

ESTTA Tracking number: **ESTTA172097**

Filing date: **10/31/2007**

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	Rexx Index, LLC
Granted to Date of previous extension	10/31/2007
Address	80 Birch Lane Greenwich, CT 06830 UNITED STATES

Attorney information	Ann Lamport Hammitte LOWRIE, LANDO & ANASTASI, LLP One Main Street Cambridge, MA 02142 UNITED STATES alhtrademarks@ll-a.com Phone:617-395-7019
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Applicant Information

Application No	77014136	Publication date	07/03/2007
Opposition Filing Date	10/31/2007	Opposition Period Ends	10/31/2007
Applicant	REAL ESTATE EQUITY EXCHANGE, INC. 101 CALIFORNIA STREET, SUITE 1950 SAN FRANCISCO, CA 94111 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: Investment management of funds raised to buy options on owner-occupied residences; assuming financial risk of others by entering into options on owner-occupied residences; option fund investment services; investment of funds for others; investment of funds for others in owner-occupied residences; establishing funds for others to purchase options on owner-occupied residences; providing information on the internet with respect to options on owner-occupied residences; Brokerage of real estate options; origination, servicing and management of option contracts on owner-occupied residences

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77119024	Application Date	02/28/2007
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	REXX INDEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith		

U.S. Application No.	77119068	Application Date	02/28/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	REXX PROPERTY INDEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith		

U.S. Application No.	77119072	Application Date	02/28/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	REXX REAL ESTATE PROPERTY INDEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	REXX		
Goods/Services	Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof		

Attachments	77119024#TMSN.jpeg (1 page)(bytes) 77119068#TMSN.jpeg (1 page)(bytes) 77119072#TMSN.jpeg (1 page)(bytes) Notice of Opposition REX.pdf (18 pages)(4317213 bytes)
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Signature	//alh//
Name	Ann Lamport Hammitte
Date	10/31/2007

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

In the matter of Application No. 77/014,136

Publication Date: July 03, 2007

_____)	
REXX INDEX, LLC,)	
)	
Opposer,)	NOTICE OF OPPOSITION
)	
v.)	Opposition No.
)	
REAL ESTATE EQUITY EXCHANGE)	
CAYMAN, INC.,)	
)	
Applicant.)	
_____)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Rexx Index, LLC, a limited liability company duly organized and existing under the laws of the State of Connecticut, having an address at 80 Birch Lane, Greenwich, CT 06830, believes that it will be damaged by registration of the mark REX, U.S.

Application Serial No. 77/014,136, published in the *Official Gazette* on July 03, 2007, and hereby opposes the same. As grounds therefore, Opposer alleges:

1. Opposer, Rexx Index, LLC, is the owner of the following pending U.S. Trademark Applications for the marks REXX INDEX, REXX REAL PROPERTY INDEX, and REXX REAL ESTATE PROPERTY INDEX, in international class 036:

MARK	APPLICATION	SERVICES
REXX INDEX	77/119,024	Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith.
REXX PROPERTY INDEX	77/119,068	Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith.
REXX REAL ESTATE PROPERTY INDEX	77/119,072	Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith.

2. As described in pending Trademark Application Serial No. 77/119,024,

Opposer has a bona fide intention to use the mark REXX INDEX in interstate commerce

for:

Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith, in international class 036.

3. As described in pending Trademark Application Serial No. 77/119,068,

Opposer has a bona fide intention to use the mark REXX PROPERTY INDEX in

interstate commerce for:

Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith, in international class 036.

4. As described in pending Trademark Application Serial No. 77/119,072,

Opposer has a bona fide intention to use the mark REXX REAL ESTATE PROPERTY

INDEX in interstate commerce for:

Financial services, namely, providing, calculating, maintaining, and updating numerical indicators of real estate market values, and the classification, analysis and reporting thereof; providing information services in connection therewith, in international class 036.

5. Upon information and belief, and according to the records of the U.S. Patent and Trademark Office (USPTO), the current owner of Application Number 77/014,136 for REX is Real Estate Equity Exchange Cayman, Inc., a corporation of the Cayman Islands, having an address at P.O. Box 309 GT, Ugland House, S. Church Street, George Town, Grand Cayman. *See*, Exhibits A and B.

6. Upon information and belief, and according to the records of the U.S. Patent and Trademark Office (USPTO), on October 4, 2006, Applicant filed an intent-to-use application, Serial Number 77/014,136, in the U.S. Patent and Trademark Office for the mark REX. *See*, Exhibit C.

7. Applicant's intent-to-use application for the mark REX, Serial Number 77/014,136, was filed in class 036 and identifies the following services: "Investment management of funds raised to buy options on owner-occupied residences; assuming financial risk of others by entering into options on owner-occupied residences; option fund investment services; investment of funds for others; investment of funds for others in owner-occupied residences; establishing funds for others to purchase options on owner-occupied residences; providing information on the internet with respect to options on owner-occupied residences; Brokerage of real estate options; origination, servicing and management of option contracts on owner-occupied residences".

8. The Examining Attorney in charge of Opposer's pending applications for the marks REXX INDEX, REXX PROPERTY INDEX, and REXX REAL ESTATE

PROPERTY INDEX (“Opposer’s REXX Marks”) has objected and refused registration of Opposer’s REXX Marks under Trademark Section 2(d) in light of Applicant’s pending application for the mark REX.

9. As a result, Opposer is and will be damaged by the registration of Applicant’s mark REX for “Investment management of funds raised to buy options on owner-occupied residences; assuming financial risk of others by entering into options on owner-occupied residences; option fund investment services; investment of funds for others; investment of funds for others in owner-occupied residences; establishing funds for others to purchase options on owner-occupied residences; providing information on the internet with respect to options on owner-occupied residences; Brokerage of real estate options; origination, servicing and management of option contracts on owner-occupied residences” in class 36 in that Opposer may not be able to obtain registrations for Opposer’s REXX Marks as a result of the Examining Attorney’s continued rejection.

10. Opposer, together with its predecessor-in-interest, has adopted, used, and is now using in interstate commerce in the U.S. and abroad, at least the marks REXX, REXX INDEX, and REXX REAL ESTATE PROPERTY INDEX.

11. Opposer, together with its predecessor-in-interest, adopted and has used in interstate commerce, at least the marks REXX and REXX INDEX, for years, well prior to Applicant’s filing date.

12. Through longstanding and exclusive use, Opposer has secured strong common law rights in at least the marks REXX and REXX INDEX.

13. Upon information and belief, and according to the records of the USPTO, Applicant has filed no Allegation of Use or Statement of Use, *see*, Exhibit D, and Opposer's first use dates predate Applicant's filing date for Application Number 77/014,136.

14. Applicant's mark, when used in connection with the services listed in application Serial Number 77/014,136, may be likely to cause confusion or mistake or to deceive the trade and the purchasing public into believing that Applicant's services are sponsored, approved or endorsed by Opposer, or believing that Applicant is in some way related to Opposer.

15. If Applicant is granted the registration opposed herein, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and harm to Opposer.

WHEREFORE, Opposer requests that this opposition be sustained and that Applicant's application be refused registration.

The required fee is submitted herewith. The Commissioner is authorized to charge any deficiencies or overpayments to Deposit Account No. 50/2762 (Ref. No.: F2009-5000) of the undersigned attorneys.

Respectfully submitted, this 31st day of October, 2007.

LOWRIE, LANDO & ANASTASI, LLP

By:


Ann Lamport Hammitte, Reg. No. 34,858
Attorneys for Opposer
One Main Street, 11th Floor
Cambridge, MA 02142
Telephone: 617-395-7019
Facsimile: 617-395-7070

EXHIBIT A



United States Patent and Trademark Office

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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 1

Serial #: 77014136	Filing Dt: 10/04/2006	Reg #: NONE	Reg. Dt:
Applicant: Real Estate Equity Exchange Cayman, Inc.			
Mark: REX			

Assignment: 1

Reel/Frame: 3644/0533	Received: 10/23/2007	Recorded: 10/23/2007	Pages: 3
Conveyance: ASSIGNS THE ENTIRE INTEREST			
Assignor: REAL ESTATE EQUITY EXCHANGE CAYMAN, INC.		Exec Dt: 10/22/2007	

Assignee: REAL ESTATE EQUITY EXCHANGE, INC. 101 CALIFORNIA STREET, SUITE 1950 SAN FRANCISCO, CALIFORNIA 94111	Entity Type: CORPORATION Citizenship: CAYMAN ISLANDS Entity Type: CORPORATION Citizenship: DELAWARE
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Correspondent: CAROLE F. BARRETT
THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CA 94111-4024

Search Results as of: 10/31/2007 02:08 PM

If you have any comments or questions concerning the data displayed, contact PRG / Assignments at 571-272-3350, v.3.0.1
Web interface last modified: April 20, 2007 v 2.0.1

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EXHIBIT B

Change Of Owner's Address

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77014136
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION	
MARK	REX
OWNER SECTION (current)	
NAME	Real Estate Equity Exchange Cayman, Inc.
STREET	101 California Street, Suite 1950
CITY	San Francisco
STATE	California
ZIP/POSTAL CODE	94111
COUNTRY	US
CORRESPONDENCE SECTION (current)	
ORIGINAL ADDRESS	CAROLE F. BARRETT HOWARD RICE ET ALIA THREE EMBARCADERO CENTER, 7TH FLOOR SAN FRANCISCO California 94111 United States trademark@howardrice.com
NEW OWNER ADDRESS	
INTERNAL ADDRESS	c/o M&C Corporate Services Limited
STREET	P.O.Box 309 GT,Ugland House,S.Church St.
CITY	GeorgeTown,GrandCayman
COUNTRY	Cayman Islands
NEW CORRESPONDENCE ADDRESS	
FIRM NAME	Howard Rice Nemerovski Canady Falk & Rabkin
STREET	Three Embarcadero Center, 7th Floor
CITY	SAN FRANCISCO
STATE	California
COUNTRY	United States
POSTAL/ZIP CODE	94111
PHONE	415.434.1600
FAX	415.765.6094

SIGNATURE SECTION

SIGNATURE	/CFB/
SIGNATORY NAME	Carole F. Barrett
SIGNATORY DATE	05/31/2007
SIGNATORY POSITION	Attorney of record

FILING INFORMATION SECTION

SUBMIT DATE	Thu May 31 19:50:35 EDT 2007
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TEAS STAMP	USPTO/COA-66.28.250.194-2 0070531195035091343-77014 136-360f02517213d77585ff5 d2ea50997fad9-N/A-N/A-200 70531194139616511
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EXHIBIT C



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Oct 31 04:02:46 EDT 2007

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[IMR](#)
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REX

Word Mark REX
Goods and Services IC 036. US 100 101 102. G & S: Investment management of funds raised to buy options on owner-occupied residences; assuming financial risk of others by entering into options on owner-occupied residences; option fund investment services; investment of funds for others; investment of funds for others in owner-occupied residences; establishing funds for others to purchase options on owner-occupied residences; providing information on the internet with respect to options on owner-occupied residences; Brokerage of real estate options; origination, servicing and management of option contracts on owner-occupied residences
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77014136
Filing Date October 4, 2006
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition July 3, 2007
Owner (APPLICANT) REAL ESTATE EQUITY EXCHANGE, INC. CORPORATION DELAWARE 101 CALIFORNIA STREET, SUITE 1950 SAN FRANCISCO CALIFORNIA 94111
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Carole F. Barrett

Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE



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EXHIBIT D

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-31 15:36:34 ET

Serial Number: 77014136 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

REX

(words only): REX

Standard Character claim: Yes

Current Status: A request for an extension of time to file an opposition has been filed at the Trademark Trial and Appeal Board.

Date of Status: 2007-08-02

Filing Date: 2006-10-04

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
WEBSTER WILLIAM M Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-05-25

.....
LAST APPLICANT(S)/OWNER(S) OF RECORD
.....

I. REAL ESTATE EQUITY EXCHANGE, INC.

Address:
REAL ESTATE EQUITY EXCHANGE, INC.

101 CALIFORNIA STREET, SUITE 1950
SAN FRANCISCO, CA 94111
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 036

Class Status: Active

Investment management of funds raised to buy options on owner-occupied residences; assuming financial risk of others by entering into options on owner-occupied residences; option fund investment services; investment of funds for others; investment of funds for others in owner-occupied residences; establishing funds for others to purchase options on owner-occupied residences; providing information on the internet with respect to options on owner-occupied residences; Brokerage of real estate options; origination, servicing and management of option contracts on owner-occupied residences

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

- 2007-10-24 - Automatic Update Of Assignment Of Ownership
- 2007-08-02 - Extension Of Time To Oppose Received
- 2007-07-03 - Published for opposition
- 2007-06-13 - Notice of publication
- 2007-05-31 - Applicant/Correspondence Changes (Non-Responsive) Entered
- 2007-05-31 - TEAS Change Of Owner Address Received
- 2007-04-25 - Law Office Publication Review Completed
- 2007-04-25 - Assigned To LIE
- 2007-04-03 - Approved for Pub - Principal Register (Initial exam)

2007-03-31 - Teas/Email Correspondence Entered
2007-03-30 - Communication received from applicant
2007-03-30 - TEAS Response to Office Action Received
2007-02-22 - Non-final action e-mailed
2007-02-22 - Non-Final Action Written
2007-02-21 - Assigned To Examiner
2006-10-10 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Carole F. Barrett

Correspondent

Carole F. Barrett
Howard Rice Nemerovski Canady Palk & Rab
Three Embarcadero Center, 7th Floor
SAN FRANCISCO CA 94111
Phone Number: 415.434.1600
Fax Number: 415.765.6094
