

ESTTA Tracking number: **ESTTA997744**

Filing date: **08/27/2019**

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	Reply S.p.A.
Granted to Date of previous extension	09/01/2019
Address	Corso Francia, 110 Torino, 10143 ITALY

Attorney information	ANTHONY F. LO CICERO, ESQ. AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE, 21ST FLOOR NEW YORK, NY 10016 UNITED STATES ptodocket@arelaw.com 2123368000
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Applicant Information

Application No	88087250	Publication date	03/05/2019
Opposition Filing Date	08/27/2019	Opposition Period Ends	09/01/2019
Applicant	Appley Health, Inc. 13510 Carryback Drive Dade City, FL 33525 UNITED STATES		

Goods/Services Affected by Opposition


Class 042. First Use: 2018/01/01 First Use In Commerce: 2018/01/01 All goods and services in the class are opposed, namely: Software as a service (SAAS) services featuring software for interacting, contracting, and transacting in the field of healthcare and insurance
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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.	5455561	Application Date	07/17/2016
Registration Date	05/01/2018	Foreign Priority Date	05/30/2016
Word Mark	APPHEAL REPLY		

Design Mark			
Description of Mark	The mark consists of the stylized word "APPHEAL" in black above the stylized word "REPLY" with the "RE" in light blue and the "PLY" in black.		
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 software for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital departments; data processing software, namely, software for medical clinicians to electronically manage and process patient health data; computer software for file management, namely, for controlling and managing patient medical information; data processors; downloadable electronic publications in the nature of books, magazines, manuals and newsletters in the field of health; downloadable software applications for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital department for use on mobile phones; handheld electronic touch screens; interactive touch screen terminals; computers; digital devices for personal assistance, namely, personal digital assistants (PDA), electronic text-messaging device for use in conjunction with personal digital assistants; electronic schedules, namely, personal digital assistants (PDA) and electronic notebook computers; all the aforesaid goods relating to medical data</p> <p>Class 010. First use: First Use: 0 First Use In Commerce: 0 systems and apparatus for diagnosis and analysis in the medical field, namely, medical imaging apparatus for diagnosing medical conditions</p> <p>Class 038. First use: First Use: 0 First Use In Commerce: 0 providing access to databases; data communication services, namely, electronic transmission of data and documents among users of computers, data streaming; telematics sending of information, transfer of data by telecommunication, communications services for the electronic transmission of data; information and consultancy relating to the aforesaid services; all the aforesaid services relating to medical data</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 development of software for data processing in the medical and health field; IT-services for the health and medical field, namely, on-site management of information technology (IT) systems of others, remote management of the information technology (IT) system of others, IT integration service, IT consulting service</p>		

U.S. Registration No.	5759932	Application Date	11/15/2017
Registration Date	05/28/2019	Foreign Priority Date	10/25/2017
Word Mark	APPHEALREPLY		
Design Mark			
Description of Mark	The mark consists of a design of a dark blue running stick figure with arms extended, to the right of which is the stylized wording "APPHEALREPLY" with "APPHEAL" in light blue and "REPLY" in dark blue.		

Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Software for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital departments; data processing software, namely, software for medical clinicians to electronically manage and process patient health data; computer software for file management, namely, for controlling and managing patient medical information; data processors; downloadable electronic publications in the nature of books, magazines, manuals and newsletters in the field of health; downloadable software applications for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital department for use on mobile phones; handheld electronic touch screens; interactive touch screen terminals; computers; digital devices for personal assistance, namely, personal digital assistants (PDA), electronic; text-messaging device for use in conjunction with personal digital assistants; electronic planners, namely, personal digital assistants (PDA) and electronic notebook computers; all the aforesaid goods relating to medical data</p> <p>Class 010. First use: First Use: 0 First Use In Commerce: 0 Systems and apparatus for diagnosis and analysis in the medical field, namely, medical imaging apparatus for diagnosing medical conditions</p> <p>Class 038. First use: First Use: 0 First Use In Commerce: 0 Providing access to databases; data communication services, namely, electronic transmission of data and documents among users of computers, data streaming; telematic sending of information, transfer of data by telecommunication, communications services for the electronic transmission of data; information and consultancy relating to the aforesaid services; all the aforesaid services relating to medical data</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Development of software for data processing in the medical and health field; IT-services for the health and medical field, namely, on-site computer software technical support services in the nature of diagnosing computer software problems, technical consultancy relating to the use of computer hardware, monitoring of computer systems by remote access for others to ensure proper functioning, IT integration service, IT consulting service</p>
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Attachments	79197746#TMSN.png(bytes) 79236613#TMSN.png(bytes) Notice of Opposition to APPEL HEALTH 88087250.pdf(920416 bytes)
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Signature	/Anthony F. Lo Cicero, Esq./
Name	ANTHONY F. LO CICERO, ESQ.
Date	08/27/2019

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

In the Matter of

*Application Serial No. 88/087,250
of Appley Health, Inc.
for APPLEY HEALTH
Filed on August 21, 2018
Published for Opposition on March 5, 2019*

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REPLY S.P.A.,	:	Opposition No.
Opposer,	:	<u>NOTICE OF OPPOSITION</u>
v.	:	
APPLEY HEALTH, INC.,	:	
Applicant.	:	
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In the matter of U.S. Trademark Application Serial No. 88/087,250 filed by Appley Health, Inc. (“Applicant”) on August 21, 2018 and published for opposition in the March 5, 2019 issue of the Official Gazette of the United States Patent and Trademark Office for the trademark APPLEY HEALTH (the “Subject Mark”) as applied to software as a service (SAAS) services featuring software for interacting, contracting, and transacting in the field of healthcare and insurance in Class 42, alleging use and use in commerce since January 1, 2018 (the “Subject Application”).

As grounds for opposition of the above-identified trademark Application, Opposer Reply S.p.A. (“Opposer”), by and through its attorneys, alleges as follows:

1. Opposer, an Italian joint stock company having a principal place of business at Corso Francia, 110 Torino Italy (“Opposer”), believes that it will be damaged by the registration of the Subject Application and hereby opposes the same.

2. Opposer is the owner of the marks APPHEAL REPLY (stylized):

APPHEAL
Reply

and APPHEALREPLY (stylized):



both for software for various medical purposes and related goods and services (collectively, “Opposer’s Marks”).

3. Opposer’s Marks are the subject of two U.S. Registrations, as described more fully below, both of which were filed before the Subject Application and before the first use date recited in the Subject Application. Based on the foregoing, Opposer has priority over Applicant.

4. Opposer owns U.S. Registration No. 5,455,561 for APPHEAL REPLY & Design:

APPHEAL
Reply

for:

software for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital departments; data processing software, namely, software for medical clinicians to electronically manage and process patient health data; computer software for file management, namely, for controlling and managing patient medical information; data processors; downloadable electronic publications in the nature of books, magazines, manuals and newsletters in the field of health; downloadable software applications for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital department for use on mobile

phones; handheld electronic touchscreens; interactive touch screen terminals; computers; digital devices for personal assistance, namely, personal digital assistants (PDA), electronic text-messaging device for use in conjunction with personal digital assistants; electronic schedules, namely, personal digital assistants (PDA) and electronic notebook computers; all the aforesaid goods relating to medical data in Class 9

systems and apparatus for diagnosis and analysis in the medical field, namely, medical imaging apparatus for diagnosing medical conditions in Class 10;

providing access to databases; data communication services, namely, electronic transmission of data and documents among users of computers, data streaming; telematics sending of information, transfer of data by telecommunication, communications services for the electronic transmission of data; information and consultancy relating to the aforesaid services; all the aforesaid services relating to medical data in Class 38; and

development of software for data processing in the medical and health field; IT services for the health and medical field, namely, on-site management of information technology(IT) systems of others, remote management of the information technology(IT) system of others, IT integration service, IT consulting service in Class 42

(the “561 Registration”).

5. The ‘561 Registration was filed on July 17, 2016, with priority going back to May 30, 2016.

6. Opposer also owns U.S. Registration No. 5,759,932 for APPHEAL REPLY & Design:



for:

software for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital departments; data processing software,

namely, software for medical clinicians to electronically manage and process patient health data; computer software for file management, namely, for controlling and managing patient medical information; data processors; downloadable electronic publications in the nature of books, magazines, manuals and newsletters in the field of health; downloadable software applications for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital department for use on mobile phones; handheld electronic touchscreens; interactive touch screen terminals; computers; digital devices for personal assistance, namely, personal digital assistants (PDA), electronic; text-messaging device for use in conjunction with personal digital assistants; electronic planners, namely, personal digital assistants (PDA) and electronic notebook computers; all the aforesaid goods relating to medical data in Class 9;

systems and apparatus for diagnosis and analysis in the medical field, namely, medical imaging apparatus for diagnosing medical conditions in Class 10;

providing access to databases; data communication services, namely, electronic transmission of data and documents among users of computers, data streaming; telematic sending of information, transfer of data by telecommunication, communications services for the electronic transmission of data; information and consultancy relating to the aforesaid services; all the aforesaid services relating to medical data in Class 38; and

development of software for data processing in the medical and health field; IT services for the health and medical field, namely, on-site computer software technical support services in the nature of diagnosing computer software problems, technical consultancy relating to the use of computer hardware, monitoring of computer systems by remote access for others to ensure proper functioning, IT integration service, IT consulting service in Class 42

(the “’932 Registration”).

7. The ‘932 Registration was filed on November 15, 2017, with priority going back to October 25, 2017.

8. Copies of the TESS status of the ‘561 and ‘932 Registrations are annexed hereto as Exhibit A.

9. The Subject Mark is confusingly similar to Opposer's Marks since all three Marks begin with APP, and the HEALTH portion of the Subject Mark resembles the HEAL portion of Opposer's Marks. The parties' goods and services are also closely related since both provide software for medical purposes.

10. Based on the foregoing, the use and/or registration of the Subject Mark by Applicant is likely to cause confusion and mistake in the minds of the purchasing public, and, in particular, will, upon information and belief, tend to falsely create the impression that the software sold under the Subject Mark is authorized, sponsored, or approved by Opposer when, in fact, it is not.

11. Accordingly, it is Opposer's belief that if Applicant is granted the Application opposed herein, Opposer will suffer irreparable harm and damage.

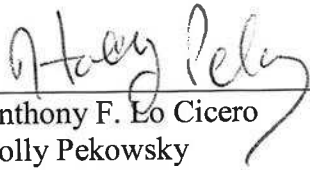
WHEREFORE, Opposer respectfully requests that the mark shown in U.S. Trademark Application Serial No. 88/087,250 be refused registration and that this Opposition be sustained.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Opposer
Reply S.p.A.
90 Park Avenue
New York, New York 10016
(212) 336-8000

Dated: New York, New York
August 27, 2019

By: _____


Anthony F. Cicero
Holly Pekowsky



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APPHEAL

Reply

**Word Mark
Goods and
Services**

APPHEAL REPLY

IC 009. US 021 023 026 036 038. G & S: software for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital departments; data processing software, namely, software for medical clinicians to electronically manage and process patient health data; computer software for file management, namely, for controlling and managing patient medical information; data processors; downloadable electronic publications in the nature of books, magazines, manuals and newsletters in the field of health; downloadable software applications for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital department for use on mobile phones; handheld electronic touch screens; interactive touch screen terminals; computers; digital devices for personal assistance, namely, personal digital assistants (PDA), electronic text-messaging device for use in conjunction with personal digital assistants; electronic schedules, namely, personal digital assistants (PDA) and electronic notebook computers; all the aforesaid goods relating to medical data

IC 010. US 026 039 044. G & S: systems and apparatus for diagnosis and analysis in the medical field, namely, medical imaging apparatus for diagnosing medical conditions

IC 038. US 100 101 104. G & S: providing access to databases; data communication services, namely, electronic transmission of data and documents among users of computers, data streaming; telematics sending of information, transfer of data by telecommunication, communications services for the electronic transmission of data; information and consultancy relating to the aforesaid services; all the aforesaid services relating to medical data

IC 042. US 100 101. G & S: development of software for data processing in the medical and health field; IT services for the health and medical field, namely, on-site management of information technology (IT) systems of others, remote management of the information technology (IT) system of others, IT integration service, IT consulting service

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 79197746
Filing Date July 17, 2016
Current Basis 66A
Original Filing Basis 66A
Published for Opposition February 13, 2018
Registration Number 5455561
International Registration Number 1322580
Registration Date May 1, 2018
Owner (REGISTRANT) REPLY S.P.A. JOINT STOCK COMPANY ITALY Corso Francia, 110 TORINO ITALY
Attorney of Record David B. Tingey
Priority Date May 30, 2016
Description of Mark The color(s) light blue and black is/are claimed as a feature of the mark. The mark consists of the stylized word "APPHEAL" in black above the stylized word "REPLY" with the "RE" in light blue and the "PLY" in black.
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark APPHEALREPLY

Goods and Services IC 009. US 021 023 026 036 038. G & S: Software for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital departments; data processing software, namely, software for medical clinicians to electronically manage and process patient health data; computer software for file management, namely, for controlling and managing patient medical information; data processors; downloadable electronic publications in the nature of books, magazines, manuals and newsletters in the field of health; downloadable software applications for management of patient booking processes, tracking and managing patient visits and examinations and patient dismissal and transfer from hospital department for use on mobile phones; handheld electronic touch screens; interactive touch screen terminals; computers; digital devices for personal assistance, namely, personal digital assistants (PDA), electronic; text-messaging device for use in conjunction with personal digital assistants; electronic planners, namely, personal digital assistants (PDA) and electronic notebook computers; all the aforesaid goods relating to medical data

IC 010. US 026 039 044. G & S: Systems and apparatus for diagnosis and analysis in the medical field, namely, medical imaging apparatus for diagnosing medical conditions

IC 038. US 100 101 104. G & S: Providing access to databases; data communication services, namely, electronic transmission of data and documents among users of computers, data streaming; telematic sending of information, transfer of data by telecommunication, communications services for the electronic transmission of data; information and consultancy relating to the aforesaid services; all the aforesaid services relating to medical data

IC 042. US 100 101. G & S: Development of software for data processing in the medical and health field; IT services for the health and medical field, namely, on-site computer software technical support services in the nature of diagnosing computer software problems, technical consultancy relating to the use of computer hardware, monitoring of computer systems by remote access for others to ensure proper functioning, IT integration service, IT consulting service

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes ; Stick figures
 02.09.05 - Humans, including men, women and children, depicted running ; Running, humans
 04.07.03 - Geometric figures or combinations of geometric figures representing a person ; Geometric figures representing a person ; Geometric shapes forming a person ; Person formed by

geometric shapes
26.01.21 - Circles that are totally or partially shaded.

Serial Number 79236613
Filing Date November 15, 2017
Current Basis 66A
Original Filing Basis 66A
Published for Opposition March 12, 2019
Registration Number 5759932
International Registration Number 1412882
Registration Date May 28, 2019
Owner (REGISTRANT) REPLY S.P.A. JOINT STOCK COMPANY ITALY Corso Francia, 110 I-10121 TORINO ITALY
Attorney of Record Max Vern
Priority Date October 25, 2017
Description of Mark The color(s) dark blue (Pantone 316 C) and light blue (Pantone 313 C) is/are claimed as a feature of the mark. The mark consists of a design of a dark blue running stick figure with arms extended, to the right of which is the stylized wording "APPHEALREPLY" with "APPHEAL" in light blue and "REPLY" in dark blue.
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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