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LEGAL DEPARTMENT

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General Counsel
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"EXPRESS MAILING" Mailing Label No. ET946317987US
DATE OF DEPOSIT: August 4th, 2005

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Type or Print Name: Burton D. Brillhart

August 4, 2005

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

Dear Sir:

Please find enclosed:

- 1) An original and two (2) copies of a Notice of Opposition regarding Trademark Application Serial No. 78/324,239, for the mark: "DRIVER'S EDGE"
- 2) A check in the amount of \$900.00 for the Notice of Opposition; and
- 3) One Return Postcard Acknowledgement.

Thank you for your attention to this matter and if you have any questions, please contact me.

Sincerely,

Burton D. Brillhart



08-04-2005

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #51

Enclosures

TTAB

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

DRIVE FINANCIAL SERVICES, LP

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Serial Number: 78/324,239

Opposer,

Filed: November 6, 2003

vs.

Mark: DRIVER'S EDGE

CITICORP

Publication Date: June 7, 2005

Applicant.

Opposition No.: _____

TO: THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS

08/09/2005 SMILSON1 00000063 78324239

01 FC:6402

900.00 OP

NOTICE OF OPPOSITION

Opposer, Drive Financial Services, LP, a Delaware limited partnership ("DFS"), located and doing business at 8585 N. Stemmons Freeway Ste. 1100-North, believes that it will be damaged by registration of the above-identified mark DRIVER'S EDGE shown in U.S. Trademark Application Serial No. 78/324,239, and hereby opposes the same under the provisions of the Trademark Act of 1946, § 1063 of Title 15 of the United States Code.

The grounds for opposition are as follows:

1. DFS provides "financial services, namely, originating loans and purchasing loans from automobile dealerships; and automobile dealership services" in International Class 36 (collectively, "Opposer's Products and Services") to consumers on a nationwide basis. In particular, Opposer originates and services consumer automobile loans in the sub-prime automobile market. Opposer is a leader in sub-prime automobile finance, helping consumers with limited or below-average credit histories obtain affordable, well-structured automobile



08-04-2005

loans. Opposer provides its products and services under the trade name and trademark DRIVE and DRIVE FINANCIAL SERVICES in standard character, stylized and design formats ("Opposer's Marks").

Opposer advertises and promotes its financing services on a nationwide basis through its website (www.drivefinancial.com), automobile dealerships, auction houses, advertising brochures, other advertisements, and through a multitude of other mediums. Opposer uses Opposer's Marks in virtually all such advertisements

2. Opposer is the owner of Opposer's Marks and United States Registration Nos. 2503943, registered on November 6, 2001, Registration No. 2514867, registered on December 4, 2001, and Registration No. 2503946, registered on November 6, 2001, pertaining thereto; for use in connection with the aforementioned products and services. A copy of each Certificate of Registration is attached for convenience of review in the attached Appendix A.

3. Prior to Applicant's filing of its application to register "DRIVER'S EDGE" (Serial No. 78/324,239) ("Applicant's mark"), Opposer adopted and has continuously used, and is still using in interstate commerce, Opposer's Marks on and in connection with Opposer's Services.

4. Since at least as early as August 3, 1999, Opposer has used Opposer's Marks in interstate commerce in connection with the marketing and sale of Opposer's Products and Services, and the public has come to recognize Opposer's Marks as signifying Opposer and Opposer's Products and Services, and Opposer has developed substantial rights in Opposer's Marks which have acquired significant value as identifiers of Opposer's Products and Services. Through Opposer's substantial, continuous and exclusive use of Opposer's Marks for six (6) years, Opposer's Marks have become famous identifiers of Opposer and Opposer's Products and Services.

5. Opposer, through substantial advertising, marketing and the sale of Opposer's Products and Services under Opposer's Marks, has built, at significant expense and effort, a valuable goodwill symbolized and embodied by such marks, which goodwill is likely to be irreparably damaged or destroyed by the registration of Applicant's proposed mark.

6. On November 6, 2003, four years *after* Opposer first began using Opposer's Marks in interstate commerce, Applicant filed its application seeking registration for Applicant's mark for use with automobile related financial services, namely, "providing information about offers by others to buy and sell motor vehicles; providing automobile information about new and used car pricing," "providing financial advice in connection with the purchase of motor vehicles," "providing automobile information about the repair and maintenance of automobiles," "providing information about motor vehicle driving events," in International Classes 35, 36, 37 and 41 respectively ("Applicant's Services"). Applicant's mark was published for opposition in the Official Gazette on June 7, 2005.

7. Applicant's mark is confusingly similar to Opposer's Marks in appearance, sound, connotation and overall commercial impression due to the fact that the dominant distinctive component of Applicant's mark, "DRIVE", is identical to the dominant distinctive component of that of Opposer's Marks. As such, Applicant's mark is likely to cause confusion, deception and mistake within the meaning of Section 2(d) of the Trademark Act of 1946, all to Opposer's irreparable damage and loss of its acquired goodwill symbolized by Opposer's Marks.

8. Applicant's Services and Opposer's Products and Services are directly related in that such products and services are both related to the field of automobile financing services, and are therefore likely to be encountered by the same customers and potential customers. Consequently, consumers and prospective consumers of Opposer's Products and Services, because of the similarity of Applicant's mark and Opposer's Marks and the relatedness of the product and services, are likely to be confused, mistaken or deceived into the belief, contrary to

fact, that Applicant's Services offered or intended to be offered under Applicant's mark, emanate from or are in some way sponsored by or affiliated with Opposer's Products and Services sold under Opposer's Marks, all to Opposer's irreparable damage to its goodwill in Opposer's Marks.

9. Moreover, due to the similarity of the relevant marks, Applicant's mark is likely to lessen the capacity of Opposer's Marks to identify and distinguish Opposer's Products and Services regardless of the presence or absence of competition between the parties or the presence or absence of likelihood of confusion, mistake or deception between Applicant's mark and Opposer's Marks.

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

WHEREFORE, Opposer prays that application Serial No. 78/324,239 be rejected and that Applicant's mark therein sought for Applicant's Services in International Class 35, 36, 37 and 41 be denied and refused.

This Notice of Opposition is being filed in triplicate and is accompanied by a check in the amount of \$300 in payment of the required fee.

Respectfully submitted,

Burton D. Brillhart
8585 North Central Expressway
Suite 1100 North
Dallas, Texas 75247

**ATTORNEY FOR OPPOSER,
DRIVE FINANCIAL SERVICES, LP.**

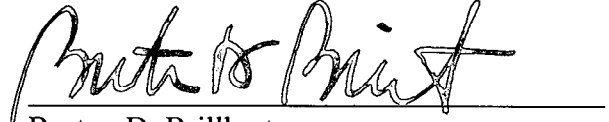
Dated: August ___, 2005

**EXPRESS MAIL CERTIFICATE OF MAILING
UNDER 37 C.F.R. 1.10**

"Express Mail" Mailing Label No.: ET946317987US

Date of Deposit: August 4th, 2005

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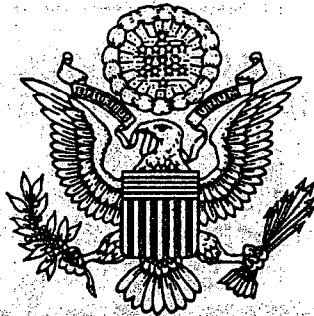


Burton D. Brillhart

1. Notice of Opposition for U.S. Trademark Application Serial No. 78/324,239 for DRIVER'S EDGE (in triplicate);
2. This Express Mail Certificate;
3. Check in the amount of \$900;
4. Certificate of Service of Notice of Opposition; and
5. Return Postcard Acknowledgement.

APPENDIX A

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



Nicholas P. Godici

Acting Director of the United States Patent and Trademark Office

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,503,943

Registered Nov. 6, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

DRIVE FINANCIAL SERVICES LP (DELAWARE
LIMITED PARTNERSHIP)
8585 N. STEMMONS FRWY
SUITE 1100-N
DALLAS, TX 75247

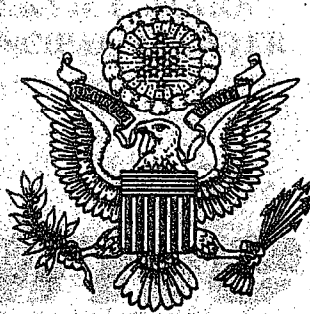
FIRST USE 8-18-2000; IN COMMERCE 8-18-2000.

SER. NO. 76-145,481, FILED 10-12-2000.

FOR: FINANCIAL SERVICES, NAMELY, PUR-
CHASING LOANS FROM AUTOMOBILE DEALER-
SHIPS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

JIM RINGLE, EXAMINING ATTORNEY

The United States of America



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Nicholas P. Lodici

Acting Director of the United States Patent and Trademark Office

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,514,867

Registered Dec. 4, 2001

**SERVICE MARK
PRINCIPAL REGISTER**



DRIVE FINANCIAL SERVICES LP (DELAWARE
LIMITED PARTNERSHIP)
8585 N. STEMMONS FRWY
SUITE 1100-N
DALLAS, TX 75247

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "FINANCIAL SERVICES", APART
FROM THE MARK AS SHOWN.

FOR: FINANCIAL SERVICES, NAMELY, PUR-
CHASING LOANS FROM AUTOMOBILE DEALER-
SHIPS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

SER. NO. 76-145,477, FILED 10-12-2000.

FIRST USE 8-18-2000; IN COMMERCE 8-18-2000.

JIM RINGLE, EXAMINING ATTORNEY

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

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Nicholas P. Lodici

Acting Director of the United States Patent and Trademark Office

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,503,946
Registered Nov. 6, 2001

**SERVICE MARK
PRINCIPAL REGISTER**



DRIVE FINANCIAL SERVICES LP (DELAWARE
LIMITED PARTNERSHIP)
8585 N. STEMMONS FRWY, SUITE 1100-N
DALLAS, TX 75247

FIRST USE 8-18-2000; IN COMMERCE 8-18-2000.

FOR: FINANCIAL SERVICES, NAMELY, PUR-
CHASING AUTOMOBILE LOANS FROM AUTOMO-
BILE DEALERSHIPS, IN CLASS 36 (U.S. CLS. 100, 101
AND 102).

SER. NO. 76-145,656, FILED 10-12-2000.

JIM RINGLE, EXAMINING ATTORNEY