

ESTTA Tracking number: **ESTTA169150**

Filing date: **10/17/2007**

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	OliverMcMillan Corporation
Granted to Date of previous extension	10/17/2007
Address	733 8th Ave. San Diego, CA 92101 UNITED STATES

Attorney information	Kiley B. MacDonald, Esq. The Trademark Group, APLC 1200 Prospect St., Suite G-100 La Jolla, CA 92037 UNITED STATES usdocketing@trademarkgroup.com Phone:858-456-4801
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Applicant Information

Application No	78812104	Publication date	06/19/2007
Opposition Filing Date	10/17/2007	Opposition Period Ends	10/17/2007
Applicant	STARWOOD HOTELS & RESORTS WORLDWIDE, INC. 1111 WESTCHESTER AVENUE WHITE PLAINS, NY 10604 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: Real estate brokerage, real estate and land acquisition, real estate equity sharing, namely, managing and arranging for ownership of real estate; real estate investment, real estate management, real estate time sharing and leasing of real estate and real property
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77187626	Application Date	05/22/2007
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	ALOFT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2003/10/11 First Use In Commerce: 2003/10/11 leasing of real property, real estate investment, real estate management Class 037. First use: First Use: 2003/10/11 First Use In Commerce: 2003/10/11 real estate development; improvement and construction of residential and/or commercial properties		

Attachments	77187626#TMSN.jpeg (1 page)(bytes) ALOFT- NOO - Notice of Opposition 10-16-07.pdf (4 pages)(19524 bytes)
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Signature	/KABM/
Name	Kiley B. MacDonald, Esq.
Date	10/17/2007

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

OliverMcMillan Corporation) Opposition No. _____
)
) In the matter of Application
) Serial No. 78/812,104
v.) Mark: ALOFT and Design
) Published in the *Official Gazette* on
) June 19, 2007.
)
Starwood Hotels & Resorts Worldwide, Inc.)
)

Box TTAB
FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, OliverMcMillan Corporation, organized under the laws of California, located and doing business at 733 8th Avenue, San Diego, California, 92101, believes that it will be damaged by registration of the mark shown in the above identified application and hereby opposes same.

Applicant's application for ALOFT and Design was filed on February 16, 2006 and is now for real estate brokerage, real estate and land acquisition, real estate equity sharing, namely, managing and arranging for ownership of real estate; real estate investment, real estate management, real estate time sharing and leasing of real estate and real property in International Class 36. It was published for Opposition in the *Official Gazette* on June 19, 2007. Opposer filed a 90-day Request for Extension of Time to File Notice of Opposition, which was granted on July 18, 2007. Opposer has, therefore, until Wednesday, October 17, 2007 to file this Notice of Opposition and has filed it timely on Wednesday, October 17, 2007 pursuant to 37 CFR 2.196.

STANDING AND GROUNDS FOR OPPOSITION

1. Opposer is the owner of the common law trademark ALOFT which has been popular and well known in various metropolitan regions of the country for almost four years since its first use as early as 2003. Opposer's services rendered in connection with the trademark ALOFT have been advertised throughout these regions and others of the U.S. resulting in strong consumer recognition. The mark, therefore, is entitled to strong protection under trademark law.

2. Opposer is the owner of a pending trademark application for the word mark ALOFT, Serial No. 77/187,626 in the United States. This application covers leasing of real property, real estate investment, real estate management in International Class 36 and real estate development; improvement and construction of residential and/or commercial properties in International Class 37.

3. Said mark of Opposer is symbolic of extensive good will and consumer recognition built through substantial effort and expense in advertising and promotion for nearly a four year period. The trademark has acquired recognition in various metropolitan cities within the United States. Opposer's trademark forms the basis for a vast real estate venture including leasing of real property, real estate development, real estate investment and management, and improvement and construction of residential and/or commercial properties. Under this program, Opposer's trademark has been widely and extensively used. Registration of Applicant's alleged mark would deprive Opposer of the exclusive use of its trademark, would infringe said trademark, would violate Opposer's rights therein, would expose Opposer to further violation of its trademark by others, and would diminish the commercial value of the trademark to Opposer in various ways. In addition, such registration would be a source of damage and injury to Opposer's potential developments, licensees and customers.

4. Opposer has clear priority of use. Opposer, since as early as 2003, has been, and is now, using the mark ALOFT in connection with the leasing of real property, real estate investment and management, real estate development and improvement and construction of

residential and/or commercial properties. Said use has been valid and continuous since said date of first use and has not been abandoned.

5. The alleged mark ALOFT and Design intended to be registered by the Applicant is confusingly similar to Opposer's mark. Consumers are highly likely to be confused into thinking this alleged mark is related to Opposer. They are even more likely to be confused because Applicant's alleged mark and Opposer's marks are for use on related services. Opposer's mark has been in use in connection with various and substantial real estate services such that consumers have come to know and recognize Opposer's mark. Applicant proposes to offer real estate brokerage, real estate and land acquisition, real estate equity sharing, namely, managing and arranging for ownership of real estate; real estate investment, real estate management, real estate time sharing and leasing of real estate and real property under its alleged mark. These services are nearly identical to those offered by Opposer under its mark. Use and registration of Applicant's alleged mark ALOFT and Design will cause confusion, mistake or deception. The public is likely to be deceived as to the source of Applicant's services and/or falsely infer a connection with or endorsement by Opposer. In view of the similarity of the respective marks and the highly related nature of the services of the respective parties, it is alleged that Applicant's mark so resembles opposer's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

6. Consequently, Applicant's alleged mark does not and cannot exclusively identify the services on which it is used as the services of the Applicant, nor can it serve as an indication of the source of origin of such services. Therefore, Applicant should not be entitled to registration of its alleged mark.

7. On information and belief Applicant's alleged mark ALOFT and Design was adopted in bad faith with knowledge of Opposer's prior and superior rights in the mark ALOFT. On information and belief Applicant knew it was not entitled to the mark for which it seeks registration, but nevertheless swore that Applicant was entitled to use the mark and that no one else had the right to use the same or similar mark in commerce. Therefore, Applicant should not be entitled to registration of its alleged mark.

8. Opposer has had common law rights for almost four years. Opposer has spent considerable time and effort and invested thousands of dollars in the development of good will and expansion of its ALOFT projects and organization of a strategic planning program to develop other ALOFT projects. On information and belief Applicant has no more than an "intention" to use the confusingly similar mark. Therefore, Applicant should choose a new mark, one which is not confusingly similar and one that is not an unfair attempt to take advantage of Opposer's years of effort and financial investment.

9. Opposer hereby gives notice under 37 C.F.R. 2.122 that at any hearing and on any appeal of this opposition proceeding it will rely on any existing trademark and copyright registrations, common law trademark rights, and pending trademark applications.

WHEREFORE, OliverMcMillan Corporation prays that this opposition be sustained in favor of Opposer, that application Serial No. 78/812,104 be rejected, and that no registration be issued thereon to Applicant.