

ESTTA Tracking number: **ESTTA68022**

Filing date: **02/24/2006**

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	Contemporary Floor Decor Inc.
Granted to Date of previous extension	02/26/2006
Address	2433 E. Mitchell Phoenix, AZ 85016 UNITED STATES

Attorney information	John D. Titus THE CAVANAGH LAW FIRM 1850 N. Central Avenue, Ste. 2400 Phoenix, AZ 85004 UNITED STATES JTitus@cavanaghlaw.com Phone:602-322-4000
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### Applicant Information

Application No	76529312	Publication date	08/30/2005
Opposition Filing Date	02/24/2006	Opposition Period Ends	02/26/2006
Applicant	Floor and Decor Outlets of America, Inc. 245 Townpark Drive, Suite 400 Kennesaw, GA 30144 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. First Use: 2003/03/00 First Use In Commerce: 2003/03/00 All goods and services in the class are opposed, namely: RETAIL STORE SERVICES FEATURING FLOORING MATERIALS AND RELATED HOME IMPROVEMENTS ACCESSORIES
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Related Proceedings	91168268 91168267
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Attachments	Floor Decor 312 Opposition.pdf ( 3 pages )
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Signature	/john d. titus/
Name	John D. Titus
Date	02/24/2006

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

In re Application of:	:	
	:	
Floor and Decor Outlets of America, Inc.	:	
	:	Opposition No.
Serial No.: 76/529,312	:	
	:	
Filed: July 14, 2003	:	
	:	
Mark: FLOOR & DECOR (and Design)	:	

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

**NOTICE OF OPPOSITION**

Sir:

Contemporary Floor Decor Inc., an Arizona Corporation with offices at 3315 E. Indian School Road, Phoenix, Arizona 85018 ("Floor Decor "), believes that it would be damaged by the registration of the above-captioned mark by Floor and Decor Outlets of America, Inc. for "retail store services featuring flooring materials and related home improvements (sic) accessories" and hereby opposes said registration under the provisions of §§ 2(d), and 13 of the Trademark Act of July 5, 1946, as amended, (15 U.S.C. § 1051 *et seq.*).

The grounds for opposition are as follows:

Mark: FLOOR & DECOR and Design

Serial No.: 76/529,312

**Notice of Opposition**

1. Since at least as early as July 1985, Floor Decor and/or its predecessors have used the mark FLOOR DECOR in an open and public manner in the United States for services including retail sales of floor covering and installation of floor covering and have not abandoned such use.

2. On information and belief, Floor and Decor Outlets of America, Inc. first used the above captioned mark no earlier than March 2003. Accordingly, opposer Floor Decor is the senior user of the mark FLOOR DECOR.

3. Floor and Decor Outlets of America, Inc.'s mark FLOOR & DECOR (and Design) is visually and phonetically similar to Floor Decor's mark FLOOR DECOR and it conveys the identical commercial connotation. On information and belief, registration and/or use of the mark FLOOR & DECOR (and Design) by Floor and Decor Outlets of America, Inc. for retail store services featuring flooring materials and related home improvement accessories is likely to cause confusion with Floor Decor's mark FLOOR DECOR for retail sales of floor covering and installation of floor covering, *inter alia* because the services recited in the above referenced application are similar or identical to Floor Decor's services and the marks are similar or virtually identical.

4. Floor and Decor Outlets of America, Inc.'s registration for the above-captioned mark should be refused on the grounds of Floor Decor's prior use, because the mark sought to be registered by Floor and Decor Outlets of America, Inc. so resembles

Mark: FLOOR & DECOR and Design  
Serial No.: 76/529,312  
**Notice of Opposition**

Floor Decor's mark as to be likely, when used in connection with the services specified in the application, to cause confusion or mistake among consumers, including purchasers of Floor Decor's products and services, who may be confused into believing that Floor and Decor Outlets of America, Inc. is the source or origin of Floor Decor's flooring services and/or that Floor and Decor Outlets of America, Inc. has sponsored or licensed Floor Decor's use of the mark.

WHEREFORE, Floor Decor prays for an Order sustaining this Opposition and refusing registration of the mark that is the subject of the above-captioned application, and for such other relief as may be proper.

Respectfully submitted,

Dated: 24 Feb 2006

By: 

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