

ESTTA Tracking number: **ESTTA529971**

Filing date: **04/02/2013**

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

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

|         |  |             |            |
|---------|--|-------------|------------|
| Name    | Bio-Reference Laboratories, Inc.                                     |             |            |
| Entity  | Corporation  | Citizenship | New Jersey |
| Address | 481B Edward H. Ross Drive<br>Elmwood Park, NJ 07407<br>UNITED STATES |             |            |

|                      |   |  |  |
|----------------------|---|--|--|
| Attorney information | Arthur L. Lessler<br>Lessler & Lessler<br>540 Old Bridge Turnpike<br>South River, NJ 08882-1050<br>UNITED STATES<br>Lessler@Compuserve.com Phone:(732) 254-5155 |  |  |
|----------------------|---|--|--|

**Registration Subject to Cancellation**

|                 |  |                   |            |
|-----------------|--|-------------------|------------|
| Registration No | 4304005  | Registration date | 03/19/2013 |
| Registrant      | CareEvolution, Inc.<br>521 Hillspur Rd 521 Hillspur Rd<br>Ann Arbor, MI 48105<br>UNITED STATES |                   |            |

**Goods/Services Subject to Cancellation**

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| <p>Class 009. First Use: 2003/04/01 First Use In Commerce: 2003/06/01<br/>All goods and services in the class are cancelled, namely: Computer software that provides real-time, integrated business management intelligence by combining information from various databases and presenting it in an easy-to-understand user interface</p>  |
| <p>Class 035. First Use: 2003/04/01 First Use In Commerce: 2003/06/01<br/>All goods and services in the class are cancelled, namely: Business and management consulting for healthcare providers and related businesses; Business information management, namely, electronic reporting of business information, business analytics, namely, business investigations, evaluations, expert appraisals, information and research, trade spend business management; Business management and consultation in the field of case management, integrated justice, data conversions, and business intelligence; Business monitoring and consulting services, namely, tracking web sites and applications of others to provide strategy, insight, marketing, sales, operation, product design, particularly specializing in the use of analytic and statistic models for the understanding and predicting of consumers, businesses, and market trends and actions; Business services provided to the healthcare industry, namely, the collection, reporting, and analysis of healthcare quality data for business purposes; Collecting and analyzing claims data from healthcare organizations for business purposes; Consulting in the fields of healthcare operations management and hospital operations management; Electronic data collection and data submission services for business purposes in the fields of medicine and healthcare; Healthcare management service organization (MSO) services, namely, providing practice organization, management and administrative support services to individual physicians or small group practices; Promoting collaboration within the scientific, research and medical communities to achieve advances in the field of healthcare; Promoting collaboration</p> |

within the scientific, research and provider communities to achieve advances in the field of healthcare; Promoting the exchange of information and resources within the scientific research and medical communities to achieve advances in the field of healthcare; Providing business intelligence services; Providing business intelligence services in the fields of medical devices, pharmaceuticals and the life sciences; Providing reimbursement benchmarking information and other market intelligence to healthcare organizations

Class 038. First Use: 2003/03/01 First Use In Commerce: 2003/06/01

All goods and services in the class are cancelled, namely: Communications via multinational telecommunication networks; Computer transmission of information accessed via a code or a terminal; Consulting in the field of telecommunication services, namely, transmission of voice, data, and documents via telecommunication networks; Electronic data interchange (EDI) services; Electronic data interchange services in the field of healthcare transactions such as claims, eligibility, claim status, electronic remittance advice, prior authorizations, attachments and referrals that allow direct transaction and payment communications between healthcare providers and payers; Electronic delivery of images and photographs via a global computer network; Electronic exchange of data stored in databases accessible via telecommunication networks; Electronic exchange of medical records across a nationwide health information network; Information transmission services via digital networks; Peer-to-peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; Providing access to an electronic exchange of medical records across a nationwide health information network

Class 044. First Use: 2003/04/01 First Use In Commerce: 2003/06/01

All goods and services in the class are cancelled, namely: Healthcare; Healthcare services, namely, integrated healthcare services with a network of international healthcare providers; Providing healthcare information

## Grounds for Cancellation

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

## Mark Cited by Petitioner as Basis for Cancellation

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2747755   | Application Date      | 05/01/2000 |
| Registration Date     | 08/05/2003  | Foreign Priority Date | NONE       |
| Word Mark             | CAREEVOLVE  |                       |            |
| Design Mark           | <b>CAREEVOLVE</b>   |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 035. First use: First Use: 2000/09/19 First Use In Commerce: 2000/09/19<br>Business management and consultation services for the health care and health care insurance industries, in the nature of technical assistance in the establishment and/or operation of health care insurance companies, health |                       |            |

|  |  |
|--|--|
|  | <p>maintenance organizations, and health care providers, health care utilization and review services, medical employment staffing services, and online store services featuring computer equipment, office supplies, used medical equipment, medical supplies, and software; arranging for delivery of goods and software by common carrier to health care providers</p> <p>Class 038. First use: First Use: 2000/09/19 First Use In Commerce: 2000/09/19<br/>Business operational services for health care providers in the form of telecommunications services, namely websites featuring web messaging services between physicians and patients, laboratories, other physicians, payers and pharmacies; electronic mail services; electronic delivery services, namely electronic delivery of images and photographs via a global computer network and electronic transmission of data and documents all in the nature of laboratory test results, claims eligibility documents, claims processing documents and medical data</p> <p>Class 042. First use: First Use: 2000/09/19 First Use In Commerce: 2000/09/19<br/>Management services for the health care and health care insurance industry in the nature of immunization record- keeping, namely maintaining personal immunization medical history, providing medical information in the nature of patient care records for the health care and health care insurance industries, providing electronic appointment scheduler services, namely, reminder services in the area of upcoming important dates and events for the health care and health care insurance industries</p> |
|--|--|

|             |   |
|-------------|---|
| Attachments | 76039328#TMSN.gif ( 1 page )( bytes )<br>Bref066 Stmt of Grounds.pdf ( 5 pages )(105922 bytes ) |
|-------------|---|

### 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 | /Arthur L. Lessler/ |
| Name      | Arthur L. Lessler   |
| Date      | 04/02/2013          |

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

Cancellation No.

Defendant's Mark: CareEvolution

Petitioner's Mark: CareEvolve

\* \* \* \* \*

\* BIO-REFERENCE LABORATORIES, INC., \*

\* Plaintiff/Petitioner \*

\* -against- \*

\* CAREEVOLUTION, INC., \*

\* Defendant/Registrant \*

\* \* \* \* \*

STATEMENT OF GROUNDS FOR CANCELLATION

April 2, 2013

Box TTAB  
Commissioner For Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

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SIR:

The undersigned hereby appears as counsel for Plaintiff-Petitioner Bio-Reference Laboratories, Inc. ("Petitioner") in the above-captioned matter; and asserts that Petitioner, a New Jersey corporation having its principal place of business at 481B Edward H. Ross Drive, Elmwood Park, New Jersey 07407, believes that it will be damaged by the following registration, and hereby requests that the same be canceled:

No. 4,304,005 for CareEvolution;

As grounds for this petition, the following is alleged:

1. Since at least as early as 2000 Petitioner has engaged in the business, *inter alia*, of promoting and providing electronic data services for the health care industry.

2. Petitioner is the owner of the following registration:

No. 2,747,755 for CareEvolve

and has used and is using the CareEvolve mark in association with the aforementioned services.

3. Petitioner has expended considerable effort and expense in promoting its aforesaid services, and has sold substantial amounts of said services. As a result of these extensive promotional efforts and sales, Petitioner owns

valuable good will symbolized by its CareEvolve mark.

4. Defendant/Registrant Careevolution, Inc. has been and is promoting and providing the same and/or closely related services to the health care industry under its CareEvolution mark as Petitioner promotes and provides under its CareEvolve mark.

5. Defendant made no use of its aforementioned mark prior to April 1, 2003.

6. Use by Defendant of its aforementioned registered mark is likely to cause confusion, or to cause mistake, or to deceive in violation of Section 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d).

7. Use by Defendant of its aforementioned mark is likely to cause dilution in violation of Section 43(c) of the United States Trademark Act, 15 U.S.C. §1125(c).

WHEREFORE, continuance of Defendant's aforementioned registration would be damaging to Petitioner and it is therefore requested that the registration be canceled.

Please address all communications for Petitioner to:

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Dated: April 2, 2013

By   
Arthur L. Lessler

CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of April, 2013, I served the foregoing Statement of Grounds for Cancellation upon Defendant/Registrant by mailing a copy thereof, by First Class Mail, postage prepaid, to the person(s) listed below.



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Arthur L. Lessler

Addressee:

Vikas Kheterpal, President  
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Tel (734) 678-4788  
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