

ESTTA Tracking number: **ESTTA65336**

Filing date: **02/07/2006**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | | | |
|---------|--|-------------|----------|
| Name | MortgageAmerica, Inc | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 1800 International Park Drive Suite 100 Birmingham, AL 35243 UNITED STATES | | |

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| Attorney information | Robert J. Veal Smith Gambrell & Russell, LLP 1230 Peachtree St. NE Suite 3100 Atlanta, GA 30309 UNITED STATES rjveal@sgrlaw.com Phone:404-815-3765 |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 78495102 | Publication date | 01/10/2006 |
| Opposition Filing Date | 02/07/2006 | Opposition Period Ends | 02/09/2006 |
| Applicants | WHITE, APRIL R. 5431 AUBURN BLVD #181 SACRAMENTO, CA 95841 UNITED STATES SEUELL, GARRETT 5431 AUBURN BLVD #181 SACRAMENTO, CA 95841 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 036. All goods and services in the class are opposed, namely: MORTGAGE PROCUREMENT FOR OTHERS |
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| Attachments | 20060207025110.PDF (6 pages) |
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|-----------|----------------|
| Signature | /rjveal/ |
| Name | Robert J. Veal |
| Date | 02/07/2006 |

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

In the matter of Trademark Application:

Serial No. : 78/495102

Applicant : Garrett Seuell and April R. White

Filed : October 5, 2004

Mark : MORTGAGES OF AMERICA HOMEOWNERSHIP IS MORE THAN A
PRIVILEGE, IT'S YOUR RIGHT and design.

Goods : MORTGAGE PROCUREMENT FOR OTHERS

Published in the *Official Gazette*
on January 10, 2006

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|------------------------------------|---|-----------------|
| MortgageAmerica, Inc., |) | |
| a Delaware Corporation, |) | |
| |) | |
| Opposer, |) | |
| |) | Opp. No.: _____ |
| v. |) | |
| |) | |
| Garrett Seuell and April R. White, |) | |
| |) | |
| Applicant. |) | |
| |) | |

NOTICE OF OPPOSITION

MortgageAmerica, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter "Opposer"), believes that it will be damaged by registration of the mark "MORTGAGES OF AMERICA HOMEOWNERSHIP IS MORE THAN A PRIVILEGE, IT'S YOUR RIGHT" and design, as shown in the trademark

application having the Serial No. 78/495102 ("Application"), and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is the owner of U.S. Trademark Registration No. 1231335, filed on November 20, 1978 and registered on March 15, 1983, for the trademark MortgageAmerica, Inc. as used with Mortgage Banking Services. The date of first use of the mark is at least as early as September 29, 1978, and the date of first use of the mark in commerce is at least as early as September 29, 1978. The mark is incontestable under the provisions of Section 15 of the Lanham Act.

2. Since at least as early as 1978, Opposer has used the MORTGAGEAMERICA, INC. mark in commerce in connection with Mortgage Banking Services.

3. The use of Opposer's mark has been valid and continuous since the date of first use, and Opposer's mark has not been abandoned.

4. By virtue of its long use of the MORTGAGEAMERICA, INC. mark, the excellence of the goods bearing the MORTGAGEAMERICA, INC. mark, the substantial sales of services advertised under the MORTGAGEAMERICA, INC. mark in the United States since 1978, and the efforts and expenditures of considerable sums for promotional activities for the MORTGAGEAMERICA, INC. services,

Opposer has developed considerable good will in connection with the MORTGAGEAMERICA, INC. services.

5. Notwithstanding Opposer's rights in and to its Federally registered MORTGAGEAMERICA, INC. mark, Applicant filed an intent-to-use application for registration of the mark MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT. for "Mortgage procurement for others " on October 10, 2004, more than 25 years after Opposer filed its application, and more than 20 years after the date Opposer's Registration No. 1231335 was granted.

6. Opposer clearly has superior rights in and to its Federally registered MORTGAGEAMERICA, INC. mark because its usage of the mark predates Applicant's filing date of its intent-to-use application for more than twenty five years..

7. Opposer has made substantial use of the MORTGAGEAMERICA, INC. mark for its services for a significant period of time prior to Applicant's filing date of October 10, 2004, including Opposer's internet presence as well as traditional media advertising.

8. The distinctive portion of Applicant's trademark is "Mortgages of America," the remainder of the mark being merely a laudatory slogan. The distinctive portion of Opposer's mark is MortgageAmerica which is completely subsumed in Applicants mark.

9. Applicant's trademark, MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT., is confusingly similar to Opposer's trademark, MORTGAGEAMERICA, INC., so that when the Applicant's mark is applied to mortgage procurement services that are similar to those provided by Opposer, it so nearly resembles, and in fact imitates, the Opposer's mark as to be likely to cause confusion, mistake, and deception as to the source and origin of Applicant's services identified by the MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT mark.

10. Applicant's mark MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT. is confusingly similar to Opposer's aforesaid mark in sound, appearance, meaning, and commercial impression.

11. Applicant's mark is deceptively similar to Opposer's mark so as to cause confusion and lead to deception as to the origin of Applicant's services advertised under Applicant's mark. As such, Applicant's use and registration of its mark will inevitably lead to confusion, to mistake, or to deception of purchasers within the meaning of Section 2(d) of the Trademark Act, all to Opposer's grave and irreparable damage.

12. The services recited in Opposer's registration include Mortgage Banking Services in class 36. The services recited in the present application are plastic tile flooring, which also

fall within International Class 036. The similarity of the services further demonstrates that there would be a likelihood of such confusion, mistake and deception by Applicant's use of its mark with such services.

13. Upon information and belief, Applicant has not begun using the mark MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT. with any services.

14. Applicant's use of MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT. with services related to that of Opposer's Federally registered MORTGAGEAMERICA, INC. mark will provide a similar commercial impression as Opposer's mark.

15. If Applicant is permitted to use and register its mark, MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT., for the services specified in the application, confusion in the trade resulting in damage and injury to Opposer would be caused by reason of the similarity between Applicant's mark and Opposer's mark. Persons familiar with Opposer's mark would be likely to confuse Applicant's services as a service, sold, or sponsored by Opposer.

16. In addition to the harm identified in paragraph 15, any defect, objection, or fault that is found with Applicant's services marked under the MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT. mark would necessarily

reflect badly upon and significantly injure the reputation which Opposer has established for its services.

17. If Applicant is permitted to register its mark, the registration would give it a *prima facie* exclusive right to use of the MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT. mark. Such registration would damage and injure Opposer.

18. By reason of the foregoing, Opposer will be damaged by the issuance of a registration of the MORTGAGES OF AMERICA. HOMEOWNERSHIP IS MORE THAN A PRIVILEGE. IT'S A RIGHT. mark to the Applicant.

WHEREFORE, Opposer respectfully prays that the present opposition be sustained and that the registration sought by the Applicant be refused.

Respectfully submitted,

/rjveal/

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Dated: February 7, 2006