

ESTTA Tracking number: **ESTTA401231**

Filing date: **04/01/2011**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Onsale, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2555 West 190th Street Torrance, CA 90504 UNITED STATES		

Attorney information	Jennifer Lee Taylor Morrison and Foerster LLP 425 Market Street San Francisco, CA 94105 UNITED STATES jtaylor@mofo.com, achristopher@mofo.com, mmcdaniel@mofo.com, lsimpson@mofo.com
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Registration Subject to Cancellation

Registration No	3880014	Registration date	11/23/2010
Registrant	Verandaglobal.com, Inc. P.O. Box 3727 Clearwater, FL 33767 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2010/03/01 First Use In Commerce: 2010/03/01
All goods and services in the class are cancelled, namely: Providing links to the retail web sites of others featuring electronics

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2960489	Application Date	09/03/2003
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	ONSALE		

Design Mark	ONSALE
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 On-line trading services in which seller posts items to be sold at a set or negotiated price or alternatively, in an auction-style format where bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery and overall trading experience in connection therewith; providing customer support services concerning online account management and use of online services</p> <p>Class 038. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Telecommunications services, namely the electronic transmission of data and information</p> <p>Class 042. First use: First Use: 2004/11/04 First Use In Commerce: 2004/11/04 providing access to non-downloadable computer software to allow sellers to aggregate listings to construct a virtual store</p>

U.S. Registration No.	3303706	Application Date	05/10/2005
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	ONSALE		
Design Mark	ONSALE		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2004/00/00 First Use In Commerce: 2004/00/00 Catalogs featuring prerecorded and blank CDs, prerecorded and blank DVDs, video games, photography instruments, electronics, computers, computer peripherals, computer software, electronic games, electronic game software, electronic game systems, audio equipment, MP3 players, personal digital assistants (PDA's), cameras, clocks, home electronics, televisions, DVD players, receivers and video recorders		

	Class 035. First use: First Use: 2004/01/15 First Use In Commerce: 2004/01/15 Telephone, mail order, and online retail store services featuring prerecorded and blank CDs, prerecorded and blank DVDs, video games, photography instruments, electronics, computers, computer peripherals, computer software, electronic games, electronic game software, electronic game systems, audio equipment, MP3 players, personal digital assistants (PDA's), cameras, clocks, home electronics, televisions, DVD players, receivers and video recorders
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Attachments	76541984#TMSN.gif (1 page)(bytes) 78627056#TMSN.jpeg (1 page)(bytes) Petition for Cancellation.pdf (8 pages)(377283 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	/Jennifer Lee Taylor/
Name	Jennifer Lee Taylor
Date	04/01/2011

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

ONSALE, INC.,

Petitioner,

vs.

VERANDAGLOBAL.COM, INC. D/B/A FIRST
PLACE INTERNET, INC.,

Respondent.

Cancellation No.:

Registration No.: 3,880,014

Issued: Jan. 15, 2008

Mark: NOWONSALE.COM

PETITION FOR CANCELLATION

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Onsale, Inc. ("Petitioner"), a Delaware corporation with offices at 2555 West 190th Street, Torrance, CA 90504, believes that it is and will continue to be injured by the mark in Registration No. 3,880,014, and hereby applies for cancellation of the entire registration.

To the best of Petitioner's knowledge, the name and address of the current owner of the registration is Verandaglobal.com, Inc. d/b/a First Place Internet, Inc. ("Respondent"), P.O. Box 3727, Clearwater, FL 33767.

The grounds for cancellation are as follows:

1. Petitioner has been offering on-line retail services in the field of computers and consumer electronics under the ONSALE trademark since 2004. Through its predecessors in

interest, Petitioner started to offer on-line auction services in the field of computers and consumer electronics under the ONSALE and ONSALE.COM trademarks at least as early as December 1996.

2. Petitioner is the owner of U.S. Registration No. 2,960,489 for ONSALE for: “On-line trading services in which seller posts items to be sold at a set or negotiated price or alternatively, in an auction-style format where bidding is done electronically, and providing evaluative feedback and ratings of sellers’ goods and services, the value and prices of sellers’ goods, buyers’ and sellers’ performance, delivery and overall trading experience in connection therewith; providing customer support services concerning online account management and use of online services” in International Class 35; “Telecommunications services, namely the electronic transmission of data and information” in International Class 38; and “providing access to non-downloadable computer software to allow sellers to aggregate listings to construct a virtual store” in International Class 42. This mark was registered on June 7, 2005 with first use dates of December 1999 for the International Class 35 and 38 services and November 2004 for the International Class 42 services.

3. Petitioner is the owner of U.S. Registration No. 3,303,706 for ONSALE for “Catalogs featuring prerecorded and blank CDs, prerecorded and blank DVDs, video games, photography instruments, electronics, computers, computer peripherals, computer software, electronic games, electronic game software, electronic game systems, audio equipment, MP3 players, personal digital assistants (PDA’s), cameras, clocks, home electronics, televisions, DVD players, receivers and video recorders” in International Class 16; and “Telephone, mail order, and online retail store services featuring prerecorded and blank CDs, prerecorded and blank DVDs, video games, photography instruments, electronics, computers, computer peripherals, computer software, electronic games, electronic game software, electronic game systems, audio equipment, MP3 players, personal digital assistants (PDA’s), cameras, clocks, home electronics, televisions, DVD players, receivers and video recorders” in International Class 35. This mark

was registered on October 2, 2007 with first use dates of 2004 for the International Class 16 services and January 2004 for the International Class 35 services.

4. Petitioner has used a red price tag logo with the ONSALE mark (the “ONSALE and Price Tag Logo Mark”) in connection with its retail store services since 2004. In addition, Petitioner’s predecessors in interest also used an ONSALE price tag logo in connection with their on-line auction services since at least as early as December 1996. Attached hereto as Exhibit A is a print-out from Petitioner’s website showing the ONSALE and Price Tag Logo Mark.

5. Petitioner previously owned Registration No. 2,126,681 for the ONSALE and Price Tag Logo Mark for “conducting interactive virtual auctions via electronic networks featuring a wide variety of business and consumer goods such as electronics, computers, and computer accessories, household appliances, audio equipment, telephones and electrical products.” Petitioner did not file an affidavit under Section 8 to maintain this registration after it ceased offering auction services.

6. Respondent owns Registration No. 3,880,014 for the mark NOWONSALE.COM and Price Tag Logo for “Providing links to the retail web sites of others featuring electronics” in International Class 35 (the “Registration”).

7. The Registration was filed on April 21, 2010 with a claimed first use date of March 1, 2010, more than a decade later than Petitioner’s first use of the ONSALE trademark and of the ONSALE and Price Tag Logo Mark (collectively “the ONSALE Marks”) in connection with International Class 35 services.

8. The Registration is likely to cause confusion with Petitioner’s ONSALE Marks. The Registration wholly incorporates ONSALE, making it visually and aurally strikingly similar to Petitioner’s marks. Moreover, the Registration is identical to Petitioner’s ONSALE Marks in meaning. Even the design element of the Registration, a price tag with strings, is strikingly similar to the ONSALE Price Tag Logo Mark with strings used by Petitioner in connection with its services. Because Respondent’s services are also closely related to Petitioner’s, both being

internet retail services in the field of computers and consumer electronics, there is a high likelihood of confusion between Petitioner's ONSALE Marks and the registered mark.

9. Petitioner will be seriously injured if Respondent is permitted to retain the registration sought herein to be canceled because consumers are likely to be confused as to the origin of services offered in connection with the ONSALE Marks and the registered mark.

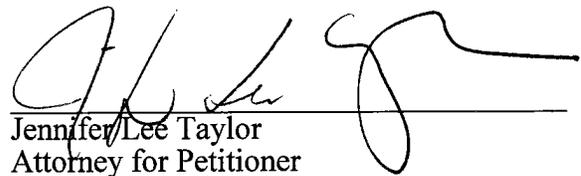
8. Filing Fee: The Patent & Trademark Office is authorized to charge \$300.00 for the Petition to Cancel to Morrison & Foerster's Deposit Account 03-1952 (Reference No. 27964-2405031).

WHEREFORE, Petitioner prays that Registration No. 3,880,014, currently owned by Respondent, be canceled.

Respectfully submitted,

Dated: April 1, 2011

By:


Jennifer Lee Taylor
Attorney for Petitioner

Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
Facsimile: (415) 268-7522

EXHIBIT A



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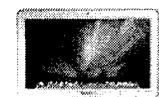
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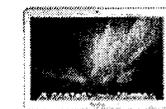
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LaCie
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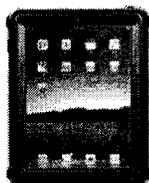
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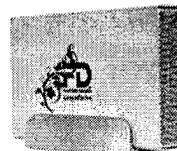
Apple
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Kodak
 EASYSHARE M531 14MP
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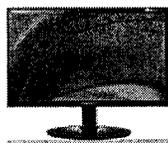
Otterbox
 iPad Defender Series Case -
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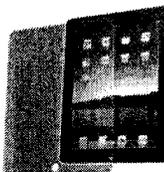
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PROOF OF SERVICE BY MAIL

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I further declare that on April 1, 2011, I served a copy of:

PETITION FOR CANCELLATION

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

**Verandaglobal.com, Inc.
DBA First Place Internet, Inc.
P.O. Box 3727
Clearwater, FL 33767**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 1st day of April 2011.

Mary S. McDaniel
(typed)



(signature)