

ESTTA Tracking number: **ESTTA419388**

Filing date: **07/13/2011**

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    | Market America, Inc.  |             |    |
| Entity  | Corporation   | Citizenship | NC |
| Address | 1302 Pleasant Ridge Road<br>Greensboro, NC 27409<br>UNITED STATES |             |    |

|                      |  |  |  |
|----------------------|--|--|--|
| Attorney information | Ryan S. Luft<br>1302 Pleasant Ridge Road<br>Greensboro, NC 27409<br>UNITED STATES<br>trademarks@marketamerica.com Phone:336/544-6349 |  |  |
|----------------------|--|--|--|

### Applicant Information

|                        |   |                        |            |
|------------------------|---|------------------------|------------|
| Application No         | 85145907  | Publication date       | 06/21/2011 |
| Opposition Filing Date | 07/13/2011  | Opposition Period Ends | 07/21/2011 |
| Applicant              | Vantage Hospitality Group, Inc.<br>3300 N. University Drive, Suite 500<br>Coral Springs, FL 3306, FL 33065<br>UNITED STATES |                        |            |

### Goods/Services Affected by Opposition

|   |
|---|
| Class 035.<br>All goods and services in the class are opposed, namely: Offering business management assistance in the establishment and/or operation of hotels and motels |
|---|

### Grounds for Opposition

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

### Mark Cited by Opposer as Basis for Opposition

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2011502   | Application Date      | 04/13/1995 |
| Registration Date     | 10/29/1996  | Foreign Priority Date | NONE       |
| Word Mark             | THE UNFRANCHISE   |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 042. First use: First Use: 1993/04/01 First Use In Commerce: 1993/04/01 |                       |            |

|  |   |
|--|---|
|  | distributorships in the field of personal care and home care products, namely, jewelry, nutritional and weight control supplements, and cosmetics |
|--|---|

|             |  |
|-------------|--|
| Attachments | Notice of Opposition - THE UNFRANCHISE.pdf ( 3 pages )(64036 bytes ) |
|-------------|--|

### **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 | /Ryan S. Luft/ |
| Name      | Ryan S. Luft   |
| Date      | 07/13/2011     |

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

In the matter of trademark application Serial No. 85-145907

For the mark THE UNFRANCHISE

Published in the Official Gazette on June 21, 2011

|                                 |   |
|---------------------------------|---|
| Market America, Inc.            | ) |
|                                 | ) |
| v.                              | ) |
|                                 | ) |
| Vantage Hospitality Group, Inc. | ) |
| _____                           | ) |

The above-identified opposer (“Market America”) believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The applicant, Vantage Hospitality Group, Inc. (“Applicant”) filed a trademark application assigned Application Serial No. 85-145907 in the United States Patent and Trademark Office (“PTO”) on October 6, 2010 (the “Application”) to register the mark THE UNFRANCHISE (the “Applicant’s Mark”) for use in connection with “Offering business management assistance in the establishment and/or operation of hotels and motels” in International Class 035.
2. The Application was based on Applicant’s intent to use the mark. On information and belief, at the time Applicant filed the Application, Applicant did not have actual use of Applicant’s Mark as a trademark with the goods and services identified above.
3. The Application was published for opposition in the *Official Gazette* on June 21, 2011.

4. Since at least April 1993, Market America has used the trademark THE UNFRANCHISE in connection with distributorships in the field of personal care and home care products. Market America's use of its THE UNFRANCHISE trademark throughout the United States has been continuous throughout this time period.

5. Through Market America's long, extensive, and continuous use of its THE UNFRANCHISE trademark, the public has come to recognize its mark as being uniquely associated with Market America.

6. Applicant's Mark, THE UNFRANCHISE, is identical to Market America's trademark, THE UNFRANCHISE. Further, Applicant's goods and services are closely related to Market America's goods and services.

7. As a result of the similarity of the parties' trademarks, the similarity of the goods and services associated with the trademarks, and the strength of Market America's THE UNFRANCHISE trademark, Applicant's registration and use of the Applicant's Mark would likely create confusion, mistake, or deception in the minds of prospective purchasers as to the origin or source of Market America's goods and services.

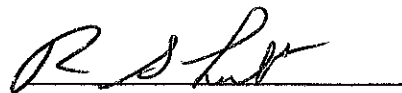
8. Prospective purchasers are likely to mistakenly believe that Applicant's goods and services are sponsored by, authorized, endorsed, affiliated with, or otherwise approved by Market America because Applicant's Mark sought to be registered and used by Applicant is confusingly similar (in fact, identical) to Market America's trademark.

9. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Market America believes that it would be damaged thereby.

10. WHEREFORE, Market America respectfully requests that registration of Applicant's Mark be refused, and that this Opposition be sustained in favor of Market America.

Dated: July 13, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. S. Luft", written over a horizontal line.

Ryan S. Luft  
Attorney of record, N.C. bar member  
Associate General Counsel  
Market America, Inc.  
336/544-6349