

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: December 8, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Healthplex, Inc.

v.

Genesis Health System

Cancellation No. 92060507

Norman H. Zivin and Laura A. Alos of Cooper & Dunham LLP
for Healthplex, Inc.

April A. Price of Lane & Waterman LLP for Genesis Health System.

Before Ritchie, Kuczma and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Genesis Health System (“Respondent”) owns a registration for the mark HEALTHPLEX, in standard characters, for “Medical Services” (the “Registration”).¹ In its petition for cancellation, Healthplex, Inc. (“Petitioner”) alleges prior use of an identical mark for “dental health insurance services” including “providing group and individual dental health insurance plans,” and pleads ownership of a registration for

¹ Registration No. 4622462, issued October 14, 2014.

the mark for “dental health insurance administration.”² As grounds for cancellation, Petitioner alleges that use of Respondent’s mark would be likely to cause confusion with Petitioner’s mark. In its answer, Respondent denies the salient allegations in the petition for cancellation, and asserts several “affirmative defenses” which merely amplify its denials.

The Record

The record includes the pleadings, and, by operation of Trademark Rule 2.122(b), the file of the involved Registration. In addition, the parties stipulated to, 7 TTABVue,³ and the Board approved, 8 TTABVue, the introduction of testimony by declaration. The parties introduced the following trial evidence:

Testimonial declaration of Bruce H. Safran DDS, one of Petitioner’s founders, and its former Vice President and Secretary, and the exhibits thereto. 11 TTABVue, 12 TTABVue.

Respondent’s Notice of Reliance (“NOR”) on third-party registrations, Internet printouts and Petitioner’s responses to certain of Respondent’s interrogatories. 13 TTABVue.

Testimonial declaration of Kenneth Croken, Respondent’s Vice President of Corporate Communications, Marketing and Advocacy and the exhibits thereto. 14 TTABVue.

The parties disagree about whether Petitioner properly introduced its pleaded Registration into evidence. Petitioner did not take advantage of Trademark Rule

² Registration No. 3824608, issued July 27, 2010.

³ Citations to the record reference TTABVue, the Board’s online docketing system. Specifically, the number preceding “TTABVue” corresponds to the docket entry number, and any number(s) following “TTABVue” refer to the page number(s) of that particular docket entry where the cited materials appear.

2.122(d)(1) by attaching to its petition a printout of the Registration from an Office database showing its current status and title. Instead, Petitioner introduced the registration through Dr. Safran's December 1, 2015 declaration, in which he testified that Petitioner filed an application to register HEALTHPLEX on December 14, 2009, and the resulting registration issued on July 27, 2010 and "now is incontestable." 11 TTABVue 5, 13. Dr. Safran's declaration includes as an exhibit a "soft" or "plain" undated copy of the Registration certificate.

Respondent argues that this was insufficient to make the pleaded Registration of record. We disagree.

In its January 26, 2015 Answer, Respondent admitted that the allegation that Petitioner "is the owner" of the Registration "is consistent with the records of the United States Patent and Trademark Office," but claimed to be "without knowledge or information sufficient to form a belief as to the truth of the underlying allegations contained in those records." 5 TTABVue 3. This is sufficient to find that Petitioner owns the Registration, because we by definition rely in part on Office records to determine ownership, at least in the absence of a counterclaim or evidence of nonownership. As for status, Respondent's admission was made less than two years ago and Dr. Safran's testimony that the Registration *is* now "incontestable," which necessarily means it was subsisting at the time of the testimony, was given one year ago, and during trial. Rarely would evidence of status be introduced meaningfully later than that. Moreover, given the overall nature of Dr. Safran's testimony, we find it appropriate in this case, to the extent Respondent's admission and Dr. Safran's

testimony are otherwise insufficient, to “infer a claim” that Petitioner owned its pleaded Registration and that the Registration was valid on the date of the testimony. *See Citigroup Inc. v. Capital City Bank Group Inc.*, 94 USPQ2d 1645, 1653 (TTAB 2010), *aff’d*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011) (citations omitted) (inferring “a claim that opposer is the owner of the registrations because of the nature of the testimony”); *cf. Royal Hawaiian Perfumes, Ltd. v. Diamond Head Prods. of Haw., Inc.*, 204 USPQ 144, 146 (TTAB 1979) (status and title copy of registration prepared two months prior to filing of opposition is reasonably contemporaneous). Therefore, we find that Petitioner’s pleaded Registration is of record. We hasten to add, however, that even if it was not, our substantive analysis of Petitioner’s claim and the ultimate outcome of this proceeding would be the same.

Standing

Petitioner’s pleaded Registration establishes its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). And even if Petitioner’s Registration was not of record, Respondent has not contradicted Dr. Safran’s convincing testimony that Petitioner has continuously used its mark for dental health insurance services since 1984. 11 TTABVue 4-9, 14-101, 127-129, 245-246, 252-258. That use also establishes Petitioner’s standing. *Giersch v. Scripps Networks, Inc.*, 90 USPQ2d 1020, 1022 (TTAB 2009) (“Petitioner has established his common-law rights in the mark DESIGNED2SELL, and has thereby established his standing to bring this proceeding.”); *Syngenta Crop Prot. Inc. v. Bio-Chek LLC*, 90 USPQ2d 1112, 1118 (TTAB 2009) (testimony that opposer uses its mark “is sufficient

to support opposer's allegations of a reasonable belief that it would be damaged ..." where opposer alleged likelihood of confusion).

Priority

As for priority, the filing date of the application resulting in Petitioner's pleaded registration is earlier than the filing date of the involved Registration, and earlier than Respondent's claimed use of its mark. 14 TTABVue 4; see *Brewski Beer Co. v. Brewski Brothers Inc.*, 47 USPQ2d 1281, 1284 (TTAB 1998) (a party "may rely on its registration for the limited purpose of proving that its mark was in use as of the application filing date"). Moreover, even if Petitioner's registration was not of record, Petitioner has established its prior use of HEALTHPLEX for dental health insurance services. 11 TTABVue 4-9, 14-101, 127-129, 245-246, 252-258. While Respondent contends that Petitioner has not established common law priority because "there is no evidence of services rendered under the mark," 22 TTABVue 8, Respondent's argument is belied by Dr. Safran's testimony that Petitioner: (1) was founded "to provide dental services to subscribing companies, governmental entities and consumers, and to administer dental health insurance plans;" (2) "runs many dental programs in connection with organizations offering other health care plans to their members and employees;" and (3) "now is the largest independent provider of dental plan services in the New York metropolitan area." 11 TTABVue 4, 6, 7.

Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In*

re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). Petitioner bears the burden of establishing that there is a likelihood of confusion by a preponderance of the evidence. *Cunningham*, 55 USPQ2d at 1848; *West Florida Seafood, Inc. v. Jet Restaurants, Inc.*, 31 F.3d 1122, 31 USPQ2d 1660, 1662 (Fed. Cir. 1994). Indeed, “a presumption of validity attaches to” Respondent’s involved registration. *Id.*; *Cerveceria Centroamericana S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 13 USPQ2d 1307, 1309 (Fed. Cir. 1989); *Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1105-06 (TTAB 2007). We consider the likelihood of confusion factors about which the parties introduced evidence or presented argument, and treat the remaining factors as neutral.

The Marks

The marks are identical. This factor weighs heavily in favor of finding a likelihood of confusion. Furthermore, because the marks are identical, the degree of similarity between the services that is required to support a finding of likelihood of confusion is reduced. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002); and *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001).

The Services and Channels of Trade

While the amount of evidence Petitioner must introduce to establish a relationship between the services is reduced, in this case in which Petitioner pleads only likelihood of confusion, rather than dilution, Petitioner's burden to establish a relationship between the parties' services is not eliminated. Indeed, in particular cases, the dissimilarity of the goods and services and their channels of trade may be dispositive. *See e.g. Han Beauty Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1560 (Fed. Cir. 2001) ("While it must consider each [*du Pont*] factor for which it has evidence, the Board may focus its analysis on dispositive factors, such as similarity of the marks and relatedness of the goods."); *The North Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1233 (TTAB 2015) ("The difference in the goods and services is dispositive on the issue of likelihood of confusion."); *In re HerbalScience Group LLC*, 96 USPQ2d 1321, 1325 (TTAB 2010) (despite nearly identical marks, "there is no evidence of overlap between the channels of trade for and purchasers of applicant's and registrant's products. Accordingly, the examining attorney has failed to prove that applicant's mark, if used for its identified goods, is likely to cause confusion with the cited registration"); *Morgan Creek Productions Inc. v. Foria International Inc.*, 91 USPQ2d 1134, 1143 (TTAB 2009) (finding no likelihood of confusion despite nearly identical marks, stating "the dissimilarity of the goods due to their nature, the manners in which they are sold or distributed, and the circumstances under which consumers would encounter them, is a dispositive factor in this case").

While Petitioner is not relieved of its burden and must establish a relationship between the services, we keep in mind that the services need not be identical or even competitive in order to support a finding of likelihood of confusion. It is enough that they are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used, to a mistaken belief that Petitioner's and Respondent's services originate from or are in some way associated with the same source or that there is an association between the sources of the services. *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1432 (TTAB 1993); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *Schering Corp. v. Alza Corp.*, 207 USPQ 504, 507 (TTAB 1980); *Oxford Pendaflex Corp. v. Anixter Bros. Inc.*, 201 USPQ 851, 854 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). The issue is not whether purchasers would confuse the services, but rather whether there is a likelihood of confusion as to the source of the services. *In re Rexel Inc.*, 223 USPQ 830, 832 (TTAB 1984). It is settled that we must compare the services identified in Respondent's involved Registration to those identified in Petitioner's pleaded registration and for which it has established prior use. See *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *Octocom Systems, Inc. v. Houston Computers Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

Here, Petitioner failed to introduce any *evidence* that the parties' services are related. Instead, Petitioner relies on mere *argument*, stated in two slightly different ways:

Respondent's identified "medical services" is a "broad and all-encompassing description that must be read to include all types of medical services, including dental health services and/or healthcare insurance services."

Petitioner's "services relate to dental care, a subset of medical care and services. [Petitioner's] website states '[s]ince 1977 it has been our vision that all people understand the connection between oral health and overall health ... prevention is the right way to improve your oral health and your overall health' ... A representative of [Respondent] is quoted as stating that the company's focus is 'not only going to be on healthcare, but on wellness for the entire community' ... [Respondent]'s advertisements [emphasize] its focus on 'population health' with 'expanded services' and state that its facility 'will continue [to expand] with more phases to come.'"

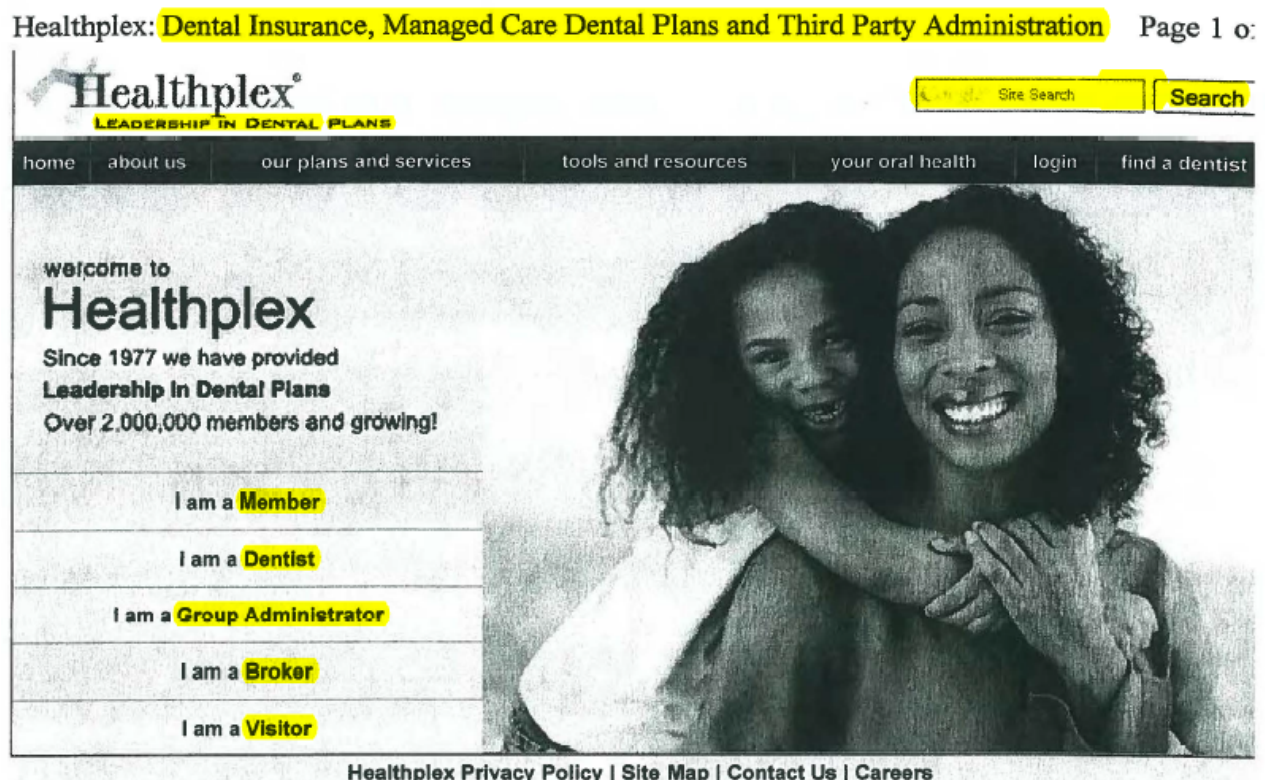
18 TTABVue 16-18. We are not persuaded by this unsupported argument.

In the absence of any evidence that dental care or dental services are a subset of medical services, we decline to make such a finding. While both medical and dental services relate in the broadest sense to human health, that is not enough by itself to establish that medical and dental services are related.

More importantly, even assuming that "medical services" encompasses "dental care," Petitioner has not established that it provides dental care. Rather, Petitioner's registration is for "dental health *insurance administration*," and it has established common law use of its mark for dental health insurance services and providing group and individual dental health insurance plans. These are all insurance services, rather

than any type of patient care, whether medical or dental. Therefore, *on their face*, the services identified in the involved Registration appear to have no relationship to Petitioner's, and are targeted to different customers for different reasons. Furthermore, as explained in more detail below, Petitioner has not *demonstrated* that there is in fact a relationship between its services and Respondent's, and there is no reason apparent from the record why the customers of one party would be exposed to the other's services or mark.

In fact, while the record includes no evidence that the services are related or that the trade channels overlap, it contains ample evidence of the *lack* of a relationship. For example, Petitioner's website has pages for members, dentists, group administrators, brokers and visitors interested in dental insurance, but *not dental patients seeking to interact directly with a dentist*:



11 TTABVue 83. Similarly, Petitioner's brochures and promotional materials are focused exclusively on insurance-related services:



Dr. Stephen J. Cuchel, Chairman of the Board of Healthplex (right) and Dr. Martin Kane, President.

HEALTHPLEX . . . THE DENTAL PLAN SPECIALISTS

Healthplex, Inc. is a rapidly growing publicly-owned corporation focused solely on the development and administration of dental healthcare programs.

The company's management and directors represent a broad range of professionals from dentistry, business, labor and insurance.

This expertise, together with a staff of skilled computer systems and service personnel, provides Healthplex with its unique knowledge, insight and capabilities in dental plan administration.

Through its ownership and service agreements with several insurance companies and dental health organizations, the company offers the widest range of dental health coverage in the industry today.

THE EXTENSIVE RANGE OF HEALTHPLEX DENTAL PROGRAMS

- ☐ TRADITIONAL INDEMNITY PLANS
- ☐ CAPITATION PLANS
- ☐ ASO OR ADMINISTRATIVE SERVICES ONLY FOR SELF-INSURED PLANS

More importantly, Healthplex can provide a single client group with many combinations of the above plans. These can be customized to meet the needs and demands of a particular client and then offered at very economical rates, with cost-containment assured.

CAPITATION . . . THE PREVENTIVE INCENTIVE

Dental capitation, by definition, is an alternative to the traditional fee-for-service method of payment.

This innovative type of dental plan provides more coverage at lower costs to both employers and employees. In addition, it offers rate stabilization over longer periods of time. The cost of these plans is about 30 percent less than comparable fee-for-service plans.

It has been universally acknowledged that it is far less costly to prevent dental disease and maintain a disease free state than it is to treat a diseased condition. Capitation is a program that encourages this kind of dental health because the professional provider is rewarded by bringing the patient to a state of good dental health quickly and maintaining this healthful condition.

The capitation program provides dental services through a network of neighborhood professionals and full service dental centers. These dental offices accept a fixed monthly payment for each subscriber who selects their office.

The plan provides a wide range of coverage with no deductible or maximum benefit limitation. Nearly all dental treatment is fully covered at no cost to the employees or members.

Under traditional indemnity insurance, a dentist would be compensated only when his patients required dental treatment. Under the Healthplex capitation program, a dentist's rewards increase as the patient's dental health improves.



Dental professionals are selected by Healthplex not only for their abilities but also for their commitment to the company's concept of dental healthcare.

CAPITATION PLAN PROCESSING

- ☐ Capitation Control
- ☐ Patient Eligibility Control
- ☐ Specialist Cost Control
- ☐ Emergency Authorizations
- ☐ Site Quality Control
- ☐ Patient Provider Relocations
- ☐ Plan Eligibility Control
- ☐ Specialist Referral Control

A MAJOR BREAKTHROUGH IN COST-EFFECTIVE DENTAL CARE

10
major reasons
why you need
HEALTHPLEX,
a managed care system dedicated exclusively
to dentistry and run by dental professionals:

- ☐ An unsurpassed cost-containment record over the past decade.
- ☐ Rate guarantees available for one, two or three years.
- ☐ No supporting Life or Major Medical Insurance required.
- ☐ You decide on benefit levels, deductibles and limitations.
- ☐ We handle all paperwork.
- ☐ Healthplex covers most dental procedures with major emphasis on prevention.
- ☐ All dental work closely monitored by Healthplex professionals.
- ☐ Healthplex programs work with existing benefits at no additional cost.
- ☐ Healthplex assures compliance with COBRA, ERISA and Taft-Hartley requirements.
- ☐ Healthplex designs all types of dental programs:
 - Traditional insurance
 - HMO/capitation type coverage
 - Administration Services Only for self-insured organizations.
 - Preferred Provider Programs
 - Direct Reimbursement Programs

Send today for our free brochure on
“THE COST-CRISIS IN DENTAL CARE”
Simply return the enclosed business reply card to Healthplex
or call us in New York at 800-468-0601 or in New Jersey at 800-468-0600

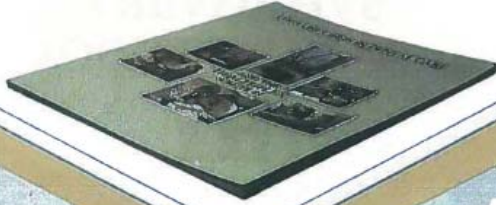


Exhibit 4

Healthplex v. Genesis
Cancellation No. 92060507

H0000105

Id. at 15.

WHEN INSURANCE BEGINS

How you become eligible

Except as it appears below, all employees represented by the Liquor Salesmens' Union Local No.2 are eligible on the plan effective date provided they are employed by an employer required to make contributions for them. Employees who are classified as apprentices under the Collective Bargaining Agreement, will become eligible on the first day of the month following the completion of the apprenticeship period.

The employees and the trustees of the Insurance Fund shall be eligible for benefits under the plan. For the purpose of eligibility, Local 2 shall be considered as a contributing employer and may cover its employees by making the appropriate monthly contributions for them.

Dependents Defined

If you become insured, your eligible dependents are:

1. your wife or husband except if you are legally separated or divorced,
2. your unmarried children, under age 19,
3. your unmarried children over 19 years of age and under age 23 provided they are full-time students.

Note: If your child is mentally retarded or physically handicapped when his insurance would terminate due to his age, insurance may be continued under the circumstances described in the Group Policy. For complete information consult your Union within 90 days before your child's insurance terminates for the appropriate form to continue coverage. With respect to orthodontic coverage, your unmarried children under age 18 will be covered.

Becoming Eligible

Each dependent will be insured beginning with the later of these dates:

1. the day on which your insurance begins,
2. the date he becomes an eligible dependent.

Any dependent who is confined to a hospital (except for birth) when he would normally become insured, will become insured only upon discharge from the hospital.

DENTAL EXPENSE ADMINISTRATION Provided by HEALTHPLEX, INC.

If an individual incurs Approved Dental Expense, the Fund will pay benefits up to the Maximum Allowance specified in the Schedule of Dental Allowances. In most instances there will be no out of pocket expense for services performed in an approved HEALTHPLEX PARTICIPATING DENTAL FACILITY. Upon request the Insurance Trust Fund Office will provide you with the names of participating HEALTHPLEX dentists. The benefit for any specific procedure shall be independent of the number of dentists engaged or consulted in the planning or execution of the procedure.

Approved Dental Expenses. The term "Approved Dental Expense" means expense incurred by the individual for treatment received by him for any of the procedures listed in the Schedule of Dental Allowances for an amount equal to the lesser of (a) the actual expense, and (b) the applicable amount specified in such Schedule. In addition, those procedures not listed in the Schedule of Dental Allowances shall be considered to be Approved Dental Expenses to the extent that they are not enumerated in the Excluded Expenses itemized below. An Approved Dental Expense must have been incurred while the individual is insured for this benefit. Dental Expenses are deemed to be incurred on the date on which the services or supply which gives rise to the expense is rendered or obtained.

Coordination of Benefits. If you or an eligible dependent is entitled to dental benefits for services covered under our Dental Program through any other group program, the benefits described in this booklet may be reduced so that the total benefits received through all sources will not exceed 100% of the actual charges incurred for covered dental services.

Pretreatment Review. Pretreatment Review is a system designed to give you and your dentist a better understanding of the Covered Expenses payable under this plan before dental service are provided. When charges for a proposed dental service or a series of dental services are expected to exceed \$200.00, your dentist should submit a claim form to HEALTHPLEX showing the treatment plan and fees. HEALTHPLEX will then use this Pretreatment Review to determine the benefits which will be payable for each dental service according to the terms of the dental plan and notify your dentist accordingly. When the treatment plan is finished, your dentist will resubmit the claim form for payment showing the date each service was performed.

If this Pretreatment Review process is not followed, payment will be determined by HEALTHPLEX taking into account alternate procedures or services which may result in the payment of a lesser amount, based on acceptable standards of dental practice.

Id. at 31.

WHAT IS HEALTHPLEX?

HEALTHPLEX is a managed care system that designs and administers dental benefit plans through various licensed or certified dental service organizations including DENTCARE DELIVERY SYSTEMS, INC., INTERNATIONAL HEALTHCARE SERVICES, INC. and GARDEN STATE DENTAL SERVICE CORPORATION.

Our purpose is simple. It is to provide members with access to a wide range of dental benefits, with a special emphasis on preventive dentistry. In this way, we work to hold down major dental problems—and their high cost—by assuring that highly qualified care is available to you on both a regular and an “as-needed” basis.

The PREMIER DENTAL PROGRAM, designed by HEALTHPLEX, offers two types of Dental Coverage, the Comprehensive Option and the Standard Reimbursement Option.

“COMPREHENSIVE OPTION”

Under the Comprehensive Option, you are asked to select a dentist from the Affiliated Provider List. This dentist will provide you with all necessary care, referring to a wide range of specialists should it become necessary. It is important to note that under this option, care provided by a non-participating dentist is NOT covered, unless arranged for by HEALTHPLEX.

All our affiliated dental providers undergo a rigorous selection process, meeting rigid requirements as to professional standards, office cleanliness, sufficient and qualified staff and modern equipment. Panel locations have been selected with a view to provide coverage in nearly all geographical areas.

Advantages:

- Eliminates out-of-pocket expenses in most cases.
- No forms to complete.
- Specialty services covered and arranged.
- All services by appointment, emergency services provided.
- Computerized monitoring of your on-going treatment.

In cases of emergency, you are covered for a maximum of two visits per member per contract year for services rendered by an affiliated provider. However, if you have had regular check-ups, or are undergoing treatment, the two visit limitation will be waived. If the emergency occurs out-of-area, or in the unlikely event you are unable to reach an affiliated provider, you will be reimbursed up to \$25 per family member per contract year, upon presentation of bills for palliative care rendered by a non-affiliated dentist until treatment can be obtained from your affiliated provider.

In the event you are unable to reach your own affiliated dentist, HEALTHPLEX provides 24 hour emergency service operators.

EMERGENCY REFERRAL - 24 HOUR SERVICE

Id. at 21.

WHAT IS DENTCARE

This is a prepaid dental benefit program offered by Dencare Delivery Systems, Inc., a not-for-profit dental insurance company licensed by the New York State Insurance Department.

Our purpose is simple. It is to provide members with access to a wide range of dental benefits, with a special emphasis on preventive dentistry. In this way, we work to hold down major dental problems – and their high cost – by assuring that highly qualified care is available to you on both a regular and an emergency basis.

DENTCARE offers two types of coverage for dental services: the Managed Care Option and the FEHB Standard Reimbursement Benefit.

FEHB BENEFIT (STANDARD REIMBURSEMENT)

Under this option, there is a \$50.00 per person annual deductible along with a \$500 annual maximum. The member and covered family members may select any licensed dentist anywhere; the amount of payment is the same, regardless of the dentist chosen. You will be reimbursed only for the Diagnostic and Preventive services listed in this brochure at the amounts shown. You are responsible to your dentist should there be any difference between Healthplex's payments and the dentist's charges. This benefit requires the use of claim forms. After services have been received, return the completed form signed by both the dentist and the member to Dencare. Benefits for covered services will not be paid directly to the dentist. Plan allowances will be paid only to the subscriber who is responsible for the dentist's full charges.

MANAGED CARE OPTION

Under the Managed Care Option, you are asked to select one dentist for you and your family from the affiliated Provider List. This dentist will provide you with all necessary care, referring to a wide range of specialists should it become necessary. We request that you wait until you receive your eligibility card (except of course in case of emergency) before making appointments. It is important to note that under this option, care provided by a non-participating dentist is not covered, unless arranged for by DENTCARE. A request to change your dentist must be in writing and only the member can make the change.

All our affiliated dental providers undergo a rigorous selection process, meeting rigid requirements as to professional standards, office cleanliness, sufficient and qualified staff and modern equipment. Panel locations have been selected with a view to provide coverage in nearly all geographical areas.

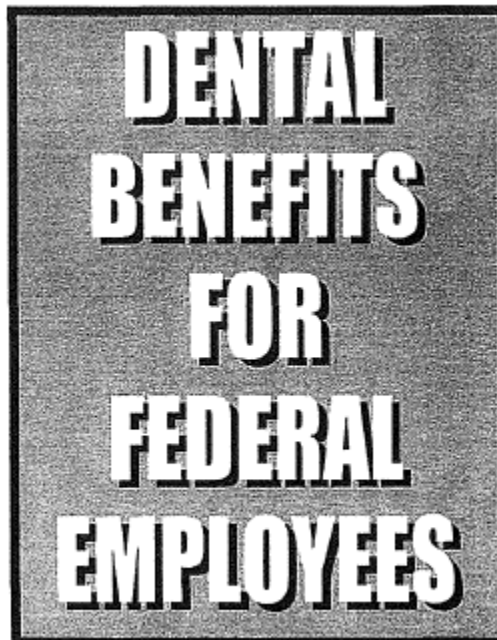
ADVANTAGES:

- Eliminates out-of-pocket expenses in most cases.
- No forms to complete.
- Specialty services covered by participating specialists.
- No deductibles or maximums

In the event you are unable to reach your own affiliated dentist, DENTCARE provides 24 hour emergency service operators.

EMERGENCY REFERRAL - 24 HOUR SERVICE (800) 468-0600

This brochure contains a general description of your Dental Care Program for your use as a convenient reference. All benefits are governed by the provisions of your group's contract.



Offered Through

Vytra 
HEALTH PLANS

**DENTCARE DELIVERY
SYSTEMS, INC.**
333 EARLE OVINGTON BLVD. SUITE 300
UNIONDALE, NY 11553-3608
(800) 468-0600 Customer Service
A NOT-FOR-PROFIT DENTAL INSURANCE COMPANY

Administered By:

 **Healthplex**
Leadership in Dental Plans
www.dentcaredeliverysystems.org
www.healthplex.com

B-2086 Print 3/06 Rev. 1/95

Exhibit 14

Id. at 34.

This evidence reveals that Petitioner bills itself as a “rapidly growing publicly-owned corporation *focused solely on the development and administration of dental*

healthcare programs.” Id. at 45 (emphasis added). Its dental programs include “traditional indemnity plans,” “capitation plans” and ASO or administrative services only for self-insured plans.” *Id.*⁴ Petitioner’s capitation plans are claimed to provide “more coverage at lower cost” than indemnity insurance. *Id.* at 46. Its focus is on “cost-containment,” rates and other features of dental insurance, and targets its promotional materials to employers and other buyers of insurance. *Id.* at 15-17, 20-101, 253-257. References to and listings of “dental providers” are limited to identifying those participating in Petitioner’s networks or insurance plans.

There is simply no evidence that Petitioner itself provides any type of medical care, or for that matter dental care. Instead, it is in the insurance business, while Respondent provides medical care. The qualifications and skills required of the providers of these services and the needs of the relevant consumers are so different that there is no basis for finding a relationship between the parties’ services.

Petitioner’s argument that there is a relationship is in some ways reminiscent of arguments made in *North Face Apparel*. There, we rejected the opposer’s argument that its clothing is related to bicycle parts merely because the clothing could be worn while riding a bicycle. We also rejected the argument that consumers would assume that opposer offers bicycle parts merely because it sponsors bicycle races. *North Face Apparel*, 116 USPQ2d at 1230-31. We also found that consumers would not perceive

⁴ Respondent introduced evidence that “administrative services only” or “ASO” means “[a] group health self-insurance program for large employers wherein the employer assumes responsibility for all the risk, purchasing only administrative services from the insurer.” 13 TTABVue 71.

opposer as the source of vehicles, merely because its mark was placed on a recreational vehicle making a promotional road trip, which opposer featured in a promotional blog. *Id.* at 1231. Similarly, in this case there is little likelihood that consumers would perceive Respondent as a provider of dental health insurance or related services merely because it provides medical services.

In fact, Petitioner introduced evidence about Respondent's use of its mark which makes this clear. Specifically:

NOW OPEN

YOUR HEALTH CARE PARTNER

2140 53rd Ave., Bettendorf

Bringing one-stop access to:

- 17 Primary Care Providers
- Lab and Imaging
- Convenient Care walk-in clinic

To find a physician accepting patients, call (563) 421-5700 or visit www.genesishealth.com/BettHealthPlex

PROVIDERS AT GENESIS HEALTHPLEX, BETTENDORF:

■ Steve Aguilar, MD	■ Jason Hagemann, DO
■ Kurt Andersen, MD	■ Sheena Harker, DO
■ Ryan Boone, MD	■ Mark Hermanson, MD
■ Mary Campbell, MD	■ Robert Knudson, MD
■ Christopher Crome, MD	■ Joanne Miller, MD
■ Myra Daniel, MD	■ Stacie Salowitz, MD
■ Andrew Edwards, MD	■ Catherine Schierbrock, MD
■ Jennifer George, FNP	■ Karl Treiber, DO
■ Deborah Haas, ARNP	

GENESIS
HealthPlex
Bettendorf

www.genesishealth.com

11 TTABVue 248. This brochure references “physicians” and “primary care providers,” and lists a number of doctors, but there are no dentists or dental services identified. Similarly:



Id. at 249. This sign references “physician” offices, centers for “surgery” and “digestive health” and medical specialties such as “orthopedics” and “gastroenterology,” but not dentists or dental care. This factor weighs heavily against a finding of likelihood of confusion.

As for channels of trade, there is also no evidence of any overlap. To the contrary, according to Dr. Safran, Petitioner’s customers seek to provide dental insurance to others, and include “private employers,” “unions and governmental employers,” “schools and health exchanges” and “health maintenance organizations.” 11 TTABVue 6. By contrast, Respondent’s customers “are patients in need of medical care” 14 TTABVue 5. The difference in trade channels is in some ways reminiscent of *In re HerbalScience Group*. There, the applicant sought to register MINDPOWER for botanical, plant, chemical and herbal extracts for use in manufacturing pharmaceuticals and similar products, but registration was refused based on a registration of MIND POWER RX for dietary and nutritional supplements. Despite

evidence that the goods were related, we reversed the refusal to register because of differences between the channels of trade – the applicant’s goods were by definition intended for manufacturers, while the registrant’s were intended for ordinary consumers who would purchase them in drug and health food stores. *In re HerbalScience Group*, 96 USPQ2d at 1324. Similarly, here, Petitioner’s services are by definition intended for those who provide dental insurance for others, or for individuals who need dental insurance, while Respondent’s medical services target ordinary patients seeking treatment for or other help with medical issues:



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The Future of Healthcare

Genesis HealthPlex, Moline to open Nov. 4

Think about the inconveniences of healthcare we've all experienced.

There's trying to find your way through the maze of hallways...standing too long at the registration desk while the receptionist handles interruptions... spending more time in the waiting room than exam room...and, then leaving your doctor's office only to have to drive somewhere else to get a prescription filled, an x-ray taken, or lab work.

The new \$14 million Genesis HealthPlex, Moline has been built and designed to take those inconveniences away.



Moline HealthPlex Building

1 of 3

The 52,000-square-foot building at 3900 28th Ave. Drive will represent the future of healthcare when it opens Nov. 4, with "one-stop shopping" for outpatient services, a centralized registration area, intuitive way-finding, work flow improvements to decrease patient wait time, and a dedication to wellness. It offers a park-like setting with walking trails and outdoor exercise equipment.

14 TTABVue 12.⁵ Given these differences, and the absence of any evidence of a relationship between the channels of trade, this factor also weighs against a finding of likelihood of confusion.⁶

The Strength of Petitioner's Mark

Respondent introduced evidence that several third-parties own registrations for marks including the term HEALTHPLEX⁷:

HEALTHPLEX (Stylized), Reg. No. 2377607, for “health and sports club services.”



, with SPORTS CLUB disclaimed, Reg. No. 3067187, for “sports club services” and “health spa services, namely, health and wellness of the body and spirit offered at a sports club.”⁸

⁵ Even if we were to agree with Petitioner that there is a relationship between “medical services” and Petitioner’s services, here, as in *HerbalScience Group*, the differences between the channels of trade are sufficient by themselves for a finding of no likelihood of confusion.

⁶ Petitioner’s argument that the “normal” channels of trade for its services are the same as those for Respondent’s services is not well taken, given the differences between dental insurance services and medical services and the purchasers thereof. While we acknowledge that purchasers of dental health insurance services, like everyone else, will likely desire or require “medical services” from time to time, that is not enough to establish that the services or channels of trade are related. *Coach Services, Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012); *Sports Authority Michigan Inc. v. PC Authority Inc.*, 63 USPQ2d 1782, 1794 (TTAB 2002) (“We think it a fit subject for judicial notice that purchasers of computer hardware and software also would be purchasers of, at least, footwear and apparel, and perhaps sporting goods and equipment. There is nothing in the record, however, to suggest that merely because the same consumer may purchase these items, such consumer would consider the goods as likely to emanate from the same source or have the same sponsorship.”). The question we are faced with here is whether consumers “would consider the goods to emanate from the same source.” *Coach Services*, 101 USPQ2d at 1723; *7-Eleven, Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007). The evidence establishes that they would not.

⁷ We have not included several cancelled registrations.

⁸ Registration Nos. 2377607 and 3067187 have common ownership.

HEALTHPLEX SOLUTIONS, in standard characters with SOLUTIONS disclaimed, Reg. No. 3187061, for “business consulting, management, planning and supervision.”

HEALTHPLEX, Reg. No. 1984274, for “real estate management services” and “real estate development services.”

13 TTABVue 19-66. However, these registrations do not establish that Petitioner’s mark is weak, because the marks are not registered for Petitioner’s services, Respondent’s services, or related services, and in any event there are only three owners of the four registrations. This factor is neutral.

Balancing the Factors/Conclusion

While the marks are identical, there is no evidence of a relationship between Petitioner’s and Respondent’s services, or their channels of trade. These factors are dispositive. *Han Beauty*, 57 USPQ2d at 1560; *North Face Apparel Corp.*, 116 USPQ2d at 1233; *Morgan Creek Productions*, 91 USPQ2d at 1143.

Decision: The petition to cancel is dismissed.