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Filing date: **04/09/2008**

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

Proceeding	91181608
Party	Defendant FBD CAPITAL MARKETS GROUP INCORPORATED
Correspondence Address	FBD CAPITAL MARKETS GROUP INCORPORATED 1608 WALNUT ST PHILADELPHIA, PA 19103-5457 UNITED STATES TMDE@ratnerprestia.com
Submission	Answer and Counterclaim
Filer's Name	Benjamin E. Leace
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Signature	/Benjamin E. Leace/
Date	04/09/2008
Attachments	20080409.Answer to Notice of Opposition .pdf ( 5 pages )(198314 bytes )

Registration Subject to Cancellation

Registration No	2991709	Registration date	09/06/2005
Registrant	FCC, LLC Suite 700 515 N. Flagler Drive West Palm Beach, FL 33401 UNITED STATES		
Goods/Services Subject to Cancellation	Class 036. First Use: 1987/12/00 , First Use In Commerce: 1988/01/00 Goods/Services:		

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

In the Matter of Application Serial No. 77/068,086  
Published in the Official Gazette of July 3, 2007

FCC, LLC	)	
	)	
Opposer,	)	Opposition No. 91181608
	)	
v.	)	Mark: 1 FIRST CAPITAL EXCHANGE & Design
	)	
FBD CAPITAL MARKETS GROUP	)	
INCORPORATED	)	
	)	
Applicant.	)	

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

FBD Capital Markets Group Incorporated, a Delaware corporation, located and doing business at 1608 Walnut Street, Philadelphia, Pennsylvania 19103, through its counsel, RatnerPrestia, files this Answer to Notice of Opposition.

1. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 1 of the Notice of Opposition and therefore denies the allegations of this paragraph.
  
2. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 2 of the Notice of Opposition and therefore denies the allegations of this paragraph.
  
3. Applicant admits that Opposer appears to be the owner of record, by assignment from the original registrant First Capital Corporation, of U.S. Reg. No. 1,966,916 for FIRST CAPITAL for business loans.
  
4. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 4 of the Notice of Opposition and therefore denies the allegations of this paragraph.

5. Applicant admits that it appears that the original registrant First Capital Corporation filed a DECLARATIONS UNDER SECTIONS 8 AND 15 OF THE TRADEMARK ACT OF 1946 in connection with U.S. Reg. No. 1,966,916 and that the Section 15 Declaration was acknowledged. Opposer is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 5 of the Notice of Opposition and therefore denies the allegations of this paragraph.

6. Applicant admits that Opposer appears to be the owner of record of U.S. Reg. No. 2,991,709 for FIRST CAPITAL for banking and related financial services.

7. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 7 of the Notice of Opposition and therefore denies the allegations of this paragraph.

8. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 8 of the Notice of Opposition and therefore denies the allegations of this paragraph.

9. Applicant admits that on December 20, 2006 it submitted U.S. App. Serial No. 77/068,086 for  FIRST CAPITAL EXCHANGE in the color blue ("Applicant's mark") for banking.

10. Admitted.

11. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 11 of the Notice of Opposition and therefore denies the allegations of this paragraph.

12. Denied.

13. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 13 of the Notice of Opposition and therefore denies the allegations of this paragraph.

14. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 14 of the Notice of Opposition and therefore denies the allegations of this paragraph.

15. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 15 of the Notice of Opposition and therefore denies the allegations of this paragraph.

16. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 16 of the Notice of Opposition and therefore denies the allegations of this paragraph.

17. Denied.

18. Denied.

#### DEFENSES

19. Opposer's Opposition is barred because Opposer's marks cited in the Notice of Opposition ("Opposer's marks") are generic or descriptive or are otherwise not inherently descriptive or have otherwise not acquired distinctiveness.

20. Opposer's Opposition is barred under the doctrines of waiver and/or estoppel.

21. Opposer's Opposition is barred under the doctrine of unclean hands.

#### COUNTERCLAIM

22. Applicant hereby counterclaims for cancellation of U.S. Reg. No. 2,991,709.

23. Applicant restates each and every averment of paragraphs 1 - 21.

24. U.S. Reg. No. 2,991,709 issued to Opposer on September 6, 2005 for FIRST CAPITAL CORPORATION for banking and financial services.

25. In a REQUEST FOR POST REGISTRATION AMENDMENT of February 28, 2006, Opposer requested the registered mark be amended from FIRST CAPITAL CORPORATION to FIRST CAPITAL and stated it had stopped using CORPORATION and was only using FIRST CAPITAL to provide its services in interstate commerce.

26. The mark in U.S. Reg. No. 2,991,709 was amended from FIRST CAPITAL CORPORATION to FIRST CAPITAL in 2007.

27. Amending U.S. Reg. No. 2,991,709 to delete CORPORATION constituted a material alteration of the mark.

28. By materially altering and discontinuing use of FIRST CAPITAL CORPORATION, Opposer has abandoned its mark.

WHEREFORE, Applicant requests that this Opposition be dismissed with prejudice; that U.S. Reg. No. 2,991,709 be cancelled; and a registration for Applicant's mark be issued to Applicant. The undersigned authorizes the withdrawal of any requisite fees not submitted herewith from Deposit Account No. 18-0350.

Respectfully Submitted,

RatnerPrestia

s/Benjamin E. Leace/

Benjamin E. Leace

John W. McGlynn

RatnerPrestia

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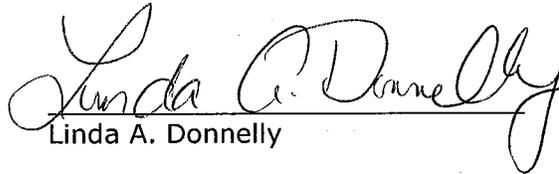
Dated: April 9, 2008

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the document identified below has been electronically filed and is being served on April 9, 2008 via transmission by overnight courier (Federal Express):

Date of Service: April 9, 2008  
Title of Documents: Applicant's Answer to Notice of Opposition  
Place of Mailing: Berwyn, Pennsylvania  
Name of Party Served: G. Todd Whitcomb  
Smith, Gambrell & Russell, LLP  
50 North Laura Street  
Suite 2600, Bank of America Tower  
Jacksonville, Florida 32202

Dated: April 9, 2008

  
Linda A. Donnelly