

ESTTA Tracking number: **ESTTA217050**

Filing date: **06/11/2008**

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	Commerce Bancorp, Inc.		
Entity	Corporation	Citizenship	New Jersey
Address	11000 Atrium Way Mount Laurel, NJ 08054 UNITED STATES		
Attorney information	Teresa C. Tucker Grossman, Tucker, Perreault & Pflieger, PLLC 55 South Commercial Street Manchester, NH 03101 UNITED STATES jhobbs@gtp.com Phone:603.668.6560		

### Applicant Information

Application No	77353689	Publication date	05/13/2008
Opposition Filing Date	06/11/2008	Opposition Period Ends	06/12/2008
Applicant	MidFirst Bank 3rd Floor Legal Department 501 NW Grand Oklahoma City, OK 73118 UNITED STATES		

### Goods/Services Affected by Opposition

Class 036. First Use: 2006/01/01 First Use In Commerce: 2006/02/01  
All goods and services in the class are opposed, namely: Banking services

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2890738	Application Date	02/05/2002
Registration Date	10/05/2004	Foreign Priority Date	NONE
Word Mark	AMERICA'S MOST CONVENIENT BANK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1996/02/23 First Use In Commerce: 1996/02/23		

	BANKING SERVICES; BANKING SERVICES AND FINANCIAL SERVICES, NAMELY, PROVIDING INVESTMENT ADVICE AND BROKERAGE SERVICES; BANKING SERVICES AND FINANCIAL SERVICES, NAMELY, PROVIDING INVESTMENT ADVICE AND BROKERAGE SERVICES VIA THE INTERNET
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U.S. Registration No.	3204243	Application Date	02/14/2002
Registration Date	01/30/2007	Foreign Priority Date	NONE
Word Mark	MOST CONVENIENT BANK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2006/09/25 First Use In Commerce: 2006/09/25 BANKING SERVICES; BANKING SERVICES AND FINANCIAL SERVICES, NAMELY, PROVIDING INVESTMENT ADVICE AND BROKERAGE SERVICES; BANKING SERVICES AND FINANCIAL SERVICES, NAMELY, PROVIDING INVESTMENT ADVICE AND BROKERAGE SERVICES VIA THE INTERNET		

Attachments	76367287#TMSN.gif ( 1 page )( bytes ) 76371497#TMSN.gif ( 1 page )( bytes ) BNG010.opposition.pdf ( 5 pages )(367917 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 First Class Mail on this date.

Signature	/TcT/
Name	Teresa C. Tucker
Date	06/11/2008

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

In Re Trademark Appln. )  
Serial No. 77353689 )  
  
Filed: December 17, 2007 )  
  
Published in the Official Gazette )  
of May 13, 2008 )  
  
Mark: More Convenience )  
  
Class: INT. 36 )

DOCKET:  
BNG010

COMMERCE BANCORP, INC. )  
Opposer ) Opposition No.  
)  
v. )  
)  
MIDFIRST BANK )  
Applicant )  
\*  

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**NOTICE OF OPPOSITION**

Commerce Bancorp, Inc. a New Jersey Corporation having a principal place of business at 11000 Atrium Way, Mount Laurel, New Jersey 08054, believes that it will be damaged by the registration of the mark "MORE CONVENIENCE" shown in Application Serial No. 77/353,689, filed on December 17, 2007, by MidFirst Bank, and hereby opposes the same.

The grounds for opposition against said application are as follows:

**OPPOSER'S MARK**

1. Opposer is the owner of the marks "AMERICA'S MOST CONVENIENT BANK" and

“MOST CONVENIENT BANK,” as shown in Federal Trademark Registration Nos. 2,890,738 and 3,204,243 respectively.

2. The above referenced registrations, each owned by Opposer, constitute prima facie evidence of Opposer’s ownership of the marks “MOST CONVENIENT BANK” and “AMERICA’S MOST CONVENIENT BANK” (hereinafter collectively referred to as “MOST CONVENIENT” marks).

3. Opposer heavily relies on the “MOST CONVENIENT” marks in its business, including without limitation, in its advertising, and has built up a significant amount of goodwill in its “MOST CONVENIENT” marks through its many years of continuous use.

4. Opposer has used the “MOST CONVENIENT” marks shown in Registration Nos. 2,890,738 and 3,204,243 since at least as early as February 23, 1996 and September 25, 2006 respectively, in connection with the goods identified in said registrations, namely, “banking services; banking services and financial services, namely, providing investment advice and brokerage services; banking services and financial, services, namely, providing investment advice and brokerage services via the internet” and related services.

#### **APPLICANT’S APPLICATION**

5. On information and belief, on December 17, 2007 Applicant MidFirst Bank filed an application with the United States Patent and Trademark Office for “MORE CONVENIENCE,” assigned Serial No. 77353689 in Class 36, for “banking services,” which services are identical to Opposer’s services.

6. Applicant’s application indicates a filing date for Applicant’s proposed mark of December 17, 2007, and a date of first use in commerce of February 1, 2006, both of which are subsequent to Opposer’s filing date of June 8, 1998 and subsequent to Opposer’s first use of February 23, 1996. Thus, Opposer is the senior user.

#### **LIKELIHOOD OF CONFUSION**

7. Opposer alleges that there is a likelihood of confusion between Opposer’s “MOST CONVENIENT” marks and Applicant’s proposed “MORE CONVENIENCE” mark, given

the similarities in the sight, sound, and overall commercial impressions of the marks, and consumers are likely to be confused or misled into believing that Applicant's "MORE CONVENIENCE" are services being offered by Opposer.

8. The "MORE CONVENIENCE" mark proposed for registration by Applicant is similar in meaning and thus maintains the same overall commercial impression as Opposer's "MOST CONVENIENT" marks. The dominant part of applicant's mark is "CONVENIENCE" while the dominant part of Opposer's marks is "CONVENIENT," both of which have the same definition and meaning. The term "convenience" is a noun meaning suitable and handy, whereas the term "convenient" is an adjective also meaning suitable and handy. Moreover, both parties' marks begin with an adjective. Applicant's proposed mark contain the adjective "MORE" and Opposer's marks contain the adjective "MOST," both of which denote having an additional quality and are superlatives of the term "many." Therefore, the Applicant's proposed "MORE CONVENIENCE" mark has the same overall commercial impression of Opposer's "MOST CONVENIENT" marks because they both imply that they offer services which have many additional convenience qualities than those offered by other banks. Thus, the overall commercial impression conveyed by Applicant's mark is essentially identical in meaning to Opposer's marks and Applicant's mark creates the impression that it is another mark in Opposer's family of trademarks
9. Furthermore, the Applicant's proposed "MORE CONVENIENCE" mark is similar in sound and appearance to Opposer's "MOST CONVENIENT" marks. Both parties' marks sound nearly identical because they repeat a similar combination of letters and words. The ordinary consumer viewing these marks would not likely focus on the slight distinctions in


the marks because they sound so similar. In addition, the marks are similar in appearance for the same reasons.

10. The likelihood of confusion between Opposer's "MOST CONVENIENT" marks and Applicant's proposed "MORE CONVENIENCE" mark is furthered by the similarity of the parties' services. Applicant's application for "MORE CONVENIENCE" was filed in Class 36 for bank services, which services are identical to those offered by Opposer under its "MOST CONVENIENT" marks.
11. Upon information and belief, there is also a similarity between the parties' respective channels of trade, which are in the field of finance, and target customers, who are looking for banking services.
12. This likelihood of confusion harms the extensive goodwill and consumer recognition that Opposer has in its "MOST CONVENIENT" marks.
13. In view of the similarity of Applicant's proposed mark "MORE CONVENIENCE" and Opposer's prior "MOST CONVENIENT" marks, Applicant's proposed mark is likely to cause confusion, mistake and/or deception.

WHEREFORE, Opposer prays that application Serial No. 77353689 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of June, 2008.

COMMERCE BANCORP, INC.

By   
Teresa C. Tucker  
Attorney for Opposer  
Grossman, Tucker, Perreault & Pflieger, PLLC

55 S. Commercial Street  
Manchester, NH 03101  
603-668-6560

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and complete copy of the subject Notice of Opposition was served upon the Applicant via First Class mail, postage prepaid, this 11<sup>th</sup> day of June, 2008 to the following address:

SARA FALKINHAM  
MIDFIRST BANK  
501 NW BANK  
LEGAL DEPARTMENT, 3<sup>RD</sup> FLOOR  
OKLAHOMA CITY, OK 73118