

ESTTA Tracking number: **ESTTA802934**

Filing date: **02/22/2017**

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	Brighter Inc.
Granted to Date of previous extension	02/22/2017
Address	501 Santa Monica Blvd., Suite 403 Santa Monica, CA 90401 UNITED STATES

Attorney information	Jami A. Gekas Foley & Lardner LLP 3000 K Street, N.W., Suite 600 Washington, DC 20007-5109 UNITED STATES ipdocketing@foley.com, JGekas@foley.com, KCalifa@foley.com, MMet- tler@foley.com, JMcGinnis@foley.com, NQuintero@foley.com Phone:202.672.5300
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Applicant Information

Application No	86825510	Publication date	10/25/2016
Opposition Filing Date	02/22/2017	Opposition Period Ends	02/22/2017
Applicant	BRIGHT HEALTH INC. 219 NORTH 2ND STREET MINNEAPOLIS, MN 55401 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Providing temporary use of online non-downloadable software that enables the provision of personalized information to health plan participants about health careservices; Providing temporary use of online nondownloadable software in the field of health care services, health care information, and health care products for facilitating consumer health care delivery and/or payment; Providing temporary use of online nondownloadable software that enables users to obtain information regarding health care, health coverage and benefits, health claims status, health fund transactions, health care providers and facilities, preferred drug list, estimate health care costs and print member identification cards

Applicant Information

Application No	86825523	Publication date	10/25/2016
Opposition Filing Date	02/22/2017	Opposition Period Ends	
Applicant	BRIGHT HEALTH INC.		

	219 NORTH 2ND STREET MINNEAPOLIS, MN 55401 UNITED STATES
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Goods/Services Affected by Opposition

<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Business administration of patient reimbursement programs</p>
<p>Class 036. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Insurance services, namely, underwriting, issuance and administration of health insurance; Administration of health care benefit plans and preferred provider plans in the field of health insurance and health care delivery, and financial administration of patient reimbursement programs; Insurance administration in the field of prescription drugs; Pharmacy benefit management services; Administration of managed health care service plans, pre-paid health care plans, and hospital plans and third party administration of employer self-insured health benefit plans; Health insurance brokerage services; Providing online insurance services in the field of health care, namely, member eligibility and enrollment information; Electronic processing of insurance claims and payment data; Organization and administration of networks of preferred health care providers; Providing information in the field of insurance</p>

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.	4091873	Application Date	09/01/2010
Registration Date	01/24/2012	Foreign Priority Date	NONE
Word Mark	BRIGHTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2011/02/01 First Use In Commerce: 2011/03/11 Dental referral services where consumers may obtain information and ratings about dentists and providers of dental and dental hygiene services; appointment scheduling services; accounts receivable services; promoting the dental services of others by providing vouchers to obtain such services; business assistance services, namely, assisting health care facilities follow-up with patients to improve customer satisfaction through the use of patient feedback after receipt of services via a global computer network; providing dental professionals with referrals of patients seeking dental services; billing services, namely, providing assistance in the administration of invoicing referred patients for the dental services received; administer, namely, providing statistical evaluation of insurance claims performance measures for others; providing a web site featuring feedback and</p>		

	ratings of dental service providers for commercial purposes Class 036. First use: First Use: 2011/02/01 First Use In Commerce: 2011/03/11 Bill payment services, namely, collecting payment for dental services from the referred patients for services performed by the dental professionals
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Attachments	85121117#TMSN.png(bytes) Consolidated Notice of Opposition to BRIGHT HEALTH PLAN.pdf(181010 bytes)
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Signature	/Jami A. Gekas/
Name	Jami A. Gekas
Date	02/22/2017

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

In the Matter of App. Serial Nos.: 86/825,510 and 86/825,523
For the mark: BRIGHT HEALTH PLAN
Published in the Official Gazette on: October 25, 2016

Brighter Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
Bright Health Inc.)	
)	
Applicant.)	
)	
)	

CONSOLIDATED NOTICE OF OPPOSITION

Brighter Inc., formerly known as Medical and Dental Commerce, (“**Opposer**”), a Delaware corporation with a business address at 501 Santa Monica Blvd., Suite 403, Santa Monica, California 90401, United States, believes it will be damaged by and hereby opposes the registration of the mark BRIGHT HEALTH PLAN (the “**Applied-For Mark**”) as shown in Application Serial Nos. 86/825,510 and 86/825,523 (the “**Applications**”), filed November 19, 2015 by Bright Health Inc. a Delaware corporation with an address of 219 North 2nd Street, Suite 310, Minneapolis, Minnesota 55401, United States (“**Applicant**”) under Section 1(b) of the Trademark Act. The Applications were published for opposition on October 25, 2016. Opposer timely filed requests for extensions of time to oppose, which were granted until February 22, 2017. By this Consolidated Notice of Opposition, Opposer requests that registration of the Applications be refused.

The grounds for opposition are as follows:

1. Opposer owns, among other U.S. trademark applications and registrations, the following trademark registration for the inherently distinctive word BRIGHTER (the “BRIGHTER Mark”) on the Principal Register:

Mark	Reg./App. No.	Filing Date	Services	Status
BRIGHTER	4,091,873	Sept. 1, 2010	<p>Class 35: Dental referral services where consumers may obtain information and ratings about dentists and providers of dental and dental hygiene services; appointment scheduling services; accounts receivable services; promoting the dental services of others by providing vouchers to obtain such services; business assistance services, namely, assisting health care facilities follow-up with patients to improve customer satisfaction through the use of patient feedback after receipt of services via a global computer network; providing dental professionals with referrals of patients seeking dental services; billing services, namely, providing assistance in the administration of invoicing referred patients for the dental services received; administer, namely, providing statistical evaluation of insurance claims performance measures for others; providing a web site featuring feedback and ratings of dental service providers for commercial purposes.</p> <p>Class 36: Bill payment services, namely, collecting payment for dental services from the referred patients for services performed by the dental professionals.</p>	Registered

2. Opposer's registration for the BRIGHTER Mark is valid, subsisting, unrevoked, and uncanceled. Attached as **Exhibit A** to this Consolidated Notice of Opposition is a printout from the PTO database showing the current status and title of the registration relied on in this opposition. This registration constitutes prima facie evidence of Opposer's exclusive right to use the BRIGHTER Mark in connection with the services specified in the registration.

3. Based on its continuous and widespread use of its BRIGHTER Mark in U.S. commerce for years, Opposer has established enormous goodwill in the BRIGHTER Mark, and the BRIGHTER Mark has become well and favorably recognized by the relevant trade and public as identifying the dental referral, information, ratings, scheduling, and billing services of Opposer (the "**BRIGHTER Services**").

4. The BRIGHTER Services have been offered and promoted throughout the United States by Opposer in a variety of media. For example, Opposer has offered and promoted the BRIGHTER Services under the BRIGHTER Mark through online ads, radio spots, direct mail, and presentations to brokers and insurance companies. Opposer's BRIGHTER Services have also been extensively promoted on Opposer's website (<https://www.brighter.com/>) and through social media.

5. Opposer has developed a well-known business reputation throughout the United States and has dedicated time and effort throughout the years to advertise, market, and promote Opposer's BRIGHTER Services in connection with the BRIGHTER Mark.

6. As a result of these efforts, Opposer's BRIGHTER Mark has become a distinctive indicator of Opposer's services, and is therefore a valuable symbol of Opposer's goodwill. The BRIGHTER Mark is of significant value to Opposer.

7. Through use by Opposer of its BRIGHTER Mark for the BRIGHTER Services, purchasers and prospective purchasers of such services associate this mark with a single source, namely, Opposer.

8. By the Application Serial Nos. 86/825,510 and 86/825,523 herein opposed, Applicant seeks to register BRIGHT HEALTH PLAN for “*Providing temporary use of online nondownloadable software that enables the provision of personalized information to health plan participants about health care services; Providing temporary use of online nondownloadable software in the field of health care services, health care information, and health care products for facilitating consumer health care delivery and/or payment; Providing temporary use of online nondownloadable software that enables users to obtain information regarding health care, health coverage and benefits, health claims status, health fund transactions, health care providers and facilities, preferred drug list, estimate health care costs and print member identification cards*” in Class 42 (Serial No. 86/825,510) and “*Business administration of patient reimbursement programs*” in Class 35 and “*Insurance services, namely, underwriting, issuance and administration of health insurance; Administration of health care benefit plans and preferred provider plans in the field of health insurance and health care delivery, and financial administration of patient reimbursement programs; Insurance administration in the field of prescription drugs; Pharmacy benefit management services; Administration of managed health care service plans, pre-paid health care plans, and hospital plans and third party administration of employer self-insured health benefit plans; Health insurance brokerage services; Providing online insurance services in the field of health care, namely, member eligibility and enrollment information; Electronic processing of insurance claims and payment data; Organization and administration of networks of preferred health care providers; Providing information in the field*”

of insurance” in Class 36 (Serial No. 86/825,523) (“**Applicant’s Services**”). The Applications were filed by Applicant on November 19, 2015, subsequent to Opposer’s first use of the BRIGHTER Mark.

9. The Applied-For Mark BRIGHT HEALTH PLAN is confusingly similar to the BRIGHTER Mark in overall appearance, spelling, sound, commercial impression, and connotation. The wording “HEALTH PLAN” in the Applied-For Mark is generic when used in connection with Applicant’s services. Thus, the dominant element of the Applied-For Mark is the term “BRIGHT,” which is virtually identical in sight, sound, meaning, and overall commercial impression to Opposer’s BRIGHTER Mark. As a result, consumers viewing Opposer’s BRIGHTER Mark and Applicant’s BRIGHT HEALTH PLAN mark are likely to be confused, mistaken, and/or deceived as to source, sponsorship, or affiliation of the respective parties’ services. Therefore, Opposer’s and Applicant’s marks are confusingly similar.

10. The services for which Applicant has sought to register BRIGHT HEALTH PLAN are related to and/or overlap with Opposer’s BRIGHTER Services. Representative examples of these areas of relatedness and/or overlap are underlined in the chart below.

Applicant’s Services	Opposer’s Services
<p>Class 35: Business administration of patient reimbursement programs</p> <p>Class 36: Insurance services, namely, underwriting, issuance and administration of health insurance; <u>Administration of health care benefit plans, preferred provider plans, and patient reimbursement programs</u>; Insurance administration in the field of prescription drugs; Pharmacy benefit management services; Administration of managed health care service plans, pre-paid health care plans, and hospital plans and third party administration of employer self-insured health benefit plans;</p>	<p>Class 35: <u>Dental referral services where consumers may obtain information and ratings about dentists and providers of dental and dental hygiene services; appointment scheduling services; accounts receivable services; promoting the dental services of others by providing vouchers to obtain such services; business assistance services, namely, assisting health care facilities follow-up with patients to improve customer satisfaction through the use of patient feedback after receipt of services via a global computer network; providing dental professionals with referrals of patients seeking dental services;</u></p>

<p>Health insurance brokerage services; Providing online insurance services in the field of health care, namely, member eligibility and enrollment information; <u>Electronic processing of insurance claims and payment data; Organization and administration of networks of preferred health care providers; Providing information in the field of insurance</u></p> <p>Class 42: <u>Providing temporary use of online nondownloadable software that enables the provision of personalized information to health plan participants about health care services; Providing temporary use of online nondownloadable software in the field of health care services, health care information, and health care products; Providing temporary use of online nondownloadable software that enables users to obtain information regarding health care, health coverage and benefits, health claims status, health fund transactions, health care providers and facilities, preferred drug list, estimate health care costs and print member identification cards</u></p>	<p><u>billing services, namely, providing assistance in the administration of invoicing referred patients for the dental services received; administer, namely, providing statistical evaluation of insurance claims performance measures for others; providing a web site featuring feedback and ratings of dental service providers for commercial purposes.</u></p> <p>Class 36: <u>Bill payment services, namely, collecting payment for dental services from the referred patients for services performed by the dental professionals.</u></p>
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11. Applicant's Services are related and/or complementary to those offered by Opposer under its BRIGHTER Mark, and consumers would expect such services to emanate from a single source. In light of the similar nature of the marks and the close relationship between the parties' services, the Applied-For Mark is likely to cause confusion with Opposer's BRIGHTER Mark.

12. Neither Applicant's Services nor the services offered by Opposer under its BRIGHTER Mark are restricted as to the trade channels or target consumers. Accordingly, both parties' services are presumed to travel in all normal channels of trade and target all normal

consumers for these types of services. As such, the parties' trade channels and target consumers are identical.

13. For the reasons set forth herein, there is a likelihood of confusion between the Applied-For Mark BRIGHT HEALTH PLAN and Opposer's prior registered BRIGHTER Mark.

14. If the Applied-For Mark is allowed to register, consumers and prospective consumers may be likely to believe, erroneously, that Applicant's Services offered under the BRIGHT HEALTH PLAN mark opposed herein emanate from, are connected, associated, or affiliated with, or are in some way approved or sponsored by Opposer, or that they emanate from the same source as Opposer's BRIGHTER Mark used to promote Opposer's dental referral, information, ratings, scheduling, and billing services, all to Opposer's damage.

15. Any defect in, objection to, or fault with Applicant's Services would injure the reputation that Opposer has established for the services provided under the BRIGHTER Mark.

16. Applicant's Applied-For Mark, BRIGHT HEALTH PLAN, consists of a mark that so resembles Opposer's BRIGHTER Mark as to be likely, if allowed to register in connection with Applicant's Services, to cause confusion, to cause mistake, or to deceive consumers as to the source of the services. Accordingly, registration of the Applied-For Mark is prohibited under Section 2(d) of the Lanham Act.

WHEREFORE, for at least the above reasons, Opposer believes that it will be damaged by the registration of the Applied-For Mark in the Applications and requests that the registration sought by Applicant of Application Serial Nos. 86/825,510 and 86/825,523 be refused and that this Opposition be sustained.

The required fee of \$1200 is being submitted with this Consolidated Notice of Opposition via credit card to cover the statutory filing fee. 37 C.F.R. § 2.6(a)(17). If any additional fees should be required, please charge the same to our Deposit Account No. 19-0741.

Respectfully submitted,

FOLEY & LARDNER LLP

/ Jami A. Gekas /

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Katherine Califa

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Attorneys for Opposer, Brighter Inc.

EXHIBIT A



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Feb 21 02:21:27 EST 2017

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)

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Record 1 out of 1

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BRIGHTER

Word Mark BRIGHTER

Goods and Services IC 035. US 100 101 102. G & S: Dental referral services where consumers may obtain information and ratings about dentists and providers of dental and dental hygiene services; appointment scheduling services; accounts receivable services; promoting the dental services of others by providing vouchers to obtain such services; business assistance services, namely, assisting health care facilities follow-up with patients to improve customer satisfaction through the use of patient feedback after receipt of services via a global computer network; providing dental professionals with referrals of patients seeking dental services; billing services, namely, providing assistance in the administration of invoicing referred patients for the dental services received; administer, namely, providing statistical evaluation of insurance claims performance measures for others; providing a web site featuring feedback and ratings of dental service providers for commercial purposes. FIRST USE: 20110201. FIRST USE IN COMMERCE: 20110311

IC 036. US 100 101 102. G & S: Bill payment services, namely, collecting payment for dental services from the referred patients for services performed by the dental professionals. FIRST USE: 20110201. FIRST USE IN COMMERCE: 20110311

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85121117

Filing Date September 1, 2010

Current Basis 1A

Original Filing Basis 1B

Published for Opposition March 29, 2011

Registration 4091873

Number

Registration Date January 24, 2012

Owner (REGISTRANT) Medical and Dental Commerce CORPORATION DELAWARE 2118 Wilshire Blvd. #1078 Santa Monica CALIFORNIA 90403

(LAST LISTED OWNER) BRIGHTER INC. CORPORATION DELAWARE 501 SANTA MONICA BLVD., SUITE 403 SANTA MONICA CALIFORNIA 90401

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Katherine P. Califa

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#)

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing CONSOLIDATED NOTICE OF OPPOSITION was served electronically on the Attorney of Record designated in the Applications:

Barbara J. Grahn
Fox Rothschild LLP
222 South Ninth St., Suite 2000
Minneapolis, Minnesota 5540
bgrahn@froxtroschild.com

Dated: February 22, 2017

/Nancy Quintero/
FOLEY & LARDNER LLP