

ESTTA Tracking number: **ESTTA204402**

Filing date: **04/11/2008**

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	VNA HomeCare, Inc.
Granted to Date of previous extension	04/12/2008
Address	200 N. Center Drive, Suite A Alton, IL 62002-0080 UNITED STATES
Party who filed Extension of time to oppose	VNA Healthcare, Inc.
Relationship to party who filed Extension of time to oppose	Same entity, typographical error in entry of name in request for extension.

Attorney information	Mark R. Sowers Lewis, Rice & Fingersh, L.C. Box IP Department 500 N. Broadway, Suite 2000 St. Louis, MO 63102 UNITED STATES msowers@lewisrice.com, ipdept@lewisrice.com Phone:314-444-1366
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**Applicant Information**

Application No	77220608	Publication date	02/12/2008
Opposition Filing Date	04/11/2008	Opposition Period Ends	04/12/2008
Applicant	White House Real Estate/Mortgage, Inc. 5655 Silver Creek Valley Road #533 San Jose, CA 95138 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 036. First Use: 2007/04/05 First Use In Commerce: 2007/04/05 All goods and services in the class are opposed, namely: FINANCIAL SERVICES, NAMELY, REAL ESTATE INVESTMENT SERVICES; MORTGAGE BANKING SERVICES, NAMELY, ORIGATION, ACQUISITION, SERVICING, SECURITIZATION AND BROKERAGE OF MORTGAGE LOANS; REAL ESTATE BROKERAGE SERVICES, REAL ESTATE ACQUISITION SERVICES; AND FINANCIAL SERVICES, NAMELY, MORTGAGE PLANNING SERVICES
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2806459	Application Date	02/13/2003
Registration Date	01/20/2004	Foreign Priority Date	NONE
Word Mark	VNA-TIP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2001/03/28 First Use In Commerce: 2001/03/28 Health care services, namely, home health care, hospice, nursing care, and infusion therapy		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TIP Hospice		
Goods/Services	Health care services		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TIP HomeCare		
Goods/Services	Health care services		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TIP PremierCare		
Goods/Services	Health care services		

Attachments	76493161#TMSN.gif ( 1 page )( bytes ) VNA HomeCare, Inc. v. White House Real Estate Mortgage.pdf ( 6 pages )(409752 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/mark sowers/
Name	Mark R. Sowers
Date	04/11/2008

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

In re Application Serial No. 77/220,608  
Filed: July 2, 2007  
For Mark: **TIP**  
Published in the *Official Gazette*: February 12, 2008

VNA HOMECARE, INC.

Opposer,

v.

WHITE HOUSE REAL  
ESTATE/MORTGAGE, INC.

Applicant.

Opposition No.: \_\_\_\_\_

Commissioner for Trademarks  
Attn: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

Opposer, VNA HomeCare, Inc. (“Opposer”), an Illinois corporation with offices at 200 N. Center Drive, Suite A, Alton, Illinois 62002-0080, believes that it will be damaged by the registration of the word mark TIP (“Applicant’s TIP Mark”) for “financial services, namely, real estate investment services; mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; real estate brokerage services, real estate acquisition services; and financial services, namely, mortgage planning services” in International Class 36, as shown in Application Serial No. 77/220,608 (the “Application”) and, having been granted an extension of time to oppose up to and including April 12, 2008, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Since prior to April 5, 2007, Applicant's claimed first use, Opposer has been, and Opposer is now, engaged in providing health care services, namely, home health care, hospice, nursing care, and infusion therapy ("Opposer's Services") under the mark VNA-TIP ("Opposer's Mark").

2. Opposer provides related health care services through its common-law marks of TIP Hospice, TIP PremierCare, and TIP HealthCare ("Opposer's Common-Law Marks").

3. Opposer has been in business for more than eleven years and has thirty (30) branches throughout the Midwest.

4. Since prior to April 5, 2007, Applicant's claimed first use, Opposer has been, and Opposer is now, engaged in providing health care services under Opposer's Common-Law Marks.

5. Opposer is the owner of U.S. Federal Registration No. 2,806,459 for "health care services, namely, home health care, hospice, nursing care, and infusion therapy" for the mark VNA-TIP in International Class 44.

6. Since prior to April 5, 2007, Applicant's claimed first use, Opposer has used, and Opposer is now using, Opposer's Mark in connection with Opposer's Services and other health care services distributed and sold by Opposer in commerce.

7. Since prior to April 5, 2007, Applicant's claimed first use, Opposer has used, and Opposer is now using, Opposer's Common-Law Marks in connection with health care services distributed and sold by Opposer in commerce.

8. As a result of extensive sales and promotion of its services bearing or offered in connection with Opposer's Mark, Opposer has built up highly valuable goodwill in Opposer's

Mark, and said goodwill has become closely and uniquely identified and associated with Opposer.

9. Opposer's vast goodwill and nationwide recognition of Opposer's Mark is demonstrated by its inclusion in the Top 500 of the 2006 HomeCare Elite and 2007 HomeCare Elite, a compilation of the most successful home care providers in the country.

10. As a result of extensive sales and promotion of its services bearing or offered in connection with Opposer's Common-Law Marks, Opposer has built up highly valuable goodwill in Opposer's Common-Law Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

11. Upon information and belief, Applicant did not use Applicant's Mark for the services in the Application prior to its claimed first use date of April 5, 2007.

12. Opposer believes and alleges, the services covered by the Application are closely related to the services rendered in connection with Opposer's Mark.

13. Opposer believes and alleges, the services covered by the Application are closely related to the services rendered in connection with Opposer's Common-Law Marks.

14. Opposer believes and alleges that Applicant's TIP Mark is confusingly similar to Opposer's Mark VNA-TIP.

15. Opposer believes and alleges that Applicant's TIP Mark is confusingly similar to Opposer's Common-Law Marks which all include the word TIP.

16. Opposer believes and alleges that Applicant's TIP Mark so resembles Opposer's Mark as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's services have their origin with Opposer and/or that such services are approved, endorsed or

sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's TIP Mark.

17. Opposer believes and alleges that Applicant's TIP Mark so resembles Opposer's Common-Law Marks as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's services have their origin with Opposer and/or that such services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's TIP Mark.

18. Opposer believes and alleges that Applicant's use and registration of Applicant's TIP Mark will enable Applicant's Mark to trade upon and utilize the goodwill established by Opposer in Opposer's Mark. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's TIP Mark.

19. Opposer believes and alleges that Applicant's use and registration of Applicant's TIP Mark will enable Applicant's Mark to trade upon and utilize the goodwill established by Opposer in Opposer's Common-Law Marks. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's TIP Mark.

20. Opposer, upon information and belief, avers that Opposer would further be injured by the granting of a certificate of registration to Applicant because Applicant's TIP Mark would falsely suggest a connection between Applicant and Opposer.

WHEREFORE, Opposer VNA HomeCare, Inc. believes that it is being and will continue to be damaged by registration of Applicant's TIP Mark, and prays that said Application Serial

No. 77/220,608 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Please recognize as attorneys for Opposer in the proceeding Frank B. Janoski, Michael J. Hickey, Kirk A. Damman, Bridget L. Hoy and Mark R. Sowers (members of the Bar of the State of Missouri) and the firm of Lewis, Rice & Fingersh, L.C., 500 N. Broadway, Suite 2000, St. Louis, Missouri 63102.

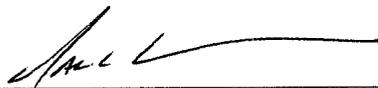
Please address all correspondence and telephonic communication concerning this Opposition to:

Mark R. Sowers, Esq.  
Lewis, Rice & Fingersh, L.C.  
Box IP Department  
500 North Broadway, Suite 2000  
St. Louis, Missouri 63102  
(314) 444-1336

Dated: St. Louis, Missouri  
April 11<sup>th</sup>, 2008

Respectfully submitted,

**LEWIS, RICE & FINGERSH, L.C.**

BY:   
Kirk A. Damman  
Mark R. Sowers  
500 N. Broadway, Suite 2000  
St. Louis, MO 63102  
(314) 444-7600

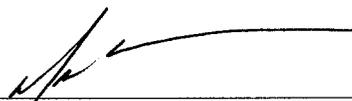
Attorneys for the Opposer VNA HomeCare,  
Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on April 11<sup>th</sup>, 2008, I caused a true copy of the foregoing NOTICE OF OPPOSITION to be sent via First Class Mail, postage prepaid, to Applicant's Attorney of Record:

Bradley D. Bosomworth, Esq.  
Sweeney, Mason, Wilson & Bosomworth  
983 University Ave, Ste C104  
Los Gatos, CA 95032-7637

Dated: St. Louis, Missouri  
April 11<sup>th</sup>, 2008

  
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Mark R. Sowers