

To: CommCare Corporation (mbreaux@millinglaw.com)
Subject: TRADEMARK APPLICATION NO. 77638426 - COMMCARE - CommCare
Sent: 3/16/2009 2:11:03 PM
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/638426

MARK: COMMCARE

77638426

CORRESPONDENT ADDRESS:

MARIE BREAU
MILLING BENSON WOODWARD LLP
909 POYDRAS ST STE 2300
NEW ORLEANS, LA 70112-1010

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: CommCare Corporation

CORRESPONDENT'S REFERENCE/DOCKET NO :

CommCare

CORRESPONDENT E-MAIL ADDRESS:

mbreaux@millinglaw.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 3/16/2009

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3281526. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

The Court in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997); In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

Comparison of the Marks

When determining whether there is a likelihood of confusion under Section 2(d), the question is not whether people will confuse the marks, but rather whether the marks will confuse the people into believing that the goods they identify emanate from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

The applicant's mark, COMMCARE, is similar to the registrant's mark, RX COMMCARE PHARMACY, and will lead to consumer confusion. Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and "21" CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

Where the marks of the respective parties are identical or highly similar, then the commercial relationship between the goods or services of the respective parties must be analyzed carefully to determine whether there is a likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355 (TTAB 1983); TMEP §1207.01(a).

Comparison of the Goods and Services

When determining whether there is a likelihood of confusion, all circumstances surrounding the sale of the goods and/or services are considered. *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers and the degree of similarity between the marks and between the goods and/or services. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning is sufficient to find a likelihood of confusion. In comparing the goods and/or services, it is necessary to show that they are related in some manner. *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); TMEP §§1207.01 *et seq.*

The applicant has applied to register COMMCARE for "Nursing homes and providing long term and senior care facilities."

The registered mark, RX COMMCARE PHARMACY, is for "Retail pharmacy services."

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and/or services as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, namely pharmacy services and nursing care, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Accordingly, because confusion as to source is likely, registration is refused under Trademark Act Section 2 (d) based on likelihood of confusion.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

/Sani Khouri/
Examining Attorney
Law Office 110
571-272-5884- Phone
571-273-9110- Fax

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

DESIGN MARK

Serial Number

77022894

Status

REGISTERED

Word Mark

RX COMM CARE PHARMACY

Standard Character Mark

No

Registration Number

3281526

Date Registered

2007/08/21

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

NS3 Health, LLC LIMITED LIABILITY COMPANY FLORIDA 1689 Forum Place
West Palm Beach FLORIDA 33401

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Retail
pharmacy services. First Use: 1996/10/01. First Use In Commerce:
1997/01/02.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RX" and "PHARMACY"
APART FROM THE MARK AS SHOWN.

Description of Mark

The mark consists of a green and white Rx logo and the green lettering
"Commcare Pharmacy".

Colors Claimed

The color(s) green and white is/are claimed as a feature of the mark.

Filing Date

2006/10/17

Print: Mar 16, 2009

77022894

Examining Attorney
WHITTAKER-BROWN, TRACY



COMM CARE

PHARMACY

DESIGN MARK

Serial Number

76238579

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Registration Number

2624006

Date Registered

2002/09/24

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(2) DESIGN ONLY

Owner

Danbury Health Systems, Inc. CORPORATION CONNECTICUT 24 Hospital Avenue Danbury CONNECTICUT 06810

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Comprehensive Health Care Services, namely, inpatient, outpatient and emergency medical services; medical and surgical hospital services; diagnostic imaging and radiology services; skilled nursing facility services; family care, namely, child care, nursing, health care; and family medical practice services; home health agency services, namely, home health registered or practical nurses; drug rehabilitation services; physical therapy services; medical laboratory services; medical clinical research services; dialysis services; wellness services, namely, personal counseling in the field of health and providing information about health; primary health care services; medical clinical services; physician services and physician managed health care services. First Use: 1975/09/01. First Use In Commerce: 1975/09/01.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Pharmacy services. First Use: 1975/09/01. First Use In Commerce: 1975/09/01.

Filing Date

2001/04/07

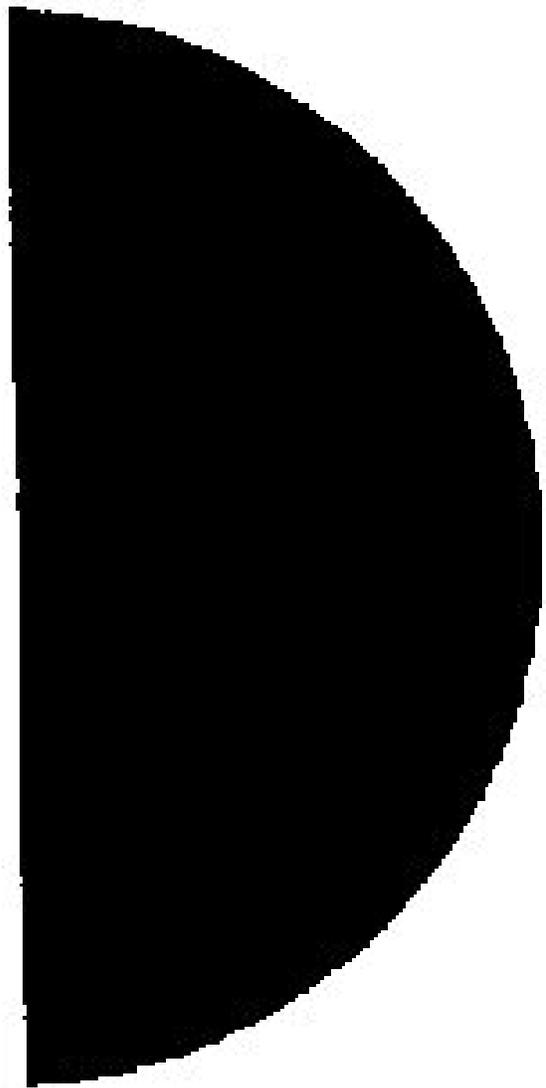
Examining Attorney

Print: Mar 16, 2009

76238579

MACIOL, GENE

Attorney of Record
Francis J. Duffin



DESIGN MARK

Serial Number

76299095

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Registration Number

2739614

Date Registered

2003/07/22

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(2) DESIGN ONLY

Owner

Resurrection Health Care CORPORATION ILLINOIS 7435 West Talcott Avenue
Suite 520 Chicago ILLINOIS 60631

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Retail
pharmacy services. First Use: 1983/01/01. First Use In Commerce:
1983/01/01.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Health care
services, namely, providing outpatient facilities; surgery centers;
nursing and physical rehabilitation facilities; home health care;
emergency medical facilities; mental rehabilitation facilities;
retirement and assisted living facilities; and child care centers.
First Use: 1983/01/01. First Use In Commerce: 1983/01/01.

Filing Date

2001/08/13

Examining Attorney

RIRIE, VERNA BETH

Attorney of Record

Tricia L. Schulz



DESIGN MARK

Serial Number

76374221

Status

REGISTERED

Word Mark

FRONT PORCH

Standard Character Mark

No

Registration Number

2702142

Date Registered

2003/04/01

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Interxnet Group, The 501(C)(3) CORPORATION CALIFORNIA 2835 N. Naomi Street Burbank CALIFORNIA 91504

Goods/Services

Class Status -- ACTIVE. IC 037. US 100 103 106. G & S: PLANNING, LAYING OUT AND DEVELOPMENT OF RESIDENTIAL AND COMMERCIAL COMMUNITIES. First Use: 2002/04/23. First Use In Commerce: 2002/04/23.

Goods/Services

Class Status -- ACTIVE. IC 044. US 100 101. G & S: HOME HEALTHCARE SERVICES, NURSING HOME SERVICES. First Use: 2002/04/23. First Use In Commerce: 2002/04/23.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: RETAIL PHARMACY SERVICES. First Use: 2002/04/23. First Use In Commerce: 2002/04/23.

Goods/Services

Class Status -- ACTIVE. IC 043. US 100 101. G & S: RETIREMENT LIVING COMMUNITIES AND PROVIDING ASSISTED LIVING FACILITIES. First

Print: Mar 16, 2009

76374221

Use: 2002/04/23. First Use In Commerce: 2002/04/23.

Filing Date

2002/02/21

Examining Attorney

LEIPZIG, MARC

Attorney of Record

Sabrina C. Stavish

FRONT PORCH

DESIGN MARK

Serial Number

76597355

Status

REGISTERED

Word Mark

ACCREDO NOVA FACTOR BIOPHARMACEUTICAL SERVICES

Standard Character Mark

No

Registration Number

3096148

Date Registered

2006/05/23

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Accredo Health Group, Inc. CORPORATION DELAWARE 1640 Century Center Parkway, Suite 101 Memphis TENNESSEE 38134

Goods/Services

Class Status -- ACTIVE. IC 044. US 100 101. G & S: Nursing care specializing in the treatment, prevention and control of chronic diseases. First Use: 2005/04/01. First Use In Commerce: 2005/04/01.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Retail pharmacy services specializing in the treatment and control of chronic diseases. First Use: 2004/04/12. First Use In Commerce: 2004/04/12.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BIOPHARMACEUTICAL SERVICES" APART FROM THE MARK AS SHOWN.

Filing Date

2004/06/15

Examining Attorney

Print: Mar 16, 2009

76597355

GARTNER, JOHN

Attorney of Record
Grady M. Garrison



DESIGN MARK

Serial Number

76608111

Status

REGISTERED

Registration Number

3091937

Date Registered

2006/05/16

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(2) DESIGN ONLY

Owner

Riverview Hospital UNIT OF COUNTY GOVERNMENT INDIANA 395 Westfield Road Noblesville INDIANA 46060

Goods/Services

Class Status -- ACTIVE. IC 044. US 100 101. G & S: Health care services, namely medical clinics, hospitals, medical services, medical imaging services, medical testing, nursing care, nursing homes, emergency medical assistance, health maintenance organization, home health care, hospices, maintaining medical files, managed health care, medical counseling, medical imaging, obstetric and gynecology, physical therapy, occupational therapy, ophthalmology, physician services, providing health information, physical rehabilitation, and psychiatric consultation. First Use: 2004/08/01. First Use In Commerce: 2004/08/01.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: pharmacy services. First Use: 2004/08/01. First Use In Commerce: 2004/08/01.

Filing Date

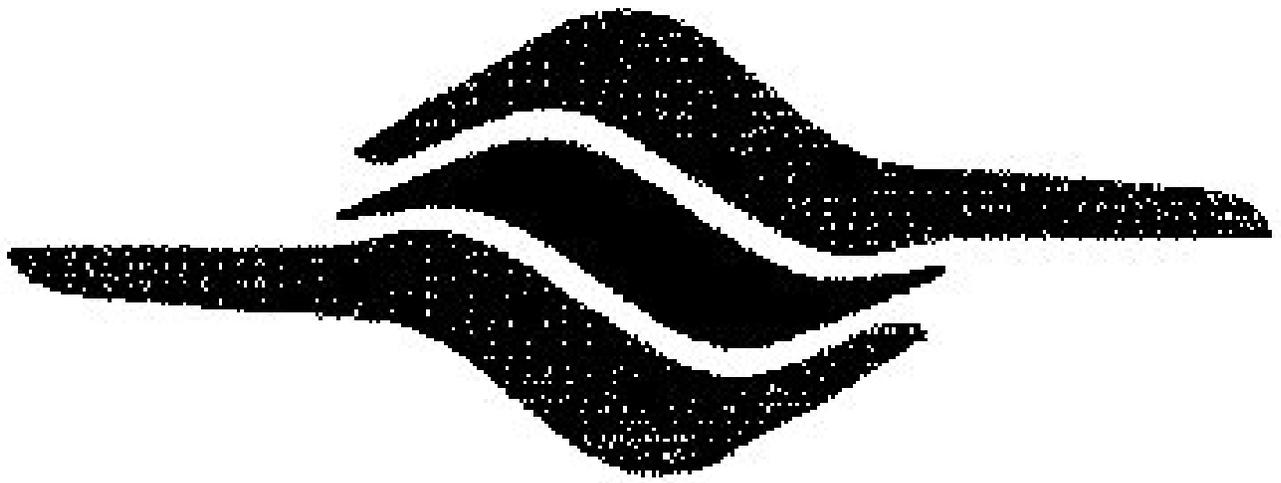
2004/08/16

Examining Attorney

CLAYTON, CHERYL

Attorney of Record

Alastair J. Warr



To: CommCare Corporation (mbreaux@millinglaw.com)
Subject: TRADEMARK APPLICATION NO. 77638426 - COMMCARE - CommCare
Sent: 3/16/2009 2:11:07 PM
Sent As: ECOM110@USPTO.GOV
Attachments:

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 3/16/2009 FOR
APPLICATION SERIAL NO. 77638426

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77638426&doc_type=OOA&mail_date=20090316 (or copy and paste this URL into the address field of your browser), or visit <http://tportal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable [response time period](#). Your response deadline will be calculated from **3/16/2009**.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the **ABANDONMENT** of your application.**