filed, Opposer having been granted several extensions of time in which to oppose, which expires on August 23, 2009.

As grounds of opposition, it is alleged that:

1. UnitedHealth Group Incorporated (hereinafter “Applicant”) seeks to register the word mark OPTUMHEALTH ESAVER as a trademark for “Health savings account services, namely, providing banking services and savings account administration for consumer-driven health care plans and defined contribution health care plans; financial management, administration, and underwriting of health savings accounts; medical insurance services, namely, providing a qualified medical insurance plan with a tax advantaged medical savings account; banking services; debit card services; electronic funds transfer; debit card transaction processing

services; cash management services; on-line banking services; providing information regarding banking, credit, money management, investing, investments and financial matters” in International Class 36 (the “Application”).

2. The Application was published in the Official Gazette of February 24, 2009.

3. The Application was filed on October 8, 2007, under section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

4. Long prior to any date of first use upon which Applicant can rely, Opposer and its predecessors in title have adopted and used OPTIMA HEALTH and OPTIMA as service marks in connection with administration of healthcare services.

5. Opposer’s mark OPTIMA HEALTH & Design was registered on May 15, 2007 and accorded Registration No, 3,241,964, in connection with “administration of pre-paid health care plans” in International Class 36, and “health care in the nature of health maintenance organizations” in International Class 44. A true and accurate copy of the registration certificate printed from the United States Patent and Trademark Office Trademark Document Retrieval (TDR) portlet is enclosed herewith as Exhibit A.

6. Opposer’s mark OPTIMA was registered on January 10, 2006 and accorded Registration No. 3,039,852, in connection with “administration of pre-paid health care plans” in International Class 36, and “health care in the nature of health maintenance organizations; providing health, wellness and medical information via a global computer network” in International Class 44. A true and accurate copy of the registration certificate printed from the United States Patent and Trademark Office Trademark Document Retrieval (TDR) portlet is enclosed herewith as Exhibit B.

7. In addition to Opposer's federal registration, Opposer has substantial common law rights in and to the marks OPTIMA HEALTH, OPTIMA, and other marks used in connection with the OPTIMA HEALTH and OPTIMA brands arising from extensive use in interstate commerce in the United States.

8. Opposer has invested great time, effort, and resources in the development of its OPTIMA HEALTH and OPTIMA brands, and Opposer has developed valuable goodwill in the marks by virtue of its efforts, promotional activities, and the excellence of its services. Opposer's unique services have become widely recognized as emanating from Opposer and as maintaining only the highest quality standards.

9. Opposer has enjoyed substantial sales of aforesaid services in the United States with its aforesaid marks.

10. Applicant's filing date is subsequent to the issuance date of Opposer's Registration Nos. 3,241,964 and 3,039,852.

11. The services for which Applicant seeks registration in the Application are nearly identical to and in the same International Class as the services provided by Opposer in connection with Registration Nos. 3,241,964 and 3,039,852. Applicant is offering administration for health care plans that are nearly identical to the administration of pre-paid health care plans offered by Opposer.

12. On information and belief, Applicant's intended use and adoption of its OPTUMHEALTH ESAVER mark has been with actual or constructive knowledge of Opposer's prior use and registration of the aforesaid marks.

13. Applicant's mark so resembles Opposer's previously registered and used marks, when applied to the services set forth in the Application, as to be likely to cause confusion,

mistake or deception that Applicant's services are endorsed, sponsored, or approved by Opposer within the meaning of section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. Any use of the mark OPTUMHEALTH ESAVER by Applicant is without the consent of Applicant.

15. Furthermore, any defect, objection or fault found with Applicant's services would necessarily reflect upon and seriously injure the reputation which Opposer has established for its services.

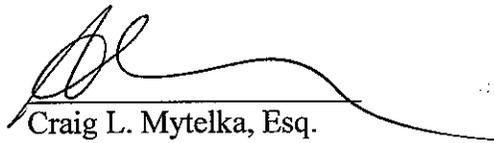
16. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 77/298,340 be rejected and that registration of the OPTUMHEALTH ESAVER mark for the services specified therein be refused.

Opposer hereby gives notice under Rule 2.122(d) of the Rules of Practice that after hearing and in any appeal on this opposition proceeding, it will rely on its registrations which are annexed as Exhibits A and B to this Notice of Opposition as evidence in support of this Notice of Opposition.

August 21, 2009

Respectfully Submitted,



Craig L. Mytelka, Esq.  
William R. Poynter, Esq.  
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*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of August, 2009, the foregoing NOTICE OF OPPOSITION was delivered by certified mail, return receipt requested, to the following:

Timothy M. Kenny  
Fulbright & Jaworski L.L.P  
C/O Trademark Docketing Dept.  
600 Congress Avenue, Suite 2400  
Austin, TX 78701  
*Attorney of Record for Applicant*

With a copy to:

UnitedHealth Group Incorporated  
9900 Bren Road East, MN008-T202  
Minnetonka, MN 55343



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A handwritten signature in black ink is positioned above a solid horizontal line. The signature consists of stylized, cursive initials that appear to be 'TK'.

#7168606v2

Int. Cls.: 36 and 44

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,241,964

Registered May 15, 2007

SERVICE MARK  
PRINCIPAL REGISTER



OPTIMA HEALTH PLAN (VIRGINIA CORPORATION)  
4417 CORPORATION LANE  
VIRGINIA BEACH, VA 23462

FOR: ADMINISTRATION OF PRE-PAID HEALTH CARE PLANS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-1-2002; IN COMMERCE 7-1-2002.

FOR: HEALTH CARE IN THE NATURE OF HEALTH MAINTENANCE ORGANIZATIONS; PROVIDING MEDICAL INFORMATION, IN CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 7-1-2002; IN COMMERCE 7-1-2002.

OWNER OF U.S. REG. NOS. 1,444,426, 3,039,852 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HEALTH", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDING "OPTIMA HEALTH" AND AN ABSTRACT CADUCEUS.

SER. NO. 78-919,402, FILED 6-28-2006.

TOBY BULLOFF, EXAMINING ATTORNEY

**Int. Cls.: 36 and 44**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 3,039,852**

**Registered Jan. 10, 2006**

**SERVICE MARK  
PRINCIPAL REGISTER**

**OPTIMA**

OPTIMA HEALTH PLAN (VIRGINIA CORPORATION)  
4417 CORPORATION LANE  
VIRGINIA BEACH, VA 23462

FOR: ADMINISTRATION OF PRE-PAID HEALTH CARE PLANS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-1-1984; IN COMMERCE 12-1-1984.

FOR: HEALTH CARE IN THE NATURE OF HEALTH MAINTENANCE ORGANIZATIONS; PRO-

VIDING HEALTH, WELLNESS AND MEDICAL INFORMATION VIA A GLOBAL COMPUTER NETWORK, IN CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 12-1-1984; IN COMMERCE 12-1-1984.

OWNER OF U.S. REG. NOS. 1,444,426 AND 1,446,762.

SER. NO. 78-178,774, FILED 10-26-2002.

REBECCA SMITH, EXAMINING ATTORNEY