

ESTTA Tracking number: **ESTTA12227**

Filing date: **07/22/2004**

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	Opus Corporation
Granted to Date of previous extension	07/24/2004
Address	Opus Corporation 10350 Bren Road West Minnetonka, MN 55343 UNITED STATES

Correspondence information	Michael M. Lafeber Attorney Briggs & Morgan, P.A. 80 South 8th Street 2200 IDS Center Minneapolis, MN 55402 UNITED STATES mlafeber@briggs.com Phone:612-977-8472
-----------------------------------	--

Applicant Information

Application No	76537880	Publication date	05/25/2004
Opposition Filing Date	07/22/2004	Opposition Period Ends	07/24/2004
Applicant	Opus Home Equity Services, Inc.		

Goods/Services Affected by Opposition

Class 036. First Use: 20010100 First Use In Commerce: 20010100

All goods and services in the class are opposed, namely: MORTGAGE AND LOAN SERVICES, NAMELY SERVICES PROVIDING FIRST AND SECOND MORTGAGES, SMALL BUSINESS LOANS, LINES OF CREDIT, SECURED LOANS, NON-SECURED LOANS AND CAR LOANS

Attachments	OPUS_opposition_1.tif (1 page) OPUS_opposition_2.tif (1 page) OPUS_opposition_3.tif (1 page) OPUS_opposition_4.tif (1 page) OPUS_opposition_5.tif (1 page)
--------------------	--

Signature	/Michael M. Lafeber/
Name	Michael M. Lafeber
Date	07/22/2004

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

In re Application Serial No.	:	76537880
For the Mark	:	OPUS
Filed	:	August 15, 2003
Published in the Trademark Official Gazette on	:	May 4, 2004

Opus Corporation and
Opus Northwest Construction Corporation,
Opposer,

v.

Opus Home Equity Services, Inc.
Applicant.

Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

NOTICE OF OPPOSITION

Opus Corporation ("Opus"), Opus Northwest Construction Corporation ("Opus Northwest"), and their affiliates (collectively, "Opposer") believe, in good faith, that they will be damaged by registration of the mark shown in the above-identified application ("Application"), and hereby oppose the registration. The time for filing an Opposition has been extended to July 24, 2004.

Opposer's grounds for opposition are as follows:

1. Opus is a Minnesota corporation with its principal place of business at 10350 Bren Road West, Minnetonka, Minnesota 55343. Opus Northwest is a Minnesota corporation and wholly-owned subsidiary of Opus, with its principal place of business at 10350 Bren Road West, Minnetonka, Minnesota 55343.

2. Opus and Opus Northwest are "related companies" within the meaning of 15 U.S.C.A. §1055.

3. Opus Northwest (formerly known as Opus Corporation) owns the federally registered mark OPUS, Registration No. 1,262,651, dated December 27, 1983 (the "OPUS word mark"), registered in connection with leasing, purchasing, selling and managing land and buildings for others; construction services, namely, constructing commercial, residential, governmental, and industrial buildings for others; and architectural, engineering and design services (in international classes 36, 37 and 42, respectively). Opus first used the Opus word mark in 1975 and has used it continuously since then.

4. Opus Northwest owns the federally registered mark OPUS plus hexagonal design (the "OPUS design mark"), Registration No. 2,520,075, dated December 18, 2001, registered in connection with managing and leasing real property, namely, land and commercial, industrial and professional complexes to and for others; real estate investment; real estate brokerage; construction services in the field of building commercial, industrial and professional complexes for others; real estate development; and architectural and engineering consulting services, namely, designing land developments and building improvements including commercial, industrial and professional complexes (in international classes 36, 37 and 42, respectively). Opus first used the Opus design mark in 1989 and has used it continuously since then.

5. Opus Northwest licenses the OPUS word mark and the OPUS design mark (collectively, the "OPUS Registered Marks") to Opus and other affiliates of Opus Northwest for use throughout the United States.

6. Opposer sells a full range of integrated services across the United States under the Registered OPUS Marks, including real estate development, architecture and engineering, construction, property management, financing, leasing and sales services. Its construction projects include industrial, institutional, office, retail and residential developments. Its financing services include, without limitation, financing leasehold improvements, providing project financing, procuring third party financing for projects, and, in residential projects, working with third party lenders to develop a mortgage loan program for condominium purchasers.

7. Opposer has used the trade name "OPUS" since approximately June, 1982.

8. Opposer owns the domain name opuscorp.com.

9. Commencing long prior to the filing date of Applicant's Application, Opposer has prominently used, and is now using, Opposer's Registered OPUS Marks. Opposer has extensively advertised, promoted and offered Opposer's services under the Registered OPUS Marks to the public through various channels of trade and commerce with the result that Opposer's customers and the public in general have come to know and recognize Opposer's Registered OPUS Marks and associate the same with Opposer and services offered by Opposer. Opposer's Registered OPUS Marks have thus attained significant good will and Opposer has acquired substantial common law rights in the mark OPUS and the trade name OPUS.

10. Upon information and belief, Opposer alleges that any use of the alleged OPUS mark by Applicant occurred long after Opposer's adoption and continuous use and registration of

Opposer's OPUS word mark. Applicant, therefore, knew or should have known of Opposer's OPUS word mark.

11. The mark that is the subject of the Application is identical to Opposer's OPUS word mark and is identical to the word component of Opposer's OPUS design mark.

12. The services that are recited in the Application, i.e., mortgage and loan services, namely services providing first and second mortgages, small business loans, lines of credit, secured loans, and non-secured loans, are the same or similar to financing services offered by Opposer.

13. The services that are recited in the Application, namely mortgage and loan services, are related to services recited in the OPUS design mark; e.g., real estate brokerage services.

14. Applicant's proposed mark is likely to be confused with Opposer's Registered OPUS Marks because the word marks are identical and the services are the same, similar or related services.

15. Applicant's proposed mark is likely to be confused with Opposer's common law service mark and trademark rights in the mark OPUS for real estate development, architecture and engineering, construction, property management, and financing, leasing and sales services.

16. Applicant's proposed mark is likely to be confused with Opposer in that the proposed mark is substantially identical to Opposer's trade name, the use of which in the United States occurred long before the filing date of the Application or the alleged first use date in the Application.

17. Opposer, upon information and belief, avers that its customers and the public in general are likely to be confused, mistaken or deceived as to the origin and sponsorship of

Applicant's services rendered under Applicant's service mark, and misled into believing that such goods and services are rendered by, emanate from or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

18. According rights of federal registration to the mark that is the subject of the Application is inimical to the superior rights of the Opposer to use the mark in connection with the same, similar or related services.

Dated: July 22, 2004

BRIGGS AND MORGAN, P.A.

By /s/ Michael M. Lafeber
John B. Lunseth, II (#065341)
Michael M. Lafeber (#242871)

2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 977-8472
Facsimile: (612) 977-8650

**ATTORNEYS FOR OPPOSER
OPUS CORPORATION AND OPUS
NORTHWEST CONSTRUCTION
CORPORATION**