

ESTTA Tracking number: **ESTTA950451**

Filing date: **01/28/2019**

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	Highmark Inc.
Granted to Date of previous extension	01/27/2019
Address	1800 Center Street Camp Hill, PA 17011 UNITED STATES

Attorney information	Alan G. Towner Leech Tishman Fuscaldo & Lampl LLC 525 William Penn Place Pittsburgh, PA 15219 UNITED STATES IPDocket@leechtishman.com, atowner@leechtishman.com, cyeo- mans@leechtishman.com 4122611600
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Applicant Information

Application No	87806017	Publication date	07/31/2018
Opposition Filing Date	01/28/2019	Opposition Period Ends	01/27/2019
Applicant	Highmark Data LLC 3554 Dexter Street Denver, CO 80207 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Software as a service (SAAS) services featuring software for the collection and compilation of regulatory, compliance, and tax data using geo-based technology

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration	2204203	Application Date	12/11/1995
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No.			
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	HIGHMARK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1997/02/25 First Use In Commerce: 1997/02/25 health care utilization and review services, pre-certification services, and electronic processing of health care information</p> <p>Class 036. First use: First Use: 1997/02/25 First Use In Commerce: 1997/02/25 health and group disability insurance underwriting and administration services, the administration of employee welfare benefit plans, [group life insurance underwriting and administration services, long-term care insurance underwriting and underwriting insurance for pre-paid legal insurance services,] and health care administration services</p> <p>Class 041. First use: First Use: 1997/02/25 First Use In Commerce: 1997/02/25 health related educational services, namely, conducting field instruction seminars on health related topics</p> <p>Class 042. First use: First Use: 1997/02/25 First Use In Commerce: 1997/02/25 health care in the nature of health maintenance organization services, preferred provider organization services, and managed health care services</p>		

U.S. Registration No.	2157238	Application Date	12/11/1995
Registration Date	05/12/1998	Foreign Priority Date	NONE
Word Mark	HIGHMARK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1997/02/25 First Use In Commerce: 1997/02/25 managed care services, namely, utilization review and precertification services</p> <p>Class 036. First use: First Use: 1997/02/25 First Use In Commerce: 1997/02/25 dental health insurance underwriting and administration; health insurance underwriting and administration; administration of employee welfare benefit plans</p> <p>Class 042. First use: First Use: 1997/02/25 First Use In Commerce: 1997/02/25 health care services in the nature of health maintenance organizations and preferred provider organizations; health care information services</p>		

U.S. Registration No.	2609989	Application Date	10/24/1996
Registration Date	08/20/2002	Foreign Priority Date	NONE
Word Mark	HIGHMARK		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 1999/08/15 First Use In Commerce: 1999/08/15 managed care services, namely, utilization review and pre-certification services and electronic processing of health care information</p> <p>Class 036. First use: First Use: 1999/07/15 First Use In Commerce: 1999/07/15 dental health insurance underwriting and administration; health insurance underwriting and administration; administration of employee welfare benefit plans</p> <p>Class 041. First use: First Use: 1999/06/15 First Use In Commerce: 1999/06/15 Health related educational services, namely, conducting field instruction seminars on health related topics</p> <p>Class 042. First use: First Use: 1999/06/15 First Use In Commerce: 1999/06/15 Health care services in the nature of health maintenance organizations and preferred provider organizations</p>

U.S. Registration No.	2453395	Application Date	10/21/1996
Registration Date	05/22/2001	Foreign Priority Date	NONE
Word Mark	HIGHMARK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1999/08/15 First Use In Commerce: 1999/08/15 health care utilization and review services, pre-certification services and electronic processing of health care information</p> <p>Class 036. First use: First Use: 1997/07/15 First Use In Commerce: 1997/07/15 health [and group disability] insurance underwriting and administration services, the administration of employee welfare benefit plans, [group life underwriting and administration services, long-term care insurance underwriting and underwriting insurance for prepaid legal insurance services,] and health care administration services</p> <p>Class 041. First use: First Use: 1999/09/15 First Use In Commerce: 1999/09/15 health related educational services, namely, conducting field instruction seminars on health related topics</p> <p>Class 042. First use: First Use: 1999/06/15 First Use In Commerce: 1999/06/15 health care in the nature of health maintenance organization services, preferred provider organization services, and managed health care services</p>		

U.S. Registration No.	3681231	Application Date	09/08/2008
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	HIGHMARK DIRECT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2009/03/01 First Use In Commerce: 2009/03/01 Individual and group health and group disability insurance underwriting and administration services, the administration of employee welfare benefit plans, dental and vision insurance underwriting and administration, underwriting and administration of long term care and catastrophic medical insurance to be provided via a retail facility with face to face interaction and customer service functionality		

Attachments	75187144#TMSN.png(bytes) 75184092#TMSN.png(bytes) 77564510#TMSN.png(bytes) Highmark Notice of Opposition.pdf(454166 bytes)
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Signature	/Alan G Towner/
Name	Alan G. Towner
Date	01/28/2019

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

In the Matter of Application Serial No. 87/806,017
For the mark: HIGHMARK DATA
Published: July 31, 2018

HIGHMARK INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
HIGHMARK DATA LLC)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

1. Opposer Highmark Inc. (“Opposer”), a Pennsylvania Corporation having a principal place of business at 1800 Center Street, Camp Hill, Pennsylvania 17011, believes that it will be damaged by the registration of Trademark Application No. 87/806,017 for the mark HIGHMARK DATA in International Class 42. Opposer hereby opposes same pursuant to Section 13(a) of the Lanham Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. § 1063(a). The grounds for the opposition are as follows:

2. Opposer is the owner of valid and subsisting United States Trademark Registrations on the Principal Register in the United States Patent and Trademark Office for trademarks HIGHMARK, HIGHMARK plus design and HIGHMARK DIRECT (“Opposer’s Registered Marks”) for the goods and services listed therein. Each of these registrations have become incontestable within the meaning of Section 15 of the Lanham Act, 15 U.S.C. § 1065. Attached as Exhibit 1 is a true and correct printout from the United States Patent and Trademark

Office electronic database showing the current status and title of the registrations as of January 28, 2019.

Trademark	Reg. No.	Filing Date	Reg. Date	International Class(es)
HIGHMARK	2,204,203	12/11/1995	11/17/1998	35, 36, 41, 42
HIGHMARK	2,157,238	12/11/1995	5/12/1998	35, 36, 42
HIGHMARK + design	2,609,989	10/24/1996	8/20/2002	35, 36, 41, 42
HIGHMARK + design	2,453,395	10/21/1996	5/22/2001	35, 36, 41, 42
HIGHMARK DIRECT	3,681,231	9/8/2008	9/8/2009	36

3. In addition to Opposer’s Registered Marks, Opposer has developed common law rights to the HIGHMARK, HIGHMARK plus design and HIGHMARK DIRECT marks (these common law rights collectively with Opposer’s Registered Marks referred to as the “HIGHMARK Marks”).

4. In addition to the goods and services recited in Opposer’s Registered Marks, Opposer provides goods and services under the HIGHMARK Marks in connection with all aspects of the health insurance marketplace, including providing, administering and underwriting multiple forms of health insurance and reinsurance, administering group and individual health insurance plans, processing healthcare information and claims, health care information services, employee benefit plan administration, health related educational services, pre-certification services and electronic processing of healthcare information.

5. Opposer has used the HIGHMARK Marks in interstate commerce in the United States in connection with the provision and promotion of its goods and services continuously since at least February 25, 1997. The goods and services offered by Opposer under

the HIGHMARK Marks are of high quality and Opposer has developed substantial goodwill in the HIGHMARK Marks.

6. Opposer has expended substantial time, money, and resources marketing, advertising, and promoting the goods and services sold under the HIGHMARK Marks.

7. As a result of its widespread, continuous, and exclusive use of the HIGHMARK Marks to identify its goods and services, Opposer has developed substantial goodwill in the HIGHMARK Marks in connection with its goods and services provided by Opposer, and consumers have come to recognize Opposer as the source of goods and services provided under the HIGHMARK Marks.

8. Opposer's HIGHMARK Marks are distinctive to both the consuming public and Opposer's trade.

9. Notwithstanding the inherent distinctiveness of Opposer's HIGHMARK Marks, these marks have also acquired secondary meaning to the public indicating Opposer as the source of goods and services bearing the HIGHMARK Marks.

10. Upon information and belief, Highmark Data LLC ("Applicant"), a Colorado limited liability company with an address at 3554 Dexter Street, Denver, Colorado 80207, on February 21, 2018 filed trademark Application Serial No. 87/806,017 to register the proposed mark HIGHMARK DATA for "Software as a service (SAAS) services featuring software for the collection and compilation of regulatory, compliance, and tax data using geo-based technology" in International Class 42.

11. Applicant filed Application Serial No. 87/806,017 as an intent-to-use application under Section 1(b) of the Lanham Act, and, upon information and belief, Applicant has not yet used the mark in commerce.

12. Opposer's HIGHMARK Marks have priority over the proposed HIGHMARK DATA mark because, to the extent that Applicant has actually used the HIGHMARK DATA mark, Opposer's first use date predates any date of first use on which Applicant may rely for purposes of priority.

13. Applicant's proposed mark HIGHMARK DATA is confusingly similar to Opposer's HIGHMARK Marks at least because the "HIGHMARK" portion of Applicant's HIGHMARK DATA mark is identical to the "HIGHMARK" component in each of Opposer's HIGHMARK Marks.

14. Upon information and belief, the services covered by the Applicant's Application Serial No. 87/806,017 are closely related to the goods and services advertised, promoted, offered, and/or sold by Opposer in connection with its HIGHMARK Marks.

15. Upon information and belief, Applicant's services with which it intends to use the HIGHMARK DATA mark and the goods and services with which Opposer uses its HIGHMARK Marks are offered for sale and are sold through the same or similar channels of trade and are offered and sold to the same classes of purchasers.

16. In view of the similarity of the respective marks, the substantially identical channels of trade, the relatedness of the goods and services offered for sale by the respective parties, and the overlap in the buyers to whom sales are made, Applicant's "HIGHMARK DATA" mark so resembles Opposer's HIGHMARK Marks as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods and services are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer in violation of 15 U.S.C. § 1052(d).

17. Because the purchasing public has come to recognize and associate the products and services of Opposer with Opposer's HIGHMARK Marks, Applicant's proposed HIGHMARK DATA mark would be recognized as uniquely and unmistakably identifying or suggesting a connection to Opposer.

18. Opposer is not connected with the services that are sold or will be sold by Applicant under the HIGHMARK DATA mark.

19. Applicant's use or intended use of the mark identified in its application and in the manner described therein creates a likelihood of confusion with Opposer's HIGHMARK Marks. A likelihood of confusion in the marketplace exists or will exist between Opposer's HIGHMARK Marks and Applicant's HIGHMARK DATA mark when applied to the goods and services of the respective parties.

20. If Applicant is permitted to register its mark for its services as specified in the application herein opposed, such registration would result in confusion in the trade by reason of the similarity between Applicant's HIGHMARK DATA mark and Opposer's HIGHMARK Marks, thereby damaging and injuring Opposer. Any such confusion may result in the loss of business to Opposer. Furthermore, any defect, objection or fault in the services sold by Applicant under its mark may reflect upon and injure the reputation which Opposer has established for its various goods and services offered or sold under or in association with Opposer's HIGHMARK Marks.

21. By reason of Opposer's continuous, extensive and exclusive use for many years, Opposer's HIGHMARK Marks are distinctive and famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

22. Opposer's HIGHMARK Marks became distinctive and famous prior to the commencement of any use of the HIGHMARK DATA mark by Applicant or any other date on which Applicant has relied for purposes of priority.

23. Upon information and belief, Applicant intends to provide the services recited in its application in connection with regulatory, compliance and tax data related to the cannabis industry, which is likely to include producers and distributors of cannabis-containing products.

24. Applicant's application and intended use will impair the distinctiveness and cause dilution by tarnishment of, and thereby damages, Opposer's famous HIGHMARK Marks in violation of 15 U.S.C. § 1125(c). Accordingly, the registration of Applicant's HIGHMARK DATA mark should be refused.

25. Applicant's application will impair the distinctiveness and cause dilution by blurring of, and thereby damages, Opposer's famous HIGHMARK Marks in violation of 15 U.S.C. § 1125(c). Accordingly, the registration of Applicant's HIGHMARK DATA mark should be refused.

26. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* right to the use of its mark. Such registration would be a further source of damage to Opposer.

27. In view of the forgoing, Applicant is not entitled to federal registration of its claimed mark because Applicant's HIGHMARK DATA mark as used upon its identified services is not entitled to protection. Further, Applicant does not have a right to exclusive use of said mark in commerce in connection with Applicant's services. Applicant's claimed mark does

not and cannot function to identify such goods and to distinguish them from goods and services offered by Opposer.

WHEREFORE, Opposer respectfully prays that its opposition be sustained and that registration to Applicant be refused.

The filing fee required by 37 C.F.R. § 2.6(a)(17) for this Notice of Opposition is being submitted herewith. Please charge any underpayment or credit any overpayment to Deposit Account No. 506516.

Date: January 28, 2019
Pittsburgh, Pennsylvania

Respectfully submitted,

By: /Alan G. Towner/
Alan G. Towner, Esq.
E-mail: atowner@leechtishman.com
LEECH TISHMAN FUSCALDO & LAMPL LLC
525 William Penn Place, 28th Floor
Pittsburgh, PA 15219
Telephone: 412/261-1600
Facsimile: 412/227-5551
Attorney for Opposer
Highmark Inc.

EXHIBIT 1

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Typed Drawing

Word Mark HIGHMARK

Goods and Services IC 035. US 100 101 102. G & S: managed care services, namely, utilization review and precertification services. FIRST USE: 19970225. FIRST USE IN COMMERCE: 19970225

IC 036. US 100 101 102. G & S: dental health insurance underwriting and administration; health insurance underwriting and administration; administration of employee welfare benefit plans. FIRST USE: 19970225. FIRST USE IN COMMERCE: 19970225

IC 042. US 100 101. G & S: health care services in the nature of health maintenance organizations and preferred provider organizations; health care information services. FIRST USE: 19970225. FIRST USE IN COMMERCE: 19970225

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75030980

Filing Date December 11, 1995

Current Basis 1A

Original Filing Basis 1B

Published for Opposition November 12, 1996

Registration Number 2157238

Registration Date May 12, 1998

Owner (REGISTRANT) HIGHMARK INC CORPORATION PENNSYLVANIA CRST-1B457 1800 Center Street Camp Hill PENNSYLVANIA 17011

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record John A. Greenbaum

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20180426.

Renewal 2ND RENEWAL 20180426

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Typed Drawing

Word Mark HIGHMARK

Goods and Services IC 035. US 100 101 102. G & S: health care utilization and review services, pre-certification services, and electronic processing of health care information. FIRST USE: 19970225. FIRST USE IN COMMERCE: 19970225

IC 036. US 100 101 102. G & S: health and group disability insurance underwriting and administration services, the administration of employee welfare benefit plans, [group life insurance underwriting and administration services, long-term care insurance underwriting and underwriting insurance for pre-paid legal insurance services,] and health care administration services. FIRST USE: 19970225. FIRST USE IN COMMERCE: 19970225

IC 041. US 100 101 107. G & S: health related educational services, namely, conducting field instruction seminars on health related topics. FIRST USE: 19970225. FIRST USE IN COMMERCE: 19970225

IC 042. US 100 101. G & S: health care in the nature of health maintenance organization services, preferred provider organization services, and managed health care services. FIRST USE: 19970225. FIRST USE IN COMMERCE: 19970225

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75030998

Filing Date December 11, 1995

Current Basis 1A

Original Filing Basis 1B

Published for Opposition November 11, 1997

Registration Number 2204203

Registration Date November 17, 1998

Owner (REGISTRANT) Veritus Inc. NON-PROFIT CORPORATION PENNSYLVANIA Fifth Avenue Place Pittsburgh PENNSYLVANIA 152223099

(LAST LISTED OWNER) HIGHMARK INC. DBA Highmark Inc. NON PROFIT CORPORATION PENNSYLVANIA CRST 1B457 1800 Center Street Camp Hill PENNSYLVANIA 17089

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record John A. Greenbaum

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20181013.

Renewal 2ND RENEWAL 20181013

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[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)***Word Mark** HIGHMARK**Goods and Services** IC 035. US 100 101 102. G & S: health care utilization and review services, pre-certification services and electronic processing of health care information. FIRST USE: 19990815. FIRST USE IN COMMERCE: 19990815

IC 036. US 100 101 102. G & S: health [and group disability] insurance underwriting and administration services, the administration of employee welfare benefit plans, [group life underwriting and administration services, long-term care insurance underwriting and underwriting insurance for prepaid legal insurance services,] and health care administration services. FIRST USE: 19970715. FIRST USE IN COMMERCE: 19970715

IC 041. US 100 101 107. G & S: health related educational services, namely, conducting field instruction seminars on health related topics. FIRST USE: 19990915. FIRST USE IN COMMERCE: 19990915

IC 042. US 100 101. G & S: health care in the nature of health maintenance organization services, preferred provider organization services, and managed health care services. FIRST USE: 19990615. FIRST USE IN COMMERCE: 19990615

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved

Serial Number 75184092

Filing Date October 21, 1996

Current Basis 1A

Original Filing Basis 1B

Published for Opposition May 4, 1999

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 2453395

Registration Date May 22, 2001

Owner (REGISTRANT) HIGHMARK INC. NON- PROFIT CORPORATION PENNSYLVANIA 120 Fifth Avenue Pittsburgh PENNSYLVANIA 15222

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record David V. Radack

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110502.

Renewal 1ST RENEWAL 20110502

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Word Mark HIGHMARK

Goods and Services IC 035. US 100 101 102. G & S: managed care services, namely, utilization review and pre-certification services and electronic processing of health care information. FIRST USE: 19990815. FIRST USE IN COMMERCE: 19990815

IC 036. US 100 101 102. G & S: dental health insurance underwriting and administration; health insurance underwriting and administration; administration of employee welfare benefit plans. FIRST USE: 19990715. FIRST USE IN COMMERCE: 19990715

IC 041. US 100 101 107. G & S: Health related educational services, namely, conducting field instruction seminars on health related topics. FIRST USE: 19990615. FIRST USE IN COMMERCE: 19990615

IC 042. US 100 101. G & S: Health care services in the nature of health maintenance organizations and preferred provider organizations. FIRST USE: 19990615. FIRST USE IN COMMERCE: 19990615

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved
27.03.01 - Geometric figures forming letters, numerals or punctuation

Serial Number 75187144

Filing Date October 24, 1996

Current Basis 1A

Original Filing Basis 1B

Published for Opposition December 26, 2000

Registration Number 2609989

Registration Date August 20, 2002

Owner (REGISTRANT) HIGHMARK, INC. CORPORATION PENNSYLVANIA Fifth Avenue Place Pittsburgh PENNSYLVANIA 152193099

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record DAVID V. RADACK

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20111018.

Renewal 1ST RENEWAL 20111018

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HIGHMARK DIRECT

Word Mark HIGHMARK DIRECT**Goods and Services** IC 036. US 100 101 102. G & S: Individual and group health and group disability insurance underwriting and administration services, the administration of employee welfare benefit plans, dental and vision insurance underwriting and administration, underwriting and administration of long term care and catastrophic medical insurance to be provided via a retail facility with face to face interaction and customer service functionality. FIRST USE: 20090301. FIRST USE IN COMMERCE: 20090301**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 77564510**Filing Date** September 8, 2008**Current Basis** 1A**Original Filing Basis** 1B**Published for Opposition** March 10, 2009**Registration Number** 3681231**Registration Date** September 8, 2009**Owner** (REGISTRANT) Highmark Inc. CORPORATION PENNSYLVANIA CRST 1B457 1800 Center Street Camp Hill PENNSYLVANIA 17089**Attorney of Record** John A. Greenbaum**Prior Registrations** 2157238;2204203;2609989;AND OTHERS**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DIRECT" APART FROM THE MARK AS SHOWN**Type of Mark** SERVICE MARK**Register** PRINCIPAL**Affidavit Text** SECT 15. SECT 8 (6-YR).**Live/Dead Indicator** LIVE[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [TOP](#) | [HELP](#)[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)