

ESTTA Tracking number: **ESTTA265314**

Filing date: **02/09/2009**

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	WebMD LLC
Granted to Date of previous extension	02/07/2009
Address	111 EIGHTH AVENUESEVENTH FLOOR NEW YORK, NY 10011 UNITED STATES
Correspondence information	Michael J. Bevilacqua, Esq. Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 UNITED STATES michael.bevilacqua@wilmerhale.com, barbara.barakat@wilmerhale.com, angela.dyer@wilmerhale.com Phone:(617) 526 6000

Applicant Information

Application No	77430168	Publication date	12/09/2008
Opposition Filing Date	02/09/2009	Opposition Period Ends	02/07/2009
Applicant	MedManage Systems, Inc. 3303 Monte Villa Parkway, Suite 325 Bothell, WA 98021 UNITED STATES		

Goods/Services Affected by Opposition

Class 038. All goods and services in the class are opposed, namely: Providing an on-line forum for transmission of messages among computer users in the medical, health, wellness and healthcare fields
Class 044. All goods and services in the class are opposed, namely: Providing information in the medical, health, wellness and healthcare fields via a global computer communications network
Class 045. All goods and services in the class are opposed, namely: On-line social networking services

Grounds for Opposition

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

U.S. Registration	1978357	Application Date	06/26/1995
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No.			
Registration Date	06/04/1996	Foreign Priority Date	NONE
Word Mark	MED SCAPE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1995/04/17 First Use In Commerce: 1995/04/17 providing information to assist healthcare providers in improving delivery of patient care in the areas of topical information in the fields of infectious diseases, AIDS, surgery, urology, family medicine, internal medicine, primary care medicine, pediatrics, psychiatry, orthopedics, respiratory diseases, cardiology, pharmacology, nursing, health economics; providing on-line questions for interactive self-assessment, and continuing general and specialized medical education in the above-identified fields, all through the means of a computer network		

Attachments	MEDSPACE NOP.pdf (4 pages)(162978 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	/barbara a. barakat/
Name	Barbara A. Barakat, Esq.
Date	02/09/2009

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

In the matter of Application Serial No. 77/430168

Published in the Official Gazette at TM 185 on December 9, 2008

WebMD, Inc.,)	
)	
Opposer)	
)	
v.)	Opposition No.
)	
MedManage Systems, Inc.)	
)	
Applicant)	
)	

BOX TTAB/FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

WebMD, Inc., a corporation organized and existing under the laws of Georgia, located and doing business at 1175 Peachtree Street, Atlanta, Georgia 30361, believes that it will be damaged by the registration of the trademark “MEDSPACE” as shown in Application Serial No. 77/430168, filed March 24, 2008, by MedManage Systems, Inc. (hereinafter “Applicant”), and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Applicant seeks registration on the Principal Register of the trademark “MEDSPACE” for use in connection with providing an on-line forum for transmission of messages among computer users in the medical, health, wellness and healthcare fields, providing information in the medical, health, wellness and healthcare fields via a global computer

communications network and on-line social networking services, as evidenced by the publication of said trademark in the December 9, 2008 issue of the Official Gazette.

2. Opposer is now, and has been for some time, engaged in providing information, education, journals, databases, training and Internet based on-line forums related to all aspects of health care, including medical conditions, diseases and disorders, medical treatments, wellness and nutrition, health risk assessments, health care provider, physician and hospital rating and referrals, and insurance.

3 Opposer and Opposer's predecessor in interest, (hereinafter "Opposer") adopted the mark "MED SCAPE" in connection with health care related services, that is, providing information to assist healthcare providers in improving delivery of patient care in the areas of topical information in the fields of infectious diseases, AIDS, surgery, urology, family medicine, internal medicine, primary care medicine, pediatrics, psychiatry, orthopedics, respiratory diseases, cardiology, pharmacology, nursing, health economics; providing on-line questions for interactive self-assessment, and continuing general and specialized medical education in the above-identified fields, all through the means of a computer network, at least as early as April 17, 1995, and has been using the mark in connection with those services ever since. Such use has been valid and continuous since the date of first use and has not been abandoned.

4. Opposer is the owner of United States registration No. 1978357 for the mark MED SCAPE in connection with the services identified in paragraph 3.

5. Opposer's mark "MED SCAPE" is symbolic of the extensive goodwill and recognition built up by Opposer through continuous use of said mark over a substantial period of time.

6. Opposer has expended considerable effort and expense in promoting its mark “MED SCAPE” and the services provided in connection with such mark, with the result that the purchasing public has come to know, rely upon, and recognize the services of Opposer by such mark. Opposer has exceedingly valuable goodwill established in its mark.

7. Application Serial No. 77/430168 for registration of the mark “MED SPACE” was filed on March 24, 2008, based upon Applicant’s bona fide intent to use said mark. Thus, Opposer actually began using its MED SCAPE mark almost 13 years prior to the filing date of Applicant’s application. Opposer’s registration for the mark “MED SCAPE” issued almost 12 years prior to the filing date of Applicant’s application.

8. Opposer’s mark “MED SCAPE” and Applicant’s mark “MEDSPACE” are virtually identical, as the first term or syllable in each mark is identical and the second syllable in Applicant’s mark merely transposes the letters “C and “P” in the second term in Opposer’s mark.

9. The services which are identified in Opposer’s registration for its mark are closely related to the services identified in the Applicant’s application to register “MEDSPACE,” and on information and belief, will be marketed through the same or similar channels of trade or to the same or similar class of consumers.

10. By reason of Opposer’s extensive use of the “MED SCAPE” mark, the public will believe that the Applicant’s use of its mark “MEDSPACE” is sponsored or approved by Opposer and that the quality of the services bearing the Applicant’s mark has been approved and/or maintained by Opposer.

11. In view of these similarities, Applicant’s use of the mark “MEDSPACE” is likely to cause confusion, mistake, or deception with respect to Opposer’s mark “MED SCAPE” and to damage the goodwill represented and symbolized by the mark.

12. Based on the foregoing, Applicant's registration of the mark "MEDSPACE" on the Principal Register of the United States Patent and Trademark Office would clearly cause injury and damage to the Opposer.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of Applicant's mark "MEDSPACE" as shown in Application Serial No. 77/430168 be refused.

Respectfully submitted,

WEBMD, INC.



Michael J. Bevilacqua

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February 9, 2009