

ESTTA Tracking number: **ESTTA447130**

Filing date: **12/19/2011**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Intellisphere, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	666 Plainsboro Road Building 300 Plainsboro, NJ 08536 UNITED STATES		

Attorney information	Frank L. Politano K&L Gates LLP One Newark Center Tenth Floor Newark, NJ 07102 UNITED STATES frank.politano@klgates.com, christopher.barbarisi@klgates.com, justin.chan@klgates.com, bertie.ali-cooke@klgates.com, nwtrademarks@klgates.com Phone:(973) 848 4150
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Registrations Subject to Cancellation

Registration No	3927515	Registration date	03/08/2011
Registrant	Engage Healthcare Communications, LLC 241 Forsgate Drive, Suite 205A Monroe Twp., NJ 08831 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2010/01/02 First Use In Commerce: 2010/05/01 All goods and services in the class are cancelled, namely: advertising services, namely, providing advertising space in magazines, newsletters, feature reports, supplements and web sites that concern information in the fields of oncology and cancer
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Grounds for Cancellation

Genericness	Trademark Act section 23		
The mark is merely descriptive	Trademark Act section 2(e)(1)		
Registration No	3918281	Registration date	02/08/2011
Registrant	Engage Healthcare Communications, LLC 241 Forsgate Drive, Suite 205A Monroe Twp., NJ 08831 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2010/01/02 First Use In Commerce: 2010/05/01 All goods and services in the class are cancelled, namely: providing downloadable electronic newsletters in the fields of oncology and cancer

Grounds for Cancellation

Genericness		Trademark Act section 23	
Registration No	3918282	Registration date	02/08/2011
Registrant	Engage Healthcare Communications, LLC 241 Forsgate Drive, Suite 205A Monroe Twp., NJ 08831 UNITED STATES		

Goods/Services Subject to Cancellation

Class 016. First Use: 2010/01/02 First Use In Commerce: 2010/05/01
All goods and services in the class are cancelled, namely: printed publications, namely, peer-reviewed medical magazines, journals, newsletters, feature reports, monographs, and printed supplements to the foregoing in the fields of oncology and cancer

Grounds for Cancellation

Genericness		Trademark Act section 23	
Registration No	3942361	Registration date	04/05/2011
Registrant	Engage Healthcare Communications, LLC 241 Forsgate Drive, Suite 205A Monroe Twp., NJ 08831 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2010/01/02 First Use In Commerce: 2010/10/01
All goods and services in the class are cancelled, namely: online educational services, namely, providing continuing professional education courses and examinations in the fields oncology and cancer via a global computer information network; providing online information about continuing education in the fields of oncology and cancer

Grounds for Cancellation

Genericness	Trademark Act section 23
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Attachments	NW-#392373-v1-Consolidation_Petition_for_Cancellation.PDF (13 pages) (150631 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	/Frank L. Politano/
Name	Frank L. Politano
Date	12/19/2011

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

Intellisphere, LLC,)	
	)	CONSOLIDATED PETITION
Petitioner,	)	FOR CANCELLATION
)	
vs.	)	Cancellation No. _____
)	
Engage Healthcare Communications, LLC	)	Registration No. 3,927,515
	)	VALUE-BASED CANCER CARE
Respondent.	)	(Principal Register)
_____	)	Registration No. 3,918,281
	)	VALUE-BASED CANCER CARE
	)	(Supplemental Register)
	)	Registration No. 3,918,282
	)	VALUE-BASED CANCER CARE
	)	(Supplemental Register)
	)	Registration No. 3,942,361
	)	VALUE-BASED CANCER CARE
	)	(Supplemental Register)

CONSOLIDATED PETITION FOR CANCELLATION

In the matter of the following U.S. Registration numbers, each for the alleged mark VALUE-BASED CANCER CARE (hereinafter “Respondent’s Alleged Marks”), and each in the name of Engage Healthcare Communications, LLC (hereinafter “Respondent”): (1) 3,927,515 (hereinafter “Respondent’s Advertising Phrase”), for “advertising services, namely, providing advertising space in magazines, newsletters, feature reports, supplements and web sites that concern information in the fields of oncology and cancer” (hereinafter “Respondent’s Advertising Services”) in International Class 35, registered on March 8, 2011, (2) 3,918,281 (hereinafter “Respondent’s Electronic Newsletter Phrase”), for “providing downloadable

electronic newsletters in the fields of oncology and cancer” (hereinafter “Respondent’s Electronic Newsletter Services”) in International Class 9, registered on the Supplemental Register on February 8, 2011, (3) 3,918,282 (hereinafter “Respondent’s Printed Publication Phrase”), for “printed publications, namely, peer-reviewed medical magazines, journals, newsletters, feature reports, monographs, and printed supplements to the foregoing in the fields of oncology and cancer” (hereinafter “Respondent’s Printed Publication Goods”) in International Class 16, registered on the Supplemental Register on February 8, 2011, and (4) 3,942,361 (hereinafter, “Respondent’s Online Educational Services Phrase”), for “online educational services, namely, providing continuing professional education courses and examinations in the fields oncology and cancer via a global computer information network; providing online information about continuing education in the fields of oncology and cancer” (hereinafter “Respondent’s Online Educational Services”) in International Class 41, registered on the Supplemental Register on April 5, 2011; Intellisphere, LLC, a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 666 Plainsboro Road, Building 300, Plainsboro, NJ 08536 (hereinafter “Petitioner”), believes it will be damaged by the continued registration of Respondent’s Alleged Marks and hereby petitions to cancel Registration Nos. 3,927,515, 3,918,281, 3,918,282 and 3,942,361.

STANDING

1. Petitioner is a publisher and provider of specialized healthcare content for physicians, pharmacists, managed care executives, and other healthcare professionals seeking tools, techniques, and information that can help them provide better care.
2. Petitioner has a bona fide intent to use the phrase “value-based” in the term VALUE-BASED ONCOLOGY as a merely descriptive and/or generic designation in connection with printed and web-based publications in the field of oncology.
3. The registration of Respondent’s Alleged Marks is inconsistent with the equal right of Petitioner to use the phrase “value-based” in the term VALUE-BASED ONCOLOGY as a merely descriptive and/or generic designation in connection with printed and web-based publications in the field of oncology.
4. On December 7, 2011, counsel for Respondent sent to Petitioner a cease and desist letter concerning its intended use of the phrase “value-based” in the term VALUE-BASED ONCOLOGY in connection with printed and web-based publications in the field of oncology.
5. In view of the foregoing, Petitioner has a real interest in the captioned proceeding and a reasonable basis for its belief that it will suffer damage if Respondent’s Alleged Marks remain registered. In addition, Petitioner believes it will be damaged by Respondent’s Alleged Marks because when the consuming public is apprised of Respondent’s registrations, it will mistakenly believe Respondents have greater rights than the law allows and that Petitioner has lesser rights and is infringing those asserted rights of Respondents.

GROUNDS FOR CANCELLATION

For Registration No. 3,927,515

6. The phrase “value-based” is an expression that is widely used in the medical/healthcare field to identify alternatives to fee-for-healthcare services. The phrase, “value-based,” when used in conjunction with a healthcare subfield, denotes a strategic, cost/benefit-driven approach to managing aspects of healthcare based upon a foundation of empirical guidelines drawn from a wide variety of sources within the healthcare field.
7. Third parties use the phrase “value-based” as a merely descriptive designation in connection with strategic, cost/benefit-driven healthcare products and services.
8. Respondent has used Respondent’s Advertising Phrase in connection with advertising services pertaining to value-based cancer care.
9. Respondent’s Advertising Phrase immediately conveys knowledge of the features or characteristics of Respondent’s Advertising Services identified in Points 6, 7 and 8, above.
10. Respondent’s Advertising Phrase, when used in connection with Respondent’s Advertising Services, was merely descriptive of them as of the time of registration.
11. Upon information and belief, Respondent made no use of Respondent’s Advertising Phrase as an alleged trademark or service mark prior to 2010.
12. Respondent’s Advertising Phrase was devoid of secondary meaning as of the time of registration.
13. Because Respondent’s Advertising Phrase was merely descriptive with respect to Respondent’s Advertising Services as of the time of registration, the relevant customers in the marketplace did not recognize it as a source indicator of Respondent’s Advertising Services at

the time of registration and Respondent had not acquired any such market recognition at the time of registration.

14. Because Respondent's Advertising Phrase was merely descriptive and devoid of secondary meaning as of the date of registration, Registration No. 3,927,515 should be cancelled.

15. Third parties use the phrase "value-based" as a generic designation in connection with strategic, cost/benefit-driven healthcare products and services.

16. Third parties use the phrase "cancer care" as a generic designation in connection with the provision of services to patients affected by cancer.

17. Third parties use the phrase "value-based cancer care" as a generic designation for strategic, cost/benefit-driven products and services for cancer patients.

18. Respondent's Advertising Phrase is a generic name for Respondent's Advertising Services, or a portion thereof, in view of the common third party uses identified in Points 15, 16 and 17, above.

19. Respondent's Advertising Phrase was a generic name for Respondent's Advertising Services, or a portion thereof, as of the time of registration.

20. Because Respondent's Advertising Phrase is a generic name for Respondent's Advertising Services, or a portion thereof, it is incapable of functioning as a trademark or service mark with respect to Respondent's Advertising Services.

21. Because Respondent's Advertising Phrase is a generic name for Respondent's Advertising Services, or a portion thereof, Registration No. 3,927,515 should be cancelled.

For Registration No. 3,918,281

22. Petitioner repeats and re-alleges Points 1-8 above.
23. Respondent has used Respondent's Electronic Newsletter Phrase in connection with the provision of electronic newsletters pertaining to value-based cancer care.
24. Respondent's Electronic Newsletter Phrase immediately conveys knowledge of the features or characteristics of Respondent's Electronic Newsletter Services identified in Points 6, 7 and 23, above.
25. Respondent's Electronic Newsletter Phrase, when used in connection with Respondent's Electronic Newsletter Services, was incapable of distinguishing the Respondent's Electronic Newsletter Services as of the time of registration.
26. Upon information and belief, Respondent made no use of Respondent's Electronic Newsletter Phrase as an alleged trademark or service mark prior to 2010.
27. Respondent's Electronic Newsletter Phrase was devoid of secondary meaning as of the time of registration.
28. Because Respondent's Electronic Newsletter Phrase was incapable of distinguishing the Respondent's Electronic Newsletter Services as of the time of registration, the relevant customers in the marketplace did not recognize it as a source indicator of Respondent's Electronic Newsletter Services at the time of registration and it does not now serve as a source indicator and is incapable of distinguishing Respondent's Electronic Newsletter Services.
29. Because Respondent's Electronic Newsletter Phrase is incapable of distinguishing the Respondent's Electronic Newsletter Services, Registration No. 3,918,281 should be cancelled.

30. Respondent's Electronic Newsletter Phrase is a generic name for Respondent's Electronic Newsletter Services, or a portion thereof, in view of the common third party uses identified in Points 15, 16 and 17, above.

31. Respondent's Electronic Newsletter Phrase was a generic name for Respondent's Electronic Newsletter Services, or a portion thereof, as of the time of registration.

32. Because Respondent's Electronic Newsletter Phrase is a generic name for Respondent's Electronic Newsletter Services, or a portion thereof, it is incapable of functioning as a trademark or service mark with respect to Respondent's Electronic Newsletter Services.

33. Because Respondent's Electronic Newsletter Phrase is a generic name for Respondent's Electronic Newsletter Services, or a portion thereof, Registration No. 3,918,281 should be cancelled.

For Registration No. 3,918,282

34. Petitioner repeats and re-alleges Points 1-8 above.
35. Respondent has used Respondent's Printed Publication Phrase in connection with printed publications pertaining to value-based cancer care.
36. Respondent's Printed Publication Phrase immediately conveys knowledge of the features or characteristics of Respondent's Printed Publication Goods identified in Points 6, 7 and 35, above.
37. Respondent's Printed Publication Phrase, when used in connection with Respondent's Printed Publication Goods, was incapable of distinguishing the Respondent's Printed Publication Goods as of the time of registration.
38. Upon information and belief, Respondent made no use of Respondent's Printed Publication Phrase as an alleged trademark or service mark prior to 2010.
39. Respondent's Printed Publication Phrase was devoid of secondary meaning as of the time of registration.
40. Because Respondent's Printed Publication Phrase was incapable of distinguishing the Respondent's Printed Publication Goods as of the time of registration, the relevant customers in the marketplace did not recognize it as a source indicator of Respondent's Printed Publication Goods at the time of registration and it does not now serve as a source indicator and is incapable of distinguishing Respondent's Printed Publication Goods.
41. Because Respondent's Printed Publication Phrase is incapable of distinguishing Respondent's Printed Publication Goods, Registration No. 3,918,282 should be cancelled.

42. Respondent's Printed Publication Phrase is a generic name for Respondent's Printed Publication Goods, or a portion thereof, in view of the common third party uses identified in Points 15, 16 and 17, above.

43. Respondent's Printed Publication Phrase was a generic name for Respondent's Printed Publication Goods, or a portion thereof, as of the time of registration.

44. Because Respondent's Printed Publication Phrase is a generic name for Respondent's Printed Publication Goods, or a portion thereof, it is incapable of functioning as a trademark or service mark with respect to Respondent's Printed Publication Goods.

45. Because Respondent's Printed Publication Phrase is a generic name for Respondent's Printed Publication Goods, or a portion thereof, Registration No. 3,918,282 should be cancelled.

For Registration No. 3,942,361

46. Petitioner repeats and re-alleges Points 1-8 above.
47. Respondent has used Respondent's Online Educational Services Phrase in connection with online educational services pertaining to value-based cancer care.
48. Respondent's Online Educational Services Phrase immediately conveys knowledge of the features or characteristics of Respondent's Online Educational Services identified in Points 6, 7 and 47, above.
49. Respondent's Online Educational Services Phrase, when used in connection with Respondent's Online Educational Services, was incapable of distinguishing the Respondent's Online Educational Services as of the time of registration.
50. Upon information and belief, Respondent made no use of Respondent's Online Educational Services Phrase as an alleged trademark or service mark prior to 2010.
51. Respondent's Online Educational Services Phrase was devoid of secondary meaning as of the time of registration.
52. Because Respondent's Online Educational Services Phrase was incapable of distinguishing Respondent's Online Educational Services as of the time of registration, the relevant customers in the marketplace did not recognize it as a source indicator of Respondent's Online Educational Services at the time of registration and it does not now serve as a source indicator and is incapable of distinguishing Respondent's Online Educational Services.
53. Because Respondent's Online Educational Services Phrase is incapable of distinguishing Respondent's Online Educational Services, Registration No. 3,942,361 should be cancelled.

54. Respondent's Online Educational Services Phrase is a generic name for Respondent's Online Educational Services, or a portion thereof, in view of the common third party uses identified in Points 15, 16 and 17, above.

55. Respondent's Online Educational Services Phrase was a generic name for Respondent's Online Educational Services, or a portion thereof, as of the time of registration.

56. Because Respondent's Online Educational Services Phrase is a generic name for Respondent's Online Educational Services, or a portion thereof, it is incapable of functioning as a trademark or service mark with respect to Respondent's Online Educational Services.

57. Because Respondent's Online Educational Services Phrase is a generic name for Respondent's Online Educational Services, or a portion thereof, Registration No. 3,942,361 should be cancelled.

WHEREOF, Petitioner prays that this Consolidated Petition for Cancellation be granted and that Registration Nos. 3,927,515, 3,918,281, 3,918,282 and 3,942,361 be cancelled accordingly.

Petitioner hereby appoints Frank L. Politano and Christopher Barbarisi, members of the law firm K&L Gates LLP, and Justin G. Chan, an associate at the law firm of K&L Gates LLP, to act as attorneys for Petitioner herein, with full power to prosecute said Petition, to transact all relevant business with the United States Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this Consolidated Petition for Cancellation.

Petitioner requests that the pertinent filing fee be deducted from deposit account 080570.

Respectfully submitted,

INTELLISPHERE, LLC

Dated: 12/19/2011



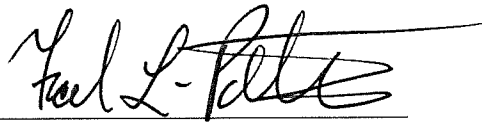
Frank L. Politano
Christopher Barbarisi
Justin G. Chan
K&L Gates LLP
Attorneys for Petitioner
One Newark Center
Tenth Floor
Newark, New Jersey 07102
Telephone No.: (973) 848-4000
Facsimile No.: (973) 848-4001
E-mail: frank.politano@klgates.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the attached document titled **CONSOLIDATED PETITION FOR CANCELLATION** was sent by first class mail, postage pre-paid to:

Brian Petrequin, Esq.
LeClairRyan
One Riverfront Plaza
16th Floor
1037 Raymond Boulevard
Newark, NJ 07102

on this 19th day of December, 2011

A handwritten signature in black ink, appearing to read "Frank L. Politano", written over a horizontal line.

Frank L. Politano