

ESTTA Tracking number: **ESTTA688164**

Filing date: **08/06/2015**

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 Phone:7166261564		
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Applicant Information

Application No	86517436	Publication date	07/07/2015
Opposition Filing Date	08/06/2015	Opposition Period Ends	08/06/2015
Applicant	The Network Advantage Card, LLC. 802 N. Euclid Ave., Suite C Ontario, CA 91762 UNITED STATES		

Goods/Services Affected by Opposition


Class 036. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Financial advisory and consultancy services, namely, the creation of personalized strategies to achieve financial independence; Financial consultancy services in the area of healthcare; Financial information and advisory services; Financial planning and investment advisory services; Insurance and financial information and consultancy services; Insurance consultancy services, namely, providing advice in the field of property and casualty insurance; On-line financial planning services; Providing counseling and consulting in the field of healthcare benefits; Providing information about healthcare insurance plans


Grounds for Opposition

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

U.S. Registration No.	4748611	Application Date	08/02/2013
Registration Date	06/02/2015	Foreign Priority Date	NONE

Word Mark	NETWORK ADVANTAGE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 2013/10/01 First Use In Commerce: 2013/10/01 Health insurance benefits, namely, providing benefits for health care services through a network of multiple physician practices offering primary care services-working in association with other health care providers, including specialists and hospitals

U.S. Registration No.	4545064	Application Date	06/29/2013
Registration Date	06/03/2014	Foreign Priority Date	NONE
Word Mark	INDEPENDENT HEALTH'S NETWORK ADVANTAGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2013/10/01 First Use In Commerce: 2013/10/01 Health insurance benefits, namely, providing benefits for health care services through a network of multiple physician practices offering primary care services-working in association with other health care providers, including specialists and hospitals		

Attachments	86026948#TMSN.png(bytes) 85973645#TMSN.png(bytes) IHAO117US_opp.pdf(167446 bytes) IHAO117US_Exhibit 1.pdf(63211 bytes) IHAO117US_Exhibit 2.pdf(54163 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	08/06/2015

disease management, and case management services, specialty pharmacy services, and pharmacy benefits management to health care providers, employers, plan subscribers, and other third-party providers of health care related services.

2. Upon information and belief, Applicant provides or intends to provide financial advisory and consulting services, including, but not limited to, financial consulting services in the area of healthcare; providing counseling and consulting in the field of healthcare benefits; and providing information about healthcare insurance plans.

3. The constructive date of first use of Opposer's mark INDEPENDENT HEALTH'S NETWORK ADVANTAGE is June 29, 2013, the date on which Opposer filed U.S. Service Mark Application Serial No. 85/973,645 for the mark INDEPENDENT HEALTH'S NETWORK ADVANTAGE. This date is long prior to the January 28, 2015 filing date of the application opposed herein.

4. Since at least as early as October 1, 2013, long prior to the filing date of the application opposed herein, Opposer has been actively using, and continues to use, the service mark INDEPENDENT HEALTH'S NETWORK ADVANTAGE in interstate commerce in connection with health insurance benefits, namely, providing benefits for health care services through a network of multiple physician practices offering primary care services working in association with other health care providers, such as specialists and hospitals. The service mark INDEPENDENT HEALTH'S NETWORK ADVANTAGE has become identified with Opposer and its services and is well known in connection with Opposer's services.

5. Since at least as early as October 1, 2013, long prior to the filing date of the application opposed herein, Opposer continuously has used the service mark NETWORK ADVANTAGE in interstate commerce in connection with health insurance benefits, namely,

providing benefits for health care services through a network of multiple physician practices offering primary care services working in association with other health care providers, including specialists and hospitals. The service mark NETWORK ADVANTAGE has become identified with Opposer and its services and is well known in connection with Opposer's services.

6. Opposer is the owner of U.S. Service Mark Registration No. 4,545,064, dated June 3, 2014, pursuant to U.S. Service Mark Application Serial No. 85/973,645 filed on June 29, 2013 for the service mark INDEPENDENT HEALTH'S NETWORK ADVANTAGE for use in association with health insurance benefits, namely, providing benefits for health care services through a network of multiple physician practices offering primary care services working in association with other health care providers, such as specialists and hospitals in International Class 36 (Exhibit 1).

7. Opposer is also the owner of U.S. Service Mark Registration No. 4,748,611, dated June 2, 2015, pursuant to U.S. Service Mark Application Serial No. 86/026,948 filed on August 2, 2013, for the service mark NETWORK ADVANTAGE for use in association with health insurance benefits, namely, providing benefits for health care services through a network of multiple physician practices offering primary care services working in association with other health care providers, such as specialists and hospitals in International Class 36 (Exhibit 2).

8. Since at least as early as 2013, Opposer has extensively used and promoted its services using its service marks NETWORK ADVANTAGE and INDEPENDENT HEALTH'S NETWORK ADVANTAGE. Opposer has developed exceedingly valuable goodwill with respect to its service marks NETWORK ADVANTAGE and INDEPENDENT HEALTH'S NETWORK ADVANTAGE. 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 the marks NETWORK ADVANTAGE and INDEPENDENT HEALTH'S NETWORK ADVANTAGE. Opposer's marks are well known to consumers and have been distinctive since prior to the filing date of the application opposed herein.

9. By its Application Serial No. 86/517,436, Applicant seeks to register the mark NETWORK ADVANTAGE CARD for use in association with financial advisory and consultancy services, namely, the creation of personalized strategies to achieve financial independence; financial consultancy services in the area of healthcare; financial information and advisory services; financial planning and investment advisory services; insurance and financial information and consultancy services; insurance consultancy services, namely, providing advice in the field of property and casualty insurance; on-line financial planning services; providing counseling and consulting in the field of healthcare benefits; providing information about healthcare insurance plans, in International Class 36.

10. The opposed application was filed on January 28, 2015 based on an intent to use the mark in interstate commerce. The January 28, 2015 constructive date of first use is well after Opposer first filed its applications to register its marks, and/or first commenced use of, and/or registered its marks NETWORK ADVANTAGE and INDEPENDENT HEALTH'S NETWORK ADVANTAGE.

11. Applicant's mark, NETWORK ADVANTAGE CARD, is confusingly similar in sight, sound and meaning to Opposer's marks NETWORK ADVANTAGE and INDEPENDENT HEALTH'S NETWORK ADVANTAGE owned and used by Opposer. The use and registration of Applicant's mark NETWORK ADVANTAGE CARD 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.

12. Upon information and belief, Applicant intends to use the mark NETWORK ADVANTAGE CARD in association with services in the field of healthcare, specifically, financial advisory and consultancy services, namely, the creation of personalized strategies to achieve financial independence; financial consultancy services in the area of healthcare; financial information and advisory services; financial planning and investment advisory services; insurance and financial information and consultancy services; insurance consultancy services, namely, providing advice in the field of property and casualty insurance; on-line financial planning services; providing counseling and consulting in the field of healthcare benefits; providing information about healthcare insurance plans. Opposer's marks NETWORK ADVANTAGE and INDEPENDENT HEALTH'S NETWORK ADVANTAGE are used in association with services in the field of healthcare, specifically, health insurance benefits, namely, providing benefits for health care services through a network of multiple physician practices offering primary care services working in association with other health care providers, such as specialists and hospitals.

13. Upon information and belief, Applicant's mark, NETWORK ADVANTAGE CARD, is intended to be used in association with services marketed and provided to individuals, employees, employers, group health care benefit administrators, and/or other such organizations. Opposer's services also utilize similar channels of trade and are offered to individuals and buyers in the same or similar industries.

14. 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 offered thereunder. Any objection or fault found with the services marketed under Applicant's mark, NETWORK ADVANTAGE CARD, could 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 offered thereunder.

15. 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.

16. Applicant's mark, as used on the services identified 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.

17. In view of the similarity in sight, sound and meaning between Applicant's mark NETWORK ADVANTAGE CARD and Opposer's aforesaid marks; the similarity between the respective services of Applicant and Opposer associated with Applicant's mark and Opposer's aforesaid marks; and the similarity of the channels of trade and customer base for Applicant's 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. 86/517,436 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 \$300.00 as required in 37 C.F.R. § 2.6(a)(17). Please charge any additional fees to Account No. 50-0822.

Respectfully submitted,



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DATED: August 6, 2015

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 6th day of August, 2015.



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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:

Omid E. Khalifeh, Esq.
Omni Legal Group
10866 Wilshire Blvd., Suite 400
Los Angeles, California 90024-4338

Dated: August 6, 2015

By:



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OPPOSITION
U.S. Trademark Application Serial No. 86/517,436

EXHIBIT 1

United States of America

United States Patent and Trademark Office

INDEPENDENT HEALTH'S NETWORK ADVANTAGE

Reg. No. 4,545,064

Registered June 3, 2014

Int. Cl.: 36

SERVICE MARK

PRINCIPAL REGISTER

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

FOR: HEALTH INSURANCE BENEFITS, NAMELY, PROVIDING BENEFITS FOR HEALTH CARE SERVICES THROUGH A NETWORK OF MULTIPLE PHYSICIAN PRACTICES OFFERING PRIMARY CARE SERVICES WORKING IN ASSOCIATION WITH OTHER HEALTH CARE PROVIDERS, INCLUDING SPECIALISTS AND HOSPITALS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-1-2013; IN COMMERCE 10-1-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,814,250, 2,938,669, AND OTHERS.

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

SN 85-973,645, FILED 6-29-2013.

MIDGE BUTLER, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

OPPOSITION
U.S. Trademark Application Serial No. 86/517,436

EXHIBIT 2

United States of America

United States Patent and Trademark Office

NETWORK ADVANTAGE

Reg. No. 4,748,611

Registered June 2, 2015

Int. Cl.: 36

SERVICE MARK

PRINCIPAL REGISTER

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

FOR: HEALTH INSURANCE BENEFITS, NAMELY, PROVIDING BENEFITS FOR HEALTH CARE SERVICES THROUGH A NETWORK OF MULTIPLE PHYSICIAN PRACTICES OFFERING PRIMARY CARE SERVICES WORKING IN ASSOCIATION WITH OTHER HEALTH CARE PROVIDERS, INCLUDING SPECIALISTS AND HOSPITALS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-1-2013; IN COMMERCE 10-1-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

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

SN 86-026,948, FILED 8-2-2013.

TINA L. SNAPP, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office