

ESTTA Tracking number: **ESTTA474395**

Filing date: **05/24/2012**

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	Independent Health Association, Inc.		
Entity	Corporation	Citizenship	New York
Address	511 Farber Lakes Drive Buffalo, NY 14221 UNITED STATES		

Attorney information	Ellen S. Simpson Simpson & Simpson, PLLC 5555 Main Street Williamsville, NY 14221 UNITED STATES esimpson@idealawyers.com, swright@idealawyers.com Phone:7166261564		
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Applicant Information

Application No	85248311	Publication date	04/24/2012
Opposition Filing Date	05/24/2012	Opposition Period Ends	05/24/2012
Applicant	C/HCA, Inc. One Park Plaza Nashville, TN 37203 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2009/06/00 First Use In Commerce: 2009/06/00 All goods and services in the class are opposed, namely: Human resource services, namely, human resources consultation, human resources management, and human resource analysis and consulting services; administer and manage employees, namely, employee administration services, employee counseling and recruiting
Class 041. First Use: 2009/06/00 First Use In Commerce: 2009/06/00 All goods and services in the class are opposed, namely: Providing recognition and incentives by the way of rewards and benefits to demonstrate excellence in the field of employment to promote employee health, employee productivity, employee performance and morale
Class 042. First Use: 2009/06/00 First Use In Commerce: 2009/06/00 All goods and services in the class are opposed, namely: Providing a web site featuring technology that enables companies and organizations to administer and manage employee incentive reward and benefit programs and to promote employee productivity, performance, recognition and morale
Class 044. First Use: 2009/06/00 First Use In Commerce: 2009/06/00 All goods and services in the class are opposed, namely: health care services, namely, wellness programs; healthcare

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2938669	Application Date	05/30/2003
Registration Date	04/05/2005	Foreign Priority Date	NONE
Word Mark	INDEPENDENT HEALTH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2003/09/00 First Use In Commerce: 2003/09/00 Health care services rendered by a health maintenance organization		

U.S. Registration No.	2929407	Application Date	05/30/2003
Registration Date	03/01/2005	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2003/09/00 First Use In Commerce: 2003/09/00 Health care services rendered by a health maintenance organization		

U.S. Registration No.	3364323	Application Date	10/23/2006
Registration Date	01/08/2008	Foreign Priority Date	NONE
Word Mark	INDEPENDENT HEALTH MAKING A DIFFERENCE		

Design Mark	
Description of Mark	The mark consists of the words INDEPENDENT HEALTH MAKING A DIFFERENCE next to an apple.
Goods/Services	Class 044. First use: First Use: 2006/08/23 First Use In Commerce: 2006/08/23 Health care in the nature of a health maintenance organization

U.S. Registration No.	1451464	Application Date	06/06/1986
Registration Date	08/04/1987	Foreign Priority Date	NONE
Word Mark	INDEPENDENT HEALTH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1986/04/07 First Use In Commerce: 1986/04/07 HEALTH CARE SERVICES RENDERED BY A HEALTH MAINTENANCE ORGANIZATION		

Attachments	76518165#TMSN.gif (1 page)(bytes) 76518170#TMSN.gif (1 page)(bytes) 77027259#TMSN.jpeg (1 page)(bytes) 73602817#TMSN.gif (1 page)(bytes) Notice-of-Opposition.pdf (16 pages)(1450588 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	/Ellen S. Simpson/
Name	Ellen S. Simpson

Date	05/24/2012
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2. Opposer is the owner of U.S. Service Mark Registration No. 2,938,669, dated

April 5, 2005, for the mark  for use in association with health care services rendered by a health maintenance organization in International Class 44 (Exhibit 1). Since at least as early as September 2003, long prior to the filing date of the application opposed herein, and long prior to the date of first use alleged in such application, Opposer has been using, and

continues to use, the service mark  in interstate commerce in connection with health care services rendered by a health maintenance organization. The service mark

 has become identified with Opposer and its services and is well known and famous in connection with Opposer's services. This registration has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065.

3. Opposer is the owner of U.S. Service Mark Registration No. 2,929,407, dated

March 1, 2005, for the mark  for use in association with health care services rendered by a health maintenance organization in International Class 44 (Exhibit 2). Since at least as early as September 2003, long prior to the filing date of the application opposed herein, and long prior to the date of first use alleged in such application, Opposer has been using, and continues to use,

the service mark  in interstate commerce in connection with health care services rendered

by a health maintenance organization. The service mark  has become identified with

Opposer and its services and is well known and famous in connection with Opposer's services. This registration has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065.

4. Opposer is the owner of U.S. Service Mark Registration No. 3,364,323, dated

January 8, 2008, for the mark  for use in association with health care in the nature of a health maintenance organization in International Class 44 (Exhibit 3). Since at least as early as August 2006, long prior to the filing date of the application opposed herein, and long prior to the date of first use alleged in such application, Opposer has been using, and continues to

use, the service mark  in interstate commerce in connection with health care

services rendered by a health maintenance organization. The service mark  has become identified with Opposer and its services and is well known and famous in connection with Opposer's services.

5. Opposer is the owner of U.S. Service Mark Registration No. 1,451,464, dated

August 4, 1987 and renewed January 6, 2007, for the mark  for use in association with health care services rendered by a health maintenance organization in International Class 42 (Exhibit 4). Since at least as early as April 1986, long prior to the filing date of the application opposed herein, and long prior to the date of first use alleged in such application, Opposer has been using, and continues to use, the service mark

 in interstate commerce in connection with health care services in the



nature of a health maintenance organization. The service mark  has become identified with Opposer and its services and is well known and famous in connection with Opposer's services. This registration has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065.

6. For many years, Opposer has extensively used and promoted its services using the aforesaid marks. Opposer has developed exceedingly valuable goodwill with respect to the family of marks cited above. By virtue of its efforts, the expenditure of considerable sums for advertising and promotional activities, and by virtue of the excellence of its services, Opposer has developed exceedingly valuable goodwill with respect to these marks. Opposer's marks are well known to consumers and have been distinctive and famous since prior to the filing date of the application opposed herein.

7. By its Application Serial No. 85/248,311, Applicant seeks to register the mark



 for use in association with "human resource services, namely, human resources consultation, human resources management, and human resource analysis and consulting services; administer and manage employees, namely, employee administration services, employee counseling and recruiting" in International Class 35; "providing recognition and incentives by the way of rewards and benefits to demonstrate excellence in the field of employment to promote employee health, employee productivity, employee performance and morale" in International Class 41; "providing a web site featuring technology that enables companies and organizations to administer and manage employee incentive reward and benefit programs and to promote employee productivity, performance, recognition and morale" in International Class 42; and "health care services, namely, wellness programs; healthcare" in International Class 44.

8. The opposed application is an application filed on February 22, 2011 claiming a first use date of June, 2009, both dates which are well after Opposer first commenced use of and registered its aforesaid marks.

9. Applicant's mark,  **HEALTHY WORK ENVIRONMENT**, is confusingly similar in sight, sound and meaning to Opposer's aforesaid marks owned and used by Opposer which all include a graphic image of an apple and most of which also include the word HEALTH. The use and

registration of Applicant's mark  **HEALTHY WORK ENVIRONMENT** would result in confusion, mistake and/or deception as to the source or origin of Applicant's services, leading consumers to believe that they are somehow affiliated with, approved, sponsored or licensed by Opposer.

10. If Applicant is permitted to use and register Applicant's mark for the services identified in the Application, confusion in trade, resulting in irreparable damage and injury to Opposer, inevitably would result by reason of the similarity between Applicant's and Opposer's marks and the services sold and provided thereunder. Any objection or fault found with the

services marketed under Applicant's mark,  **HEALTHY WORK ENVIRONMENT**, would reflect on, and injure, the reputation Opposer has established for the services provided under its aforesaid marks. If Applicant is granted the registration herein opposed, Applicant would obtain a *prima facie* exclusive right to use the mark set forth in its application for registration. Such registration would become a source of damage and injury to Opposer through the generation of confusion, mistake, and/or deception, the dilution of Opposer's marks and the diminution of Opposer's ability to control the quality of services sold thereunder.

11. Moreover, such registration would run contrary to the requirement that all doubts as to the likelihood of confusion must be resolved in favor of Opposer, and against Applicant, who has a legal duty to select a mark dissimilar to marks already in use.

12. Applicant's mark, as used on the services listed in the Application, would dilute, or be likely to dilute, the distinctiveness of Opposer's aforesaid marks, resulting in damage to Opposer, its goodwill and strength and value of its marks.

13. In view of the similarity in sight, sound and meaning between Applicant's mark  and Opposer's aforesaid marks; the similarity between the respective services of Applicant and Opposer associated with Opposer's aforesaid marks; and the similarity of the channels of trade and customer base for Applicant's alleged services and Opposer's services; Applicant's mark so resembles Opposer's aforesaid marks as to be likely to cause confusion, and/or to cause mistake, and/or to deceive.

WHEREFORE, Opposer prays that U.S. Service Mark Application Serial No. 85/248,311 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer hereby submits the requisite filing fee in the amount of \$1,200.00 as required in 37 C.F.R. § 2.6(a)(17). Please charge any additional fees to Account No. 50-0822.

Respectfully submitted,



Ellen S. Simpson
Attorney for Opposer
Simpson & Simpson PLLC
5555 Main Street
Williamsville, New York 14221
(tel) 716-626-1564
(fax) 716-626-0366

DATED: May 24, 2012

CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this NOTICE OF OPPOSITION is being filed electronically with the United States Patent and Trademark Office utilizing the *Electronic System for Trademark Trials and Appeals* on this 24th day of May, 2012.



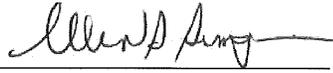
Ellen S. Simpson
Attorney for Opposer
Simpson & Simpson PLLC
5555 Main Street
Williamsville, New York 14221
(tel) 716-626-1564
(fax) 716-626-0366

CERTIFICATE OF SERVICE

I certify that a true copy of this NOTICE OF OPPOSITION was served upon the Applicant by depositing a copy thereof with the U.S. Postal Service, via first class mail, postage prepaid, directed to Applicant's counsel:

Julie Ann Gregory, Esq.
Middleton Reutlinger
2500 Brown Williamson Tower
Louisville, KY 40202-3410

Dated: May 24, 2012

By: 
Ellen S. Simpson
Attorney for Opposer
Simpson & Simpson, PLLC
5555 Main Street
Williamsville, New York 14221
Telephone: (716) 626-1564
Facsimile: (716) 626-0366

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the Matter of U.S. Service Mark Application Serial No. 85/248,311
Independent Health Association, Inc. v. C/HCA, Inc.
Attorney Docket No.: 035.IHAO110US

EXHIBIT 1

Int. Cl.: 44

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,938,669

Registered Apr. 5, 2005

SERVICE MARK
PRINCIPAL REGISTER

Independent
 Health

INDEPENDENT HEALTH ASSOCIATION, INC.
(NEW YORK CORPORATION)

511 FARBER LAKES DRIVE
BUFFALO, NY 14221

FOR: HEALTH CARE SERVICES RENDERED BY
A HEALTH MAINTENANCE ORGANIZATION, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 9-0-2003; IN COMMERCE 9-0-2003.

OWNER OF U.S. REG. NOS. 1,451,464, 2,653,308,
AND OTHERS.

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

SN 76-518,165, FILED 5-30-2003.

ELIZABETH HUGHITT, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the Matter of U.S. Service Mark Application Serial No. 85/248,311
Independent Health Association, Inc. v. C/HCA, Inc.
Attorney Docket No.: 035.IHAO110US

EXHIBIT 2

Int. Cl.: 44

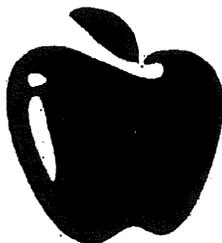
Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,929,407

Registered Mar. 1, 2005

**SERVICE MARK
PRINCIPAL REGISTER**



**INDEPENDENT HEALTH ASSOCIATION, INC.
(NEW YORK CORPORATION)
511 FARBER LAKES DRIVE
BUFFALO, NY 14221**

**OWNER OF U.S. REG. NOS. 1,451,464, 2,653,308,
AND OTHERS.**

**FOR: HEALTH CARE SERVICES RENDERED BY
A HEALTH MAINTENANCE ORGANIZATION, IN
CLASS 44 (U.S. CLS. 100 AND 101).**

SN 76-518,170, FILED 5-30-2003.

FIRST USE 9-0-2003; IN COMMERCE 9-0-2003.

ELIZABETH HUGHITT, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the Matter of U.S. Service Mark Application Serial No. 85/248,311
Independent Health Association, Inc. v. C/HCA, Inc.
Attorney Docket No.: 035.IHAO110US

EXHIBIT 3

Int. Cl.: 44

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,364,323

Registered Jan. 8, 2008

**SERVICE MARK
PRINCIPAL REGISTER**



INDEPENDENT HEALTH ASSOCIATION, INC.
(NEW YORK CORPORATION)
511 FARBER LAKES DRIVE
WILLIAMSVILLE, NY 14221

FOR: HEALTH CARE IN THE NATURE OF A
HEALTH MAINTENANCE ORGANIZATION, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 8-23-2006; IN COMMERCE 8-23-2006.

OWNER OF U.S. REG. NOS. 1,814,250, 2,949,231
AND OTHERS.

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

THE MARK CONSISTS OF THE WORDS INDE-
PENDENT HEALTH MAKING A DIFFERENCE
NEXT TO AN APPLE.

SER. NO. 77-027,259, FILED 10-23-2006.

MARGARET POWER, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the Matter of U.S. Service Mark Application Serial No. 85/248,311
Independent Health Association, Inc. v. C/HCA, Inc.
Attorney Docket No.: 035.IHAO110US

EXHIBIT 4

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office
Amended

Reg. No. 1,451,464
Registered Aug. 4, 1987
OG Date May 4, 1993

**SERVICE MARK
PRINCIPAL REGISTER**

INDEPENDENT
HEALTH 

INDEPENDENT HEALTH ASSOCIATION, INC. (NEW YORK CORPORATION)
777 INTERNATIONAL DRIVE
BUFFALO, NY 14221

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

THE LINING IN THE MARK IS A DESIGN FEATURE AND DOES NOT INDICATE COLOR.

FOR: HEALTH CARE SERVICES RENDERED BY A HEALTH MAINTENANCE ORGANIZATION, IN CLASS 42 (U.S. CL. 100).

FIRST USE 4-7-1986; IN COMMERCE 4-7-1986.

SER. NO. 73-602,817, FILED 6-6-1986.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on May 4, 1993.