



# TTAB

6070/00226/A-1 & 6070/00226/B-1

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

UNIVERSAL AMERICAN CORP. by  
change of name from UNIVERSAL  
AMERICAN FINANCIAL CORP.<sup>1</sup>

OPPOSER

v.

LAWTON PRINTING, INC.  
APPLICANT

Opposition No.: 91179933  
(Serial No. 78/795,258)

Opposition No.: 91179963  
(Serial No. 78/795,335)

### MOTION TO CONSOLIDATE AND MOTION FOR EXTENSION OF TIME OF DISCOVERY PERIOD AND TRIAL DATES

Universal American Corp., through its attorneys, moves the Trademark Trial and Appeal Board for an order consolidating Opposition No. 91179933 with Opposition No. 91179963 under Rule 42(a) of the Federal Rules of Civil Procedure based on the following:

1. Universal American Corp. is the owner of Registration No. 2,432,877 for "LIVING STRATEGIES" dated October 16, 1998.

2. Universal American Corp. has been, and is now using the "LIVING STRATEGIES" mark and name in interstate commerce in connection with services in the field of elder adult housing and care needs, namely, consultation, assessment of individuals' needs, care plan development and evaluation, identification of appropriate facilities and placement of individuals, care program setup and implementation, and care management. Said uses have been valid and continuous since prior to Lawton Printing, Inc.'s date of first use for the mark "SENIOR LIVING STRATEGIES" Serial No.

<sup>1</sup> Opposer has just recently changed its corporate name to Universal American Corp. from Universal American Financial Corp. Documents reflecting this change are in the process of being secured for recordation purposes.



12-12-2007

78/795,335 and "SENIOR LIVING STRATEGIES" Serial No. 78/795,258 and have not been abandoned.

3. These opposition proceedings involve common questions of law and fact. For example, both proceedings involve the identical marks. Each of the opposed applications involve the marks "SENIOR LIVING STRATEGIES and Design." Opposer has opposed the registration of both of these applications due to their similarity under Section 2(d) with Opposer's Registration No. 2,432,877 covering the mark "LIVING STRATEGIES" and Opposer's common law "LIVING STRATEGIES" mark. Both proceedings involve virtually identical pleadings. *See S. Industries v. Lamb -Weston, Inc.*, 45 USPQ2d 1297 (TTAB 1997).

4. The services of the Applicant as described in each of its applications, though different, when considered are each closely related, if not identical, to the various services and products offered by Opposer. Also, many of the services and products offered by Opposer under its LIVING STRATEGIES mark and name are likely to be directed to and be used and purchased by the same class of persons who are likely to purchase and use Applicant's services as described in each of the opposed applications.

5. When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); *Bigfoot 4x4 Inc. v. Bear Foot Inc.*, 5 USPQ2d 1444 (TTAB 1987); *Federated Department Stores, Inc. v. Gold Circle Insurance Co.*, 226 USPQ 262 (TTAB 1985); *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199 (TTAB 1981); *World Hockey Ass'n v. Tudor Metal Products*

*Corp.*, 185 USPQ 246 (TTAB 1975); and *Izod, Ltd. v. La Chemise Lacoste*, 178 USPQ 440 (TTAB 1973).

6. The consolidation of these proceedings will save time, effort, and expense for both parties and consolidation would be advantageous to both parties.

7. Lawton Printing, Inc. will not suffer any prejudice or inconvenience by consolidation of these proceedings.

8. These actions should be consolidated in an effort to conserve the time and resources of the Trademark Trial and Appeal Board.

9. These actions should be consolidated in order to expedite these matters.

REQUEST FOR EXTENSION OF TRIAL DATES

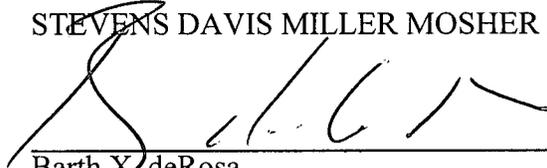
10. In light of the pending motion to consolidate, Opposer requests the Board to reset the dates in Opposition No. 91179933 to conform with the scheduling order in Opposition No.: 91179963 to the following dates:

	<u>Revised Due Date</u>
THE PERIOD FOR DISCOVERY TO CLOSE.....	April 27, 2008
Testimony period for party in position of plaintiff to close (opening thirty days prior thereto).....	July 26, 2008
Testimony period for party in position of defendant to close (opening thirty days prior thereto).....	September 24, 2008
Rebuttal testimony period for party in position of plaintiff to close (opening fifteen days prior thereto).....	November 8, 2008

WHEREFORE, for the reasons stated above, Opposer prays that the Board will grant this motion to consolidate and extend the discovery and trial dates.

Respectfully submitted,

STEVENS DAVIS MILLER MOSHER L.L.P.



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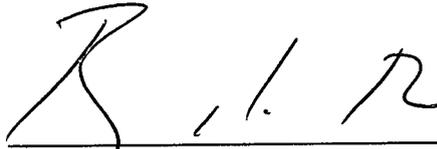
Barth X. deRosa  
Ruth Mae Finch  
Counsel for Opposer  
1615 L Street, N.W., Suite 850  
Washington, D.C. 20043  
Tel: (202) 408-5100  
Fax: (202) 408-5200

Counsel for Opposer, Universal American Corp.  
f/k/a Universal American Financial Corp.

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Motion to Consolidate and Motion for Extension of Time of Discovery Period and Trial Dates and Order is being forwarded this December 12, 2007 to the Applicant, by first class mail, postage prepaid and addressed to:

Randy A. Gregory, Esquire  
Gregory IPL  
P.O. Box 31090  
Spokane, WA 99223-3018

A handwritten signature in black ink, appearing to read "B. X. deRosa", written over a horizontal line.

Barth X. deRosa