

ESTTA Tracking number: **ESTTA316756**

Filing date: **11/13/2009**

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	Humana Inc.
Granted to Date of previous extension	12/20/2009
Address	500 West Main Street Louisville, KY 40202 UNITED STATES
Party who filed Extension of time to oppose	Humana, Inc. Humana, Inc.
Relationship to party who filed Extension of time to oppose	There is no comma after "Humana" and before "Inc."

Attorney information	Jeffrey S. Standley Standley Law Group LLP 6300 Riverside Drive Dublin, OH 43017 UNITED STATES trademarks@standleyllp.com Phone:614-792-5555
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Applicant Information

Application No	77677706	Publication date	06/23/2009
Opposition Filing Date	11/13/2009	Opposition Period Ends	12/20/2009
Applicant	AETNA INC. 980 JOLLY ROAD BLUE BELL, PA 19422 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. First Use: 2009/02/12 First Use In Commerce: 2009/02/12 All goods and services in the class are opposed, namely: Managed health care services, namely, health and wellness counseling; medical, behavioral health, and disability care management services; disease care management services; providing health care information in the field of health and wellness, behavioral health, disability management, and disease management

Applicant Information

Application No	77677709	Publication date	06/23/2009
Opposition Filing	11/13/2009	Opposition	

Date		Period Ends	
Applicant	AETNA INC. 980 JOLLY ROAD BLUE BELL, PA 19422 UNITED STATES		

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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2771449	Application Date	12/13/2002
Registration Date	10/07/2003	Foreign Priority Date	NONE
Word Mark	HUMANAONE		
Design Mark	HumanaOne		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2002/05/00 First Use In Commerce: 2002/05/00 UNDERWRITING INSURANCE FOR PRE-PAID HEALTH CARE; INSURANCE UNDERWRITING IN THE FIELD OF HEALTH ADMINISTRATION OF PRE-PAID HEALTH CARE PLANS; ORGANIZING PRE-PAID HEALTH CARE PLANS		

U.S. Registration No.	3050248	Application Date	01/05/2005
Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	HUMANA ONE		

Design Mark	
Description of Mark	The mark consists of the words HUMANA and ONE in different stylized fonts with a circular design element.
Goods/Services	Class 036. First use: First Use: 2002/05/31 First Use In Commerce: 2002/05/31 underwriting insurance for pre-paid health care; insurance underwriting in the field of health; administration of pre-paid health care plans; organizing pre-paid health care plans

Attachments	76475467#TMSN.gif (1 page)(bytes) 78542670#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (5 pages)(49822 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	/Cheryl S. Scotney/
Name	Cheryl S. Scotney
Date	11/13/2009

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

IN THE MATTER OF APPLICATION SERIAL NOS.: 77/677706 and 77/677709

MARKS: AETNA ONE and AETNA ONE (& Design)

PUBLISHED IN THE OFFICIAL GAZETTE ON: June 23, 2009

HUMANA INC.
Opposer,

v.

OPPOSITION NO. _____

AETNA INC.
Applicant.

NOTICE OF OPPOSITION

Humana Inc. (“Opposer”), a Delaware corporation, having its principal place of business at 500 West Main Street, Louisville, Kentucky 40202, believes that it will be damaged by the registration of the marks shown in U.S. Application Serial Nos. 77/677706 (“the ‘706 application”) and 77/677709 (“the ‘709 application”), and hereby opposes the same. As grounds for opposition, Opposer alleges:

OPPOSER’S TRADEMARK RIGHTS

The ‘449 Registration

1. Opposer filed US Trademark Application Ser. No. 76/475467 (“the ‘467 application”) on December 13, 2002 to register the mark HUMANAONE in International Class 036 for the services “Underwriting insurance for pre-paid health care; insurance underwriting in the field of health administration of pre-paid health care plans; organizing pre-paid health care plans.”
2. The ‘467 application was based on use in commerce in association with the services at least as early as May 2002.

3. The United States Trademark Office duly registered the '467 application as US Trademark Registration No. 2,771,449 ("the '449 registration") on October 7, 2003.

4. The '449 registration has a statement of continued use filed and accepted, has incontestable status, and is in good standing and owned by Opposer, as evidenced by the attached copy thereof.

The '248 Registration

5. Opposer filed US Trademark Application Ser. No. 78/542670 ("the '670 application") on January 5, 2005 to register the mark HUMANA ONE (& Design) in International Class 036 for the services "Underwriting insurance for pre-paid health care; insurance underwriting in the field of health administration of pre-paid health care plans; organizing pre-paid health care plans."

6. The '670 application was based on use in commerce in association with the services at least as early as May 31, 2002.

7. The United States Trademark Office duly registered the '670 application as US Trademark Registration No. 3,050,248 ("the '248 registration") on January 24, 2006.

8. The '248 registration is in good standing and owned by Opposer, as evidenced by the attached copy thereof.

9. The '449 registration and the '248 registration are referred to collectively as the "HUMANA ONE registrations" and the marks are referred to collectively as the "HUMANA ONE marks".

APPLICANT

10. On information and belief, Aetna Inc. ("Applicant") is a Pennsylvania corporation having its principal place of business at 980 Jolly Road, Blue Bell, Pennsylvania 19422.

11. Applicant filed the '706 application on February 25, 2009 for the mark AETNA ONE, based upon use in commerce in International Class 44 for use in association with "Managed health care services, namely, health and wellness counseling; medical, behavioral health, and disability care management services; disease care management services; providing

health care information in the field of health and wellness, behavioral health, disability management, and disease management.”

12. The date of first use for the mark represented by the ‘706 application is February 12, 2009.

13. The ‘706 application was published for opposition in the Official Gazette of June 23, 2009.

14. Applicant filed the ‘709 application on February 25, 2009 for the mark AETNA ONE (& DESIGN), based upon use in commerce in International Class 44 for use in association with “Managed health care services, namely, health and wellness counseling; medical, behavioral health, and disability care management services; disease care management services; providing health care information in the field of health and wellness, behavioral health, disability management, and disease management.”

15. The date of first use for the mark represented by the ‘709 application is February 12, 2009.

16. The ‘709 application was published for opposition in the Official Gazette of June 23, 2009.

Likelihood of Confusion

17. The mark represented by the ‘706 and ‘709 applications and the marks represented by Opposer’s HUMANA ONE registrations are similar as to appearance, sound, connotation and commercial impression.

18. Opposer began use of its HUMANA ONE marks in commerce prior to Applicant’s claimed dates of first use in commerce.

19. On information and belief, Applicant selected the marks represented by the ‘706 and ‘709 applications because of the fame of the marks represented by the HUMANA ONE registrations.

20. The services identified in the ‘706 and ‘709 applications are substantially similar to Opposer’s services sold under Opposer’s HUMANA ONE marks.

21. The Applicant has neither sought, nor has the Opposer given, any consent as to Applicant's proposed use of the marks represented by the '706 and '709 applications.

22. As a result of the use of Opposer's HUMANA ONE marks, the marks have become well known to the public, in particular, in the insurance industry. By virtue of such use, Opposer has established valuable goodwill in the marks, and the public has come to associate the HUMANA ONE marks with Opposer and to know HUMANA ONE as an indication of services that emanate from Opposer.

23. Opposer's HUMANA ONE registrations are famous through the extensive length of use and the amount of sales revenue achieved.

24. The extent of potential confusion is substantial if the Applicant is permitted to register the marks represented by the '706 and '709 applications.

Conclusions

25. Registration of the '706 and '709 applications to Applicant in association with the listed services would cause an impermissible diminution of the goodwill associated with the marks represented by Opposer's HUMANA ONE registrations.

26. Registration of the '706 and '709 applications to Applicant and use of marks substantially similar to Applicant's marks is likely to cause confusion, or to cause mistake, or to deceive, particularly as to the source or origin of the services with which Applicant uses its mark, to induce purchasers to believe that the services of Applicant are those of Opposer and/or Opposer's licensees, or are endorsed by, or are in some way affiliated or associated with Opposer.

27. Registration of the '706 and '709 applications to Applicant would presumptively entitle Applicant to prima facie exclusive ownership and rights to the marks represented by the '706 and '709 applications and would cause confusion among consumers of the relevant services as to the source of the services.

WHEREFORE, Opposer prays that this Opposition be sustained and that the Applicant be denied registration of Application Serial Nos. 77/677706 and 77/677709 for "AETNA ONE" and AETNA ONE (& Design).

The Commissioner is also authorized to charge any fees which may be required to Deposit Account 19-4076.

Respectfully submitted,

HUMANA INC.

Date: 11/13/09

By:



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Atty. Docket No. HUM2027-057