



the same field as CarePayment. Nevertheless, CP continues to use its infringing trademarks and has ignored CarePayment's demands to stop its infringing activity.

4. CP's use of these infringing trademarks is likely to cause, and will cause, confusion, mistake, and deception. CarePayment therefore brings this action to enjoin CP's unlawful infringement and to recover money damages to compensate CarePayment for the damages it has suffered because of CP's conduct.

### **PARTIES**

5. CarePayment is an Oregon corporation with its principal place of business in Nashville, Tennessee.

6. Upon information and belief, CP is a Nevada corporation with an office at 5005 West Royal Lane, Suite 100, Irving, Texas 75063.

### **JURISDICTION AND VENUE**

7. Pursuant to 28 U.S.C. § 1121, § 1331, and § 1338(a), this Court has federal question subject matter jurisdiction over CarePayment's federal claims arising under Sections 32 and 43 of the Lanham Act.

8. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental subject matter jurisdiction over CarePayment's state claims because they are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

9. Pursuant to principles of general and specific jurisdiction, this Court has personal jurisdiction over CP because CP regularly conducts business in this district, maintains regular and established places of business in this district, and has committed acts of trademark infringement and unfair competition in this district.

10. Pursuant to 28 U.S.C. § 1391, venue is proper in this district and division.

## **FACTS**

### **CarePayment and its Trademarks**

11. Founded in 2004, CarePayment's mission is to bridge the affordability gap between healthcare providers and patients.

12. CarePayment offers financing options for patients to pay their medical bills.

13. CarePayment's financing options are interest-free. CarePayment offers low monthly payments, which are flexible and can be adjusted if new charges are added. Because CarePayment is not a collection agency, its financing products and services do not directly impact patients' credit scores.

14. CarePayment partners with more than 1,000 hospitals, physician practices, and ancillary service providers nationwide to provide its financing products and services to those providers' patients. Through a search engine on CarePayment's website, patients can search for providers who participate in CarePayment's financing products and services.

15. By providing attractive financing products and services and compassionate patient engagement, CarePayment increases collections and helps providers collect more revenue.

16. Since its founding, CarePayment has helped more than one million patients pay their medical bills.

17. CarePayment currently owns seven trademarks that are federally registered with the United States Patent & Trademark Office ("USPTO").

18. Those trademarks include three trademarks that incorporate the word, "CAREPAYMENT," including:

- a. On July 13, 2010, CarePayment obtained federal Registration No. 3,817,445 for the trademark, "CAREPAYMENT," in standard characters, in International Class ("IC") 36 in connection with healthcare financing services. This registration is

based on first use in commerce by at least November 2004 and is in full force and effect. A true and accurate copy of the registration certificate for this trademark (the “CAREPAYMENT Word Mark”) is attached as Exhibit 1.

- b. On February 4, 2014, CarePayment obtained federal Registration No. 4,477,497 for the mark:



in IC 36 in connection with healthcare financing services. This registration is based on first use in commerce by at least June 30, 2010 and is in full force and effect. A true and accurate copy of the registration certificate for this trademark (the “CAREPAYMENT & Design Mark”) is attached as Exhibit 2.

- c. On May 12, 2015, CarePayment obtained federal Registration No. 4,734,368 for the mark:



in IC 36 in connection with healthcare financing services. This registration is based on first use in commerce by at least May 2014 and is in full force and effect. A true and accurate copy of the registration certificate for this trademark (the “CAREPAYMENT+ & Design Mark”) is attached as Exhibit 3.

19. These three marks are collectively referred to as the “CAREPAYMENT Marks.”

20. All of the CAREPAYMENT Marks are registered on the Principal Register, have been registered for more than five years, have had their incontestability affidavits acknowledged by the USPTO, and are incontestable.

21. CarePayment also owns valid and protectable common law trademark rights for the CAREPAYMENT Marks.

22. Since at least the first use dates listed on the respective registration certificates, CarePayment has continuously used the CAREPAYMENT Marks to promote, identify, and distinguish its products and services.

23. CarePayment has invested substantial time and money in marketing and promoting the CAREPAYMENT Marks.

24. Through CarePayment's longstanding and continuous use and substantial investment in marketing and promotion, the public has come to associate the CAREPAYMENT Marks with CarePayment and with the products and services CarePayment provides.

25. CarePayment has acquired substantial goodwill in the CAREPAYMENT Marks. As a result, the CAREPAYMENT Marks have become invaluable and irreplaceable assets of CarePayment.

**CP's Infringement of the CAREPAYMENT Marks**

26. According to publicly available entity filings, CP was incorporated on February 18, 2021.

27. On its website, CP states that its vision, which it refers to as the "CarePay™ project," is to "improv[e] the healthcare experience by applying technology that enables consumers to identify and select the best cost options for receiving healthcare services, while helping medical practitioners reach and engage with those potential client patients."

28. CP operates an internet search engine, which CP describes as "A CarePay™ Product." CP claims the search engine allows patients to search a database of more than 2 million medical providers and their known billing information.

29. Upon information and belief, CP offers several other products related to healthcare financing and affordability, including:

- a. A symptom tracker, which CP claims can diagnose patients with 94% accuracy;
- b. A virtual wallet, which patients can use to pay medical bills; and
- c. A quote tool, in which CP negotiates prices on patients' behalf.

30. According to a recent press release, CP has pending patents for two additional products:

- a. A ranking system that rates health care providers with a numerical score; and
- b. A system for patients to upload medical bills into an algorithm that determines fair or unfair charges.

31. CP uses CAREPAY (the "CP Word Mark") to describe each of these products and services.

32. CP also uses the following stylized version of its mark to describe its products and services. Similar to the CarePayment+ & Design Mark, this mark incorporates a plus sign as a prominent design element:



(the "CP+ & Design Mark") (collectively, the "CP Marks").

33. Upon information and belief, CP adopted and continues to use the CP Marks despite having full knowledge that its use is likely to cause confusion, mistake, or deception with the CAREPAYMENT Marks.

34. Specifically, on July 1, 2019, the USPTO refused registration of the CP Word Mark, citing a likelihood of confusion with the CAREPAYMENT Marks.

35. Notwithstanding this refusal, CP continues to use the CP Marks to describe its products and services.

36. Upon learning of CP's infringing use, CarePayment sent two cease-and-desist letters to CP and to its counsel of record at the USPTO. CP has not substantively responded to either letter.

37. Upon information and belief, CP intends to continue using the CP Marks unless enjoined by this Court.

**FIRST CAUSE OF ACTION**  
**Trademark Infringement – 15 U.S.C. § 1114**

38. CarePayment realleges and incorporates by reference each of the above paragraphs.

39. CarePayment owns the CAREPAYMENT Marks.

40. CarePayment has current, valid, federal registrations for the CAREPAYMENT Marks.

41. Since at least the dates listed on the respective registration certificates, CarePayment has continuously used the CAREPAYMENT Marks in commerce.

42. The CAREPAYMENT Marks are legally protectible.

43. The CAREPAYMENT Marks are incontestable.

44. CP has used the CP Marks in commerce in connection with the sale, offering for sale, distribution, and advertising of its products and services.

45. CarePayment did not authorize or consent to CP's use of the CP Marks.

46. CP's use of the CP Marks is likely to cause confusion, mistake, or deception as to the source, affiliation, connection, or association of the parties' products and services.

47. CP's use of the CP Marks constitutes trademark infringement in violation of 15 U.S.C. § 1114.

48. CP is willfully infringing CarePayment's CAREPAYMENT Marks despite having actual knowledge of CarePayment's rights in the marks and actual knowledge that such use is likely to cause confusion, mistake, or deception.

49. CP's infringement is causing CarePayment to suffer irreparable harm for which CarePayment has no adequate remedy at law.

50. CP's infringement will continue and escalate unless enjoined by this Court.

51. CP's infringement has proximately caused CarePayment to suffer damages.

52. CarePayment is entitled to injunctive relief and to recover CP's profits, actual damages, enhanced profits and damages, a reasonable royalty, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, and 1117 and all other applicable law.

**SECOND CAUSE OF ACTION**  
**Unfair Competition – 15 U.S.C. § 1125(a)**

53. CarePayment realleges and incorporates by reference each of the above paragraphs.

54. CarePayment owns the CAREPAYMENT Marks.

55. The CAREPAYMENT Marks are legally protectible.

56. CP has used the CP Marks in commerce in connection with the sale, offering for sale, distribution, and advertising of its products and services.

57. CarePayment did not authorize or consent to CP's use of the CP Marks.

58. CP's use of the CP Marks is likely to cause confusion, mistake, or deception as to the source, affiliation, connection, or association of the CP's and CarePayment's respective products and services.

59. CP's use of the CP Marks constitutes unfair competition in violation of 15 U.S.C. § 1125.



60. CP's conduct is willful because it is using the CP Marks despite having actual knowledge of CarePayment's superior rights in the CAREPAYMENT Marks and actual knowledge that such use is likely to cause confusion, mistake, or deception.

61. CP's conduct is causing CarePayment to suffer irreparable harm for which CarePayment has no adequate remedy at law.

62. CP's conduct will continue and escalate unless enjoined by this Court.

63. CP's conduct has proximately caused CarePayment to suffer damages.

64. CarePayment is entitled to injunctive relief and to recover CP's profits, actual damages, enhanced profits and damages, a reasonable royalty, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1116, 1117, and 1125 and all other applicable law.

**THIRD CAUSE OF ACTION**  
**Common Law Trademark Infringement**

65. CarePayment realleges and incorporates by reference each of the above paragraphs.

66. CarePayment owns valid and legally protectible common law rights in the CAREPAYMENT Marks.

67. CP has used the CP Marks in commerce in connection with the sale, offering for sale, distribution, and advertising of its products and services.

68. CarePayment did not authorize or consent to CP's use of the CP Marks.

69. CP's use of the CP Marks is likely to cause confusion, mistake, or deception as to the source, affiliation, connection, or association of the parties' products and services.

70. CP's use of the CP Marks constitutes common law trademark infringement.

71. CP's infringement is causing CarePayment to suffer irreparable harm for which CarePayment has no adequate remedy at law.

72. CP's infringement will continue and escalate unless enjoined by this Court.

73. CP's infringement has proximately caused CarePayment to suffer damages.

74. CarePayment is entitled to injunctive relief and to recover CP's profits, actual damages, a reasonable royalty, costs, and reasonable attorneys' fees under all applicable law.

75. Upon information and belief, CP acted with malice and gross negligence. CarePayment is therefore entitled to exemplary damages.

**FOURTH CAUSE OF ACTION**  
**Common Law Unfair Competition**

76. CarePayment realleges and incorporates by reference each of the above paragraphs.

77. CarePayment owns valid and legally protectible common law rights in the CAREPAYMENT Marks.

78. CP has used the CP Marks in commerce in connection with the sale, offering for sale, distribution, and advertising of its products and services.

79. CarePayment did not authorize or consent to CP's use of the CP Marks.

80. CP's use of the CP Marks is likely to cause confusion, mistake, or deception as to the source, affiliation, connection, or association of the parties' products and services.

81. CP's use of the CP Marks constitutes common law unfair competition.

82. CP's conduct is causing CarePayment to suffer irreparable harm for which CarePayment has no adequate remedy at law.

83. CP's conduct will continue and escalate unless enjoined by this Court.

84. CP's conduct has proximately caused CarePayment to suffer damages.

85. CarePayment is entitled to injunctive relief and to recover CP's profits, actual damages, a reasonable royalty, costs, and reasonable attorneys' fees under all applicable law.

86. Upon information and belief, CP acted with malice and gross negligence. CarePayment is therefore entitled to exemplary damages.

**PRAYER FOR RELIEF**

WHEREFORE, CarePayment respectfully requests that the Court enter judgment in its favor as follows:

- A. Finding CP is liable for trademark infringement and unfair competition in violation of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a); and trademark infringement and unfair competition under the common law;
- B. Finding CP's violations of the Lanham Act were willful;
- C. Finding that this is an exceptional case pursuant to 15 U.S.C. § 1117;
- D. Entering an injunction enjoining CP and its agents, employees, representatives, partners, joint venturers, and anyone acting on their behalf or in concert with them from:
  - i. Advertising, marketing, or selling any products or services under the CP Marks or any other mark that is likely to cause confusion with the CAREPAYMENT Marks;
  - ii. Using in commerce or facilitating the use in commerce of the CP Marks, or any other phrase, term, mark, trade name, logo, or design that falsely represents that, or is likely to confuse, mislead, or deceive the public to believe that products or services advertised, marketed, sold, or offered for sale CP originate from CarePayment, or that such goods or services have been sponsored, approved, or licensed by or associated with CarePayment, or are in some way connected to or affiliated with CarePayment;
  - iii. Doing or allowing any act or thing which is likely to injury CarePayment's business reputation or goodwill;

- iv. Engaging in any acts of federal, state, or common law trademark infringement, false designation of origin, or unfair competition that would damage or injury CarePayment; and
  - v. Participating or assisting in the above activities;
- E. Requiring CP, pursuant to 15 U.S.C. § 1116(a), to file with the Court and serve on CarePayment within 30 days after service of an injunction order as requested herein, a report in writing under oath setting forth in detail the manner and form in which they have complied with the Court's order;
- F. Ordering an accounting of all the profits realized by CP from their infringement of the CAREPAYMENT Marks;
- G. Awarding monetary relief to CarePayment in the form of an accounting and payment by CP of its profits it made from its unlawful activities, pursuant to 15 U.S.C. §§ 1114, 1117(a), and other applicable law;
- H. Awarding monetary relief to CarePayment in the form of an award of actual, compensatory, increased, exemplary, and exemplary damages in an amount to be proven at trial;
- I. Awarding monetary relief to CarePayment in the form of a reasonable royalty for CP's use of marks confusingly similar to the CAREPAYMENT Marks, pursuant to 15 U.S.C. § 1117(a) and other applicable law;
- J. Awarding CarePayment treble damages pursuant to 15 U.S.C. § 1117 and other applicable law;
- K. Awarding CarePayment its costs, including reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117 and other applicable law;

L. Awarding CarePayment both pre-judgment and post-judgment interest; and

M. Awarding CarePayment such other and further relief as the Court may deem just and proper.

DATED: March 7, 2022.

**BRADLEY ARANT BOULT CUMMINGS LLP**

/s/ Robert L. Sayles

Robert L. Sayles (TX Bar No. 24049857)

David C. Miller (TX Bar No. 24110114)

[rsayles@bradley.com](mailto:rsayles@bradley.com)

[dmiller@bradley.com](mailto:dmiller@bradley.com)

Fountain Place

1445 Ross Avenue, Suite 3600

Dallas, TX 75202

Telephone: (214) 257-9800

Fax: (214) 939-8787

Timothy L. Capria (TN Bar No. 033235)

Richard Swor (TN Bar No. 037640)

[tcapria@bradley.com](mailto:tcapria@bradley.com)

[rswor@bradley.com](mailto:rswor@bradley.com)

1600 Division Street, Suite 700

Nashville, Tennessee 37203

Telephone: (615) 252-2358

Fax: (615) 248-3011

*Pro hac vice forthcoming*

Matthew S. DeAntonio (NC Bar No. 39625)

[mdeantonio@bradley.com](mailto:mdeantonio@bradley.com)

214 N. Tryon Street, Suite 3700

Charlotte, North Carolina 28202

Telephone: (704) 338-6115

Fax: (704) 338-6083

*Pro hac vice forthcoming*