

ESTTA Tracking number: **ESTTA175790**

Filing date: **11/20/2007**

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	Morris Visitor Publications, LLC
Granted to Date of previous extension	11/21/2007
Address	725 Broad Street Augusta, GA 30901 UNITED STATES

Attorney information	Timothy E. Moses, Esq. Hull, Towill, Norman, Barrett & Salley 801 Broad Street Suite 700 Augusta, GA 30901 UNITED STATES TEMoses@hullfirm.com, dhdupree@hullfirm.com
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**Applicant Information**

Application No	77015656	Publication date	07/24/2007
Opposition Filing Date	11/20/2007	Opposition Period Ends	11/21/2007
Applicant	Magellan Press, Inc. P.O. Box 121075 Nashville, TN 37212 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 039. All goods and services in the class are opposed, namely: PROVIDING ONLINE TRAVEL INFORMATION AND TRAVEL GUIDE SERVICES VIA A GLOBAL COMPUTER NETWORK
Class 043. All goods and services in the class are opposed, namely: PROVIDING ONLINE RESTAURANT INFORMATION VIA A GLOBAL COMPUTER NETWORK

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	730450	Application Date	07/13/1961
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Registration Date	04/24/1962	Foreign Priority Date	NONE
Word Mark	WHERE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U038 (International Class 016). First use: First Use: 1936/01/01 First Use In Commerce: 1936/01/01 Weekly Magazines Distributed in Leading Hotels and Motels Primarily Directed to Traveler Guests		

U.S. Registration No.	2280351	Application Date	06/05/1997
Registration Date	09/28/1999	Foreign Priority Date	NONE
Word Mark	WHERE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1936/00/00 First Use In Commerce: 1996/03/01 computer software used to store, search, retrieve and archive editorial content, photos, illustrations, advertisements, and customer information; communications software for voice, text, video and imaging, namely, audio text that allow customers to call a central telephone number for access to 24 hour information and advertisers; prerecorded audio/video tapes and CD-ROMs featuring travel, hotel, restaurant and entertainment information; kiosks featuring computer based multimedia advertising</p> <p>Class 016. First use: First Use: 1936/00/00 First Use In Commerce: 1996/03/01 books and periodicals</p> <p>Class 035. First use: computerized database management</p> <p>Class 038. First use: telecommunications services, namely, the electronic transmission of voice, text, video and imaging</p> <p>Class 039. First use: transportation reservation services; electronic and digital storage of information; travel information services</p> <p>Class 041. First use: arranging for ticket reservations for shows and other entertainment</p> <p>Class 042. First use: First Use: 1936/00/00 First Use In Commerce: 1996/03/01 making hotel and restaurant reservations for others; computer services, namely, providing an on-line magazine in the field of travel, hotel, restaurants and entertainment</p>		

U.S. Application No.	77329265	Application Date	11/14/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WHERE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 039. First use: First Use: 2004/04/12 First Use In Commerce: 2004/04/12 Providing information, news and commentary in the field of travel Class 043. First use: First Use: 2004/04/12 First Use In Commerce: 2004/04/12 Providing on-line reviews of restaurants and hotels; Providing advice to tourists and business travelers on hotel and restaurant destinations; Providing reviews of restaurants

Attachments	75304063#TMSN.gif ( 1 page )( bytes ) 77329265#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 4 pages )(1424542 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 Overnight Courier on this date.

Signature	//TEMoses/20071120//
Name	Timothy E. Moses, Esq.
Date	11/20/2007

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

Morris Visitor Publications, LLC,	)	
Opposer,	)	Opposition No. ....
	)	
v.	)	
	)	
Magellan Press, Inc.,	)	
Applicant.	)	

Mark : **WHERE THE LOCALS EAT**  
Ser. No.: 77/015,656  
Services: Providing online travel information and travel guide services via a global computer network in International Class 039 and Providing online restaurant information via a global computer network in International Class 043  
Filed: October 6, 2006  
Published: July 24, 2007

**NOTICE OF OPPOSITION**

Opposer, Morris Visitor Publications, LLC, a Georgia limited liability company having a principal place of business of 725 Broad Street, Augusta, Georgia 30901, believes that it will be damaged by the registration of the above-identified application and opposes grant of the registration. As grounds for its opposition, it is alleged that:

1. Since at least as early as 1936, Opposer and its predecessors in interest have used the trademark WHERE<sup>®</sup> throughout the United States in connection with magazines directed to traveler guests and advertising, reviewing and touting local entertainment, restaurants and places of interest. Opposer owns U.S. Registration No. 730,450 registered April 24, 1962, for the mark WHERE<sup>®</sup>. This mark is registered on the Principal Register for Class 016. Additionally, Opposer owns U.S. Registration No. 2,280,351 registered September 28, 1999, for the mark WHERE<sup>®</sup>. This registration covers seven (7) classes of goods and services, including services in Class 039. In addition, Opposer owns WHERE, U.S. Serial No. 77/329,265, which covers Classes 039 and 043.

2. Upon information and belief, Applicant, Magellan Press, Inc., is a Tennessee corporation having a place of business at 201 Summit View Drive, Suite 250 Brentwood, TN

37027. Applicant filed an application to register the mark WHERE THE LOCALS EAT on October 6, 2006. Thereafter, on July 24, 2007, Applicant's mark was published for opposition.

3. Applicant's mark is confusingly similar to Opposer's prior-registered mark, especially considering that Opposer's mark has been registered and used in interstate commerce for over seventy (70) years. Opposer's use of its registered mark, WHERE<sup>®</sup>, spans across the entire continental United States and Hawaii. (See <http://www.wheremagazine.com/> for a map of the cities in which WHERE<sup>®</sup> magazine is published and distributed.) Applicant's application, therefore, should be dismissed on the basis of priority and likelihood of confusion. Trademark Act Section 2(d).

4. Opposer's publication, WHERE<sup>®</sup> magazine, covers local entertainment, restaurants and bars for the cities in which it is published. Similarly, Opposer makes its publication available online. Applicant's on-line publication, WHERE THE LOCALS EAT, is used to advertise restaurants and provides travel information, which are the very type of establishments contained in Opposer's publication, WHERE<sup>®</sup> magazine. (See, e.g., WHERE<sup>®</sup> San Francisco, available online at [http://www.wheremagazine.com/where\\_books/wheresf.shtml](http://www.wheremagazine.com/where_books/wheresf.shtml)). Thus, the two marks serve nearly identical functions and cover the same type of content. As a result, it is easy for a consumer to become confused into believing that there is some affiliation, or endorsement of Applicant's publication by Opposer. Opposer clearly does not endorse or approve of Applicant's publication.

5. Any doubts about likelihood of confusion under Section 2(d) must be resolved against Applicant as the newcomer. *In re Hyper Shoppes, Inc.*, 6 U.S.P.Q.2d 1025, 1026 (Fed. Cir. 1988); T.M.E.P. § 1207.01(d)(i).

6. Applicant's mark is merely descriptive and should be dismissed pursuant to Trademark Act Section 2(e)(1). Indeed, Applicant's mark, WHERE THE LOCALS EAT, is used for "providing online restaurant information." Opposer is entitled to raise this claim of descriptiveness because of Opposer's interest in using the mark "WHERE" to provide services identical to those covered by Applicant's application.

7. Applicant's mark improperly and unfairly dilutes Opposer's registered mark, WHERE<sup>®</sup>, for the exact same services, that is, providing information about restaurants via an online publication. Trademark Act Section 43(c).

8. For the foregoing reasons and upon the bases discussed above, Applicant's mark should be refused registration. For these reasons, Opposer would be damaged by registration of Applicant's WHERE THE LOCALS EAT mark shown in Application Serial No. 77/015,656.

WHEREFORE, Opposer respectfully requests that application Serial No. 77/015,656 be rejected, that no registration issue to Applicant, and that this opposition be sustained in favor of Opposer.

Simultaneously herewith, Opposer submits the required opposition fee of \$600.00.

Respectfully submitted, this 20th day of November, 2007.



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Timothy E. Moses  
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Attorney for Opposer,  
Morris Visitor Publications, LLC

Attorney Docket #: 7292-002

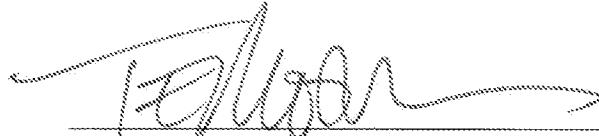
CERTIFICATE OF SERVICE

I certify that I have on this day served a copy of the foregoing "Notice of Opposition" on counsel of record by causing a copy of same to be delivered via the following means:

Via FedEx addressed to:

Mr. Anthony V. Lupo  
ARENT FOX PLLC  
1050 Connecticut Ave NW  
Washington, DC 20036-5303

This 20 day of November, 2007.



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Attorney for Opposer,  
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