

ESTTA Tracking number: **ESTTA737702**

Filing date: **04/04/2016**

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.
Granted to Date of previous extension	04/03/2016
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, TrademarkEFS@idealawyers.com Phone:716-626-1564
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### Applicant Information

Application No	86540687	Publication date	10/06/2015
Opposition Filing Date	04/04/2016	Opposition Period Ends	04/03/2016
Applicant	iGetBetter, Inc. 383 Boston Post Road, Suite 201 Sudbury, MA 01776 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Downloadable software programs for use on mobile telecommunication devices enabling clinicians and patients to gain secure access to electronic health records and to correspond online regarding medical conditions and treatment

### 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 No.	4279343	Application Date	06/07/2012
Registration Date	01/22/2013	Foreign Priority Date	NONE
Word Mark	GET BETTER		

Design Mark	<b>GET BETTER</b>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2011/10/07 First Use In Commerce: 2011/10/07 Business consultation services, namely, assistance and analysis to third party health organizations and like organizations to optimize Medicare reimbursement services

Related Proceedings	91223654
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Attachments	85645430#TMSN.png( bytes ) IHAO119US_opp.pdf(166780 bytes ) IHAO119US_ Exhibit 1.pdf(99885 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	04/04/2016

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

In the Matter of U.S. Trademark Application Serial No. 86/540,687  
Published in the *Official Gazette* on October 6, 2015

Independent Health Association, Inc. )  
)  
Opposer, )  
)  
v. )  
)  
iGetBetter, Inc. )  
)  
)  
Applicant. )  
\_\_\_\_\_ )

Opposition No. \_\_\_\_\_

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

ATTN: Trademark Trial and Appeal Board

**NOTICE OF OPPOSITION**

Independent Health Association, Inc. (“**Opposer**”), formed in the State of New York, having a principal place of business at 511 Farber Lakes Drive, Buffalo, New York, 14221,



believes that it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 86/540,687 filed by iGetBetter, Inc. (“**Applicant**”) and hereby opposes the same.

As grounds for opposition, Opposer states as follows:

1. Opposer, Independent Health Association, Inc., formed in the State of New York with a principal place of business in New York, is a leading company in the field of managed health care, providing health care benefit plans and related administrative services, wellness, 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 downloadable software programs for use on mobile telecommunication devices enabling clinicians and patients to gain secure access to electronic health records and to correspond online regarding medical conditions and treatment.

3. Opposer filed U.S. Trademark Application Serial No. 85/645,430 for the mark GET BETTER on June 7, 2012. This date is long prior to the February 20, 2015 filing date of the application opposed herein.

4. Since at least as early as October 7, 2011, long prior to the filing date of the application opposed herein, Opposer has been actively using, and continues to use, the service mark GET BETTER in interstate commerce in connection with business consultation services, namely, assistance and analysis to third party health organizations and like organizations to optimize Medicare reimbursement services. The service mark GET BETTER has become identified with Opposer and its services and is well known in connection with Opposer's services.

5. Opposer is the owner of U.S. Service Mark Registration No. 4,279,343, dated January 22, 2013, pursuant to U.S. Trademark Application Serial No. 85/645,430 filed on June 7,

2012 for the service mark GET BETTER for use in association with business consultation services, namely, assistance and analysis to third party health organizations and like organizations to optimize Medicare reimbursement services in International Class 35 (Exhibit 1).

6. Since at least as early as 2011, Opposer has extensively used and promoted its services using its service mark GET BETTER. 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 mark GET BETTER. Opposer's mark is well known to consumers and has been distinctive since prior to the filing date of the application opposed herein.


7. By its Application Serial No. 86/540,687, Applicant seeks to register the mark




for use in association with downloadable software programs for use on mobile telecommunication devices enabling clinicians and patients to gain secure access to electronic health records and to correspond online regarding medical conditions and treatment in International Class 9.

8. The opposed application was filed on February 20, 2015 based on a bona-fide intention to use the mark in commerce.




9. Applicant's mark, , with its predominant literal portion IGET BETTER, is confusingly similar in sight, sound and meaning to Opposer mark GET BETTER




owned and used by Opposer. The use and registration of Applicant's mark  would result in confusion, mistake and/or deception as to the source or origin of Applicant's goods, leading consumers to believe that they are somehow affiliated with, approved, sponsored or licensed by Opposer.



10. Upon information and belief, Applicant intends to use the mark  in association with services in the field of healthcare, specifically, downloadable software programs for use on mobile telecommunication devices enabling clinicians and patients to gain secure access to electronic health records and to correspond online regarding medical conditions and treatment. Opposer's mark GET BETTER is used in association with services in the field of healthcare, specifically, business consultation services, namely, assistance and analysis to third party health organizations and like organizations to optimize Medicare reimbursement services.



11. Upon information and belief, Applicant's mark, , is intended to be used in association with goods marketed and provided to medical professionals, group health care benefit administrators, and/or other such organizations. Opposer's services also utilize similar channels of trade and are offered to medical professionals, third party health organizations, and like organizations in the same or similar industries.

12. If Applicant is permitted to use and register Applicant's mark for the goods 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 goods and services offered thereunder. Any objection or fault found with the



goods marketed under Applicant's mark could reflect on, and injure, the reputation Opposer has established for the services provided under its GET BETTER mark. 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 mark and the diminution of Opposer's ability to control the quality of services offered thereunder.

13. 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.

14. Applicant's mark, as used on the goods identified in the Application, would dilute, or be likely to dilute, the distinctiveness of Opposer's mark, resulting in damage to Opposer, its goodwill and strength and value of its mark.

15. In view of the similarity in sight, sound and meaning between Applicant's mark



and Opposer's mark GET BETTER; the similarity between the respective goods

and services of Applicant and Opposer associated with Applicant's mark and Opposer's mark; and the similarity of the channels of trade and customer base for Applicant's goods and Opposer's services; Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, and/or to cause mistake, and/or to deceive.

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 86/540,687 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,



Ellen S. Simpson  
Attorney for Opposer  
Simpson & Simpson PLLC  
5555 Main Street  
Williamsville, New York 14221  
(tel) 716-626-1564 / (fax) 716-626-0366

DATED: April 4, 2016



**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 4<sup>th</sup> day of April, 2016.



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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:

Peter Nils Baylor  
Attorney of Record for Applicant  
Nutter, McClennen & Fish, LLP  
155 Seaport Blvd  
Boston, Massachusetts 02210-2604

Dated: April 4, 2016

By:



Ellen S. Simpson  
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ATTORNEY DOCKET NO.: IHAO119US  
Notice of Opposition for U.S. Trademark Application Serial No. 86/540,687

**Exhibit 1**

**United States of America**  
United States Patent and Trademark Office

# GET BETTER

**Reg. No. 4,279,343**

INDEPENDENT HEALTH ASSOCIATION, INC. (NEW YORK CORPORATION)

**Registered Jan. 22, 2013**

511 FARBER LAKES DRIVE  
WILLIAMSVILLE, NY 14221

**Int. Cl.: 35**

FOR: BUSINESS CONSULTATION SERVICES, NAMELY, ASSISTANCE AND ANALYSIS TO THIRD PARTY HEALTH ORGANIZATIONS AND LIKE ORGANIZATIONS TO OPTIMIZE MEDICARE REIMBURSEMENT SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

**SERVICE MARK**

FIRST USE 10-7-2011; IN COMMERCE 10-7-2011.

**PRINCIPAL REGISTER**

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

SER. NO. 85-645,430, FILED 6-7-2012.

GRETTA YAO, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
See 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or  
reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**