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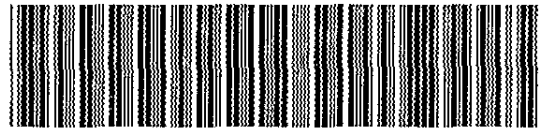
(Requestor's Name)

855/304/671 ^{740 Title}

after further review
we will grant reg.
with the disclaimer
for the term "Title"
only. Please return
your original app.
with the correction
requested.

Office Use Only

- No disclaimer required
for "Advantage" due to
filing of 2806558 w/
USPTO - cut



800024063068

(14)

104-345

10/27/03--01054--016 **87.50

~~103-31487~~

Must disclaim
"Advantage Title"

ST-50
STATE
SEPT. 17, 2004
OFFICE OF PROSECUTIONS

OIS
to file 3/19/04
per Bet

Malloy & Malloy, P.A.

Patent, Trademark & Copyright Law

"Since 1959"

Registered Patent Attorneys
Members of the Florida Bar
Trial and Appellate Counsel

Miami Office

2800 S.W. Third Avenue
Miami, Florida 33129
Telephone (305) 858-8000
Facsimile (305) 858-0008

Ft. Lauderdale Office

2101 West Commercial Blvd.
Reply to: Miami Office
Broward (954) 525-9611
Florida (800) 337-7239

October 21, 2003

Secretary of State
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Re: Florida Trademark Application —
"NAT ADVANTAGE-TITLE & Design"
Our Ref.: 2.997.03

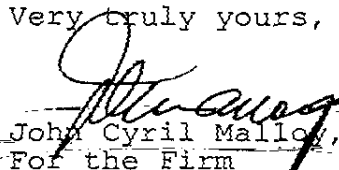
Dear Sir:

Enclosed please find a trademark application, along with three (3) specimens, to be filed with the State of Florida regarding the above-referenced trademark.

Also enclosed is our check in the amount of \$87.50 to cover the appropriate filing fee.

Kindest regards,

Very truly yours,


John Cyril Malloy, III
For the Firm

JCM3/vm
Enclosures



FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State

October 28, 2003

JOHN CYRIL MALLOY, III ESQUIRE
MALLOY & MALLOY, P.A.
2800 S.W. THIRD AVENUE
MIAMI, FL 33129

SUBJECT: ADVANTIAGE TITLE AND DESIGN OF THE LETTER "A" NEXT TO
A SUNBURST DESIGN APPEARING ABOVE THE LETTER "T" AND THE
WORDS "ADVANTAGE TITLE"
Ref. Number: W03000031487

We have received your document for ADVANTIAGE TITLE AND DESIGN OF THE LETTER "A" NEXT TO A SUNBURST DESIGN APPEARING ABOVE THE LETTER "T" AND THE WORDS "ADVANTAGE TITLE" and your check(s) totaling \$87.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

Your mark contains word(s)/design(s) that must have a disclaimer. All geographical terms, such as cities, states, countries, and designs of same, must be disclaimed. Some commonly used words and corporate suffixes must also be disclaimed. You must disclaim the following term(s) by completing the disclaimer statement found in #2 of Part III of the application: "ADVANTAGE TITLE"

The specimens provided this office are not acceptable; we need three permanent specimens, which may be the same or different. We do not accept photocopies or camera ready copies. We do not accept specimens which have been altered or defaced in any manner. In order to register your service mark, we need specimens from which we can determine the services being rendered. We will accept brochures, newspaper, or magazine advertisements, or business cards. If business cards are used, we must be able to determine from the business card the services offered. The mere mark, address, city, etc., on the business card, brochure, or advertisement is not acceptable -- we must be able to look at the specimens provided and be able to determine the services being rendered. We need specimens for each class of registration. We DO NOT accept letterhead, stationery, envelopes, invoices or mailing labels.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call
(850) 245-6918.

Nanette Causseaux
Document Specialist Supervisor

Letter Number: 303A00058654

Malloy & Malloy, P.A.

"Since 1959"
Registered Patent Attorneys
Members of the Florida Bar
Trial and Appellate Counsel

Miami Office
2800 S.W. Third Avenue
Miami, Florida 33129
Telephone (305) 858-8000
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Patent, Trademark & Copyright Law

Ft. Lauderdale Office
2101 West Commercial Blvd.
Reply to: Miami Office
Broward (954) 525-9611
FLORIDA (800) 337-7239

December 26, 2003

Via Federal Express

Department of State
Division of Corporations
409 E. Gaines Street
Tallahassee, FL 32399

Attn: Nanette Causseaux
Corporate Specialist Supervisor

Re: Trademark Application in the State of Florida -
"AT ADVANTAGE TITLE & DESIGN"
Applicant: Advantage Title, Inc.
Your Ref.: W03000031487
Our Ref.: 2.997.03

Dear Ms. Causseaux:

This response is being submitted in reply to your correspondence dated October 28, 2003, (copy enclosed) wherein it was stated that essentially all terms in the Applicant's mark must be disclaimed. Also, the specimens originally submitted were not acceptable, and as such, Applicant herein provides substitute specimens.

On the one hand, the Applicant is willing to enter an amendment which disclaims the term "TITLE," as noted below. On the other hand, the Applicant respectfully disagrees that the term "ADVANTAGE" of the above-referenced mark needs to be disclaimed, when the mark is considered in its entirety. As such, the Applicant respectfully requests reconsideration of this matter in light of the following arguments, and that its mark be accepted for registration in the State.

AMENDMENT

In response to the Department's correspondence, the Applicant agrees to the entry of a disclaimer of the wording "TITLE". Accordingly, the following is submitted:

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
04 MAR 17 PM 12:00

December 26, 2003

Page 2

"No claim is made to the exclusive right to use 'TITLE' apart from the mark as shown."

Applicant would like the record to reflect, however, that common law rights are not disclaimed.

RESPONSE

As noted above, the Department's correspondence also asked for a disclaimer of the words "ADVANTAGE," apart from the mark as shown, presumably because it was thought to be a commonly used term, to wit, "[s]ome commonly used words ... must also be disclaimed." Applicant respectfully disagrees and through its attorneys submits the following arguments which demonstrate that a disclaimer of the term "ADVANTAGE" is not necessary.

At the outset, Applicant would respectfully ask the Corporate Specialist Supervisor to recall that, along with the appropriate Florida State law, federal case law can and should be given due consideration and great weight, as more fully set forth below. In particular, Florida Statute §495.181 states that "[i]t is the intent of the Legislature that, in construing this chapter, due consideration and great weight be given to the interpretations of the federal courts relating to comparable provisions of the Trademark Act of 1946, as amended (15 U.S.C. §1051 et seq.). See also Florida Trademark Examining Procedure Section 205.01(a) (stating that "where sections of Florida's Trademark Act are essentially the same as corresponding sections of the Lanham Act, 15 U.S.C. §1051 et seq., federal case law may be applicable).

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For these reasons, recitations to federal law may be noted below.

I. THE TERM "ADVANTAGE" IS NOT APPROPRIATE FOR DISCLAIMER UNDER STATE OR FEDERAL TRADEMARK LAW.

As grounds for refusal to allow Applicant to register the term "ADVANTAGE", the Examiner has stated that the term is 'common'. The term 'common' is not a trademark term of art. Presumably, the Examiner has refused registration of this term because, in her mind, the term is generic.

With regard to trademark significance, matter may be categorized along a continuum, ranging from marks that are highly distinctive to matter that is a generic name for the goods or services. See Trademark Manual of Examining Procedure ("TMEP") §1209.01.

Under trademark law, generic terms are terms that the relevant purchasing public understands primarily as the common or class name for the goods or services. See TMEP §1209.01(c). For instance, the term "BEER" used in connection with beer can never be registered either at the state or federal level.

However, terms which are not generic for the goods and services they are used in connection with may be higher on the trademark continuum, and therefore suitable for registration without disclaimer.

For instance, in the instant case, Applicant respectfully argues that the term "ADVANTAGE" as used in connection with Applicant's services is "suggestive" and therefore is substantially

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distinctive to warrant registration. See Great Southern Bank v. First Southern Bank, 625 So.2d 463 (Fla. 1993) (the leading Florida state case on the trademark continuum). See also In re Angelo Brothers, Co., 2003 TTAB LEXIS 110 (TTAB 2003) (finding the term "ADVANTAGE" to be suggestive and therefore not requiring disclaimer). As such, the term "ADVANTAGE" is neither generic, nor descriptive, but rather suggestive of Applicant's services and is therefore suitable for registration without disclaimer.

II. THE EXAMINER HAS PROVIDED NO EVIDENCE THAT THE TERM "ADVANTAGE" IS "COMMON", OR OTHERWISE NOT REGISTRABLE.

The Examiner has provided no evidence apart from a conclusory statement that the term "ADVANTAGE" is a commonly used term (presumably in connection with title services). This failure to meet a bare minimum burden alone is not sufficient to warrant the disclaimer requirement. See TMEP §710.01.

Even if the Examiner were to provide print-outs of state or federal trademark registrations, such registrations would not be evidence of commercial use of the marks therein, or of the state of the marketplace for the goods identified in the registrations. See Old Tyme Foods, Inc. v. Roundy's Inc., 961 F.2d 200 (Fed. Cir. 1992).

As such, Applicant respectfully posits that the Examiner has simply failed to meet her threshold burden to support her position that the term "ADVANTAGE" in Applicant's mark is not suitable for registration without the entry of a disclaimer.

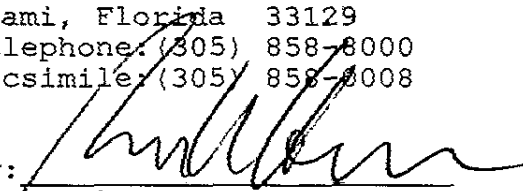
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Page 5

III. CONCLUSION.

For the above-stated reasons, Applicant respectfully submits that when the foregoing arguments are considered, and further, that when its mark is considered in its entirety, the Department of State will undoubtedly agree that a disclaimer of the term "ADVANTAGE" is not necessary. Once this conclusion is reached, and with the disclaimer of "TITLE" having been entered previously herein, it will further be seen that the Applicant's mark should now be passed to registration in the State and this action is respectfully solicited.

Respectfully submitted,

MALLOY & MALLOY, P.A.
Attorneys for Applicant
2800 S.W. Third Avenue
Miami, Florida 33129
Telephone: (305) 858-8000
Facsimile: (305) 858-8008

By: 

Frank Herrera
Florida Bar No. 494,801

Dated: December 26, 2003



FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State

March 11, 2004

JOHN CYRIL MALLOY, III ESQUIRE
MALLOY & MALLOY, P.A.
2800 S.W. THIRD AVENUE
MIAMI, FL 33129

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A SUNBURST DESIGN APPEARING ABOVE THE LETTER "T" AND THE
WORDS "ADVANTAGE TITLE"
Ref. Number: W03000031487

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After further review we will grant registration with a disclaimer for the term "TITLE" only. Please return your original application with this corrections.

Your mark contains word(s)/design(s) that must have a disclaimer. All geographical terms, such as cities, states, countries, and designs of same, must be disclaimed. Some commonly used words and corporate suffixes must also be disclaimed. You must disclaim the following term(s) by completing the disclaimer statement found in #2 of Part III of the application: TITLE

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6918.

Nanette Causseaux
Document Specialist Supervisor

Letter Number: 604A00016307

Malloy & Malloy, P.A.

"Since 1959"
Registered Patent Attorneys
Members of the Florida Bar
Trial and Appellate Counsel

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Miami, Florida 33129
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Patent, Trademark & Copyright Law

Ft. Lauderdale Office
2101 West Commercial Blvd.
Reply to: Miami Office
Broward (954) 525-9611
FLORIDA (800) 337-7239

March 15, 2004

Secretary of State
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Attn: Nanette Causseaux
Document Specialist Supervisor

Re: Florida Trademark Application -
"ADVANTAGE TITLE & Design"
Your Ref.: W03000031487
Our Ref.: 2.997.03

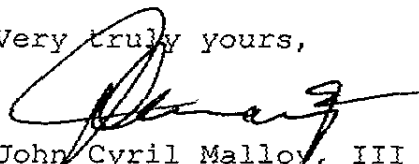
Dear Ms. Causseaux:

In response to your correspondence dated March 9, 2004, (copy enclosed) applicant hereby submits the corrected trademark application in connection with the above-referenced trademark.

This response is submitted within sixty (60) days of the date of your action. Accordingly, applicant requests that its mark be accepted for registration.

Kindest regards,

Very truly yours,



John Cyril Malloy, III
For the Firm

JCM3/vm

Enclosures

F:\MM DOCS\2-TM\TM 2003\APP\2997-03 Advantage Title, Inc\response ltr- FL SEC STATE.wpd

APPLICATION FOR THE REGISTRATION OF A TRADEMARK OR SERVICE MARK
PURSUANT TO CHAPTER 495, FLORIDA STATUTES

Name & address to whom acknowledgment should be sent:

Malloy & Malloy, P.A.

2800 S.W. Third Avenue

Miami, Florida 33129

(305) 858-8000

Daytime Telephone number

PART I

1. (a) Applicant's name: Advantage Title, Inc.

(b) Applicant's business address: 9732 W. Sample Road

Coral Springs, Florida 33065

City/State/Zip

(c) Applicant's telephone number: (954) 344-8988

☐ Individual

☒ Corporation

☐ Joint Venture

☐ Other:

☐ General Partnership

☐ Limited Partnership

☐ Union

If other than an individual,

(1) Florida registration number: P97000084559

(2) Domicile State: Florida

(3) Federal Employer Identification Number: 650793976

2. (a) If the mark to be registered is a service mark, the services in connection with which the mark is used:
(i.e., furniture moving services, diaper services, house painting services, etc.)

Real estate title services, namely, title searching, providing title insurance

and providing title condition reports.

(b) If the mark to be registered is a trademark, the goods in connection with which the mark is used:
(i.e., ladies sportswear, cat food, barbecue grills, shoe laces, etc.)

(c) The mode or manner in which the mark is used: (i.e., labels, decals, newspaper advertisements, brochures, etc.)

The mark is used by applying it to advertisements and promotional materials including
flyers, brochures, signs and Internet site.

(Continued)

