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11-12-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #47

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

In the Matter of Application Serial No. 75/515213

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COMPREHENSIVE CARE CORPORATION,

Opposer,

v.

COMCARE LIMITED,

Applicant.
-----X

Opposition No.

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NOTICE OF OPPOSITION

Comprehensive Care Corporation ("CompCare" or "Opposer"), a corporation organized and existing under the laws of Delaware, with a place of business at 200 South Hoover Boulevard, Building 219, Suite 200, Tampa, FL 33609, believes it will be damaged by the registration of the mark COMCARE HEALTH SERVICES & Design shown in application Serial No. 75-515213, filed on July 8, 1998 by Comcare Limited ("Applicant"), and hereby opposes that application. As grounds for the opposition, CompCare, through its counsel Fross, Zelnick, Lehrman & Zissu, P.C. alleges as follows:

1. Opposer is the owner of the trademarks COMPCARE and COMPREHENSIVE CARE CORPORATION, which it has used extensively throughout the United States in connection with a wide variety of health care, managed health care and health-related management services, including, *inter alia*, rehabilitation services, employer-related programs, workers' compensation, employee assistance programs, utilization review and care management, community counseling and referral programs, medical consultation and

management services for hospitals and other health-related agencies. Opposer has also used COMPCARE and COMPREHENSIVE CARE CORPORATION as trade names for its wide array of health care, managed health care and health management services. Opposer first used the marks COMPCARE and COMPREHENSIVE CARE CORPORATION in at least as early as 1972, a date long prior to any date on which Applicant may rely. Opposer's COMPCARE and COMPREHENSIVE CARE CORPORATION marks are known throughout the United States to a diverse range of customers, special populations and payor groups, including, among others, insurance companies, employers, government agencies, HMOs and PPOs.

2. Among other U.S. registrations, Opposer owns several federal trademark registrations for the marks COMPCARE and COMPREHENSIVE CARE CORPORATION, as set forth below:

MARK	REG. NO. & DATE	GOODS/SERVICES
COMPCARE	1,333,713 04/30/85	Rehabilitative health care services. (Class 42)
COMPCARE	1,517,632 12/20/88	Retail mail order services for books, pamphlets and other printed matter relating to rehabilitative health care. (Class 42)
COMPCARE	1,202,661 07/27/82	Books and pamphlets relating to rehabilitative health care; retail mail order services for sound and video recordings and motion picture films relating to rehabilitative health care. (Classes 16, 42)
COMPCARE (stylized)	1,211,963 10/05/82	Employee assistance programs namely, providing counseling and assistance to employees in dealing with a wide range of

MARK	REG. NO. & DATE	GOODS/SERVICES
		personal problems. (Class 42)
COMPCARE (stylized)	1,025,435 11/18/75	Implementation of alcoholic rehabilitation programs and centers in general hospitals. (Class 42)
COMPCARE	2,459,960 6/12/01	Business services, namely, case management for the health benefits plans and worker's compensation plans of others; business management services for hospitals, mental health centers, physician groups, medical groups, and health related organizations; case management of health benefits and workers' compensation plans and utilization review of preferred provider and exclusive provider health care organizations (Class 35); organization and administration of prepaid behavioral healthcare plans; administration of employee healthcare plans, including workers' compensation, and underwriting, musculoskeletal disease management and workers' compensation, insurance; administration of preferred provider and exclusive provider organizations (Class 36); and healthcare in the nature of a behavioral health maintenance organization and health care services (Class 42)
COMPREHENSIVE CARE CORPORATION	1,227,026 02/08/83	Health care services, namely rehabilitative programs for problems related to alcoholism, mental health and drug abuse, and related employee assistance programs, community counseling and referral programs, and consultation services to hospitals and health assistance agencies. (class 42)

3. Opposer's foregoing registrations are valid, subsisting and in full force and effect; as such, they constitute *prima facie* evidence of the validity of the registered marks and of the registrations thereof, of Opposer's ownership of the marks shown therein and of Opposer's exclusive right to use the marks in commerce in connection with the goods and services named therein, without condition or limitation; they also constitute notice to Applicant of Opposer's claim of ownership of the marks shown therein; all as provided in Sections 7(b), 22 and 33(a) of the Lanham Trademark Act of 1946 as amended (the "Lanham Act"). Copies of Opposer's trademark registrations are attached hereto as Exhibit A. Further, Opposer's rights in the COMPCARE and COMPREHENSIVE CARE CORPORATION marks have become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

4. Opposer has expended large sums of money and considerable effort in advertising, promoting, protecting and publicizing its registered COMPCARE and COMPREHENSIVE CARE CORPORATION marks and trade names. By reason of Opposer's extensive use and promotion of its marks and trade names, a very valuable and inestimable goodwill has been built up in Opposer's marks and trade names.

5. Opposer's marks and trade names, by virtue of substantial use, have acquired great value as an identification of Opposer's goods and services, and distinguishes them from the goods and services of others.

6. On January 8, 1998, Applicant filed an intent to use application for the mark COMCARE HEALTH SERVICES and Design, Application Serial No. 75/515213, for "home healthcare services, namely, the provision of healthcare workers to individuals in their homes, general healthcare services, namely, the provision of healthcare workers to institutions and corporations, contract research services, namely, the conducting of pharmaceutical research

trials, occupational healthcare services, the operation of rehabilitation clinics “(in Class 42); and “career placement; personnel placement; job placement services” (in Class 35).

7. The services identified in Applicant’s U.S. Application Serial. No. 75-515213 are closely related and identical in-kind to services and goods offered by Opposer under its COMPCARE mark and trade name and COMPREHENSIVE CARE CORPORATION mark.

8. Applicant’s COMCARE HEALTH SERVICES mark, and its dominant component COMCARE, is closely similar in sound and appearance to Opposer’s COMPCARE mark and trade name as to be likely, when applied to the services of Applicant, to cause confusion, or to cause mistake, or to deceive, and would tend to damage Opposer’s goodwill in its trademarks and trade names. Such use by Applicant will cause the public to believe mistakenly that Applicant’s services originate with, or are approved or licensed by Opposer, or are otherwise connected or associated with Opposer or Opposer’s goods and services in violation of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). The likelihood of such confusion, deception, or mistake is compounded by the similarity and relatedness of the goods and services of the respective parties.

9. By reason of the foregoing, Opposer is likely to be harmed by the registration of U.S. Application Serial No. 75-515213 for the mark COMCARE HEALTH SERVICES & Design.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that the application to register be denied.

A duplicate copy of this Opposition is filed herewith, as well as the \$600 opposition fee for two classes. If, for any reason, the enclosed payment is insufficient, kindly charge any deficiency to our Deposit Account No. 23-0825-0576900.

Dated: New York, New York
November 12, 2002

"Express Mail" mailing label No. EL865410783US

Date of Deposit: Novemebr 12, 2002

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Georges Nahitchevansky

(Printed name of person mailing paper of fee)


(Signature)

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 

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