

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**ORION BANCORP, INC.,**  
a Florida corporation,

Plaintiff,

v.

**CASE NO: 8:07-cv-1753-T-26MAP**

**ORION RESIDENTIAL FINANCE,  
LLC, a Florida limited liability co.,  
and VARIOUS JOHN DOES,  
JANE DOES and ABC COMPANIES,**

Defendants.

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**FINAL ORDER, JUDGMENT,  
AND PERMANENT INJUNCTION**

This cause is before the Court with reference to Plaintiff's Motion for Entry of Final Judgment and Agreed Permanent Injunction. The Court, having been fully advised of the premises, it is:

**ORDERED and ADJUDGED** that Plaintiff's Motion for Entry of Final Judgment and Agreed Permanent Injunction is hereby **GRANTED**, and the Court finds as follows:

The court has jurisdiction over the subject matter in this dispute and over all parties herein. Venue is proper in this Middle District. Defendant, ORION RESIDENTIAL FINANCE, LLC, has not filed an answer in this case but has been represented by legal counsel, Jack W. Crooks, Esq., in connection with the resolution of this case. Defendant, ORION RESIDENTIAL FINANCE, LLC, (hereinafter “Defendant”), admits those allegations of the Complaint necessary for the Court to find jurisdiction, venue, factual basis, and legal basis, for entry of this Final Judgment and Agreed Permanent Injunction and for the enforceability of this Final Judgment and Agreed Permanent Injunction.

**PLAINTIFF AND ITS TRADEMARK RIGHTS**

Plaintiff ORION BANCORP, INC., (“Plaintiff”) has been engaged in the business of banking since 2002. Plaintiff’s many services, including but not limited to including but not limited to, banking, checking, internet financial services, residential and commercial loans including real estate financing, lockbox, merchant, treasury management, investment services and many related goods and services, have been and are presently utilized by people throughout the state of Florida and the United States. For many years, Plaintiff has enjoyed an excellent reputation for services and has established public goodwill in the State of Florida and throughout the United States. Plaintiff’s reputation and considerable

expenditures have resulted in brand value, brand identity and recognition, and Plaintiff's ORION brand stands for excellence in its field and is a well known and recognized name in banking, financial services and many related goods and services.

**PLAINTIFF AND ITS SUCCESS IN THE INDUSTRY**

Since 1977, Orion Bank has grown to become the largest, most successful, privately held bank in Southwest Florida and the second largest in the State of Florida, with assets in the multi-billions.

Plaintiff, ORION BANCORP, INC., a highly respected and successful corporation offers a wide range of goods and services to the public from twenty (20) locations throughout the State of Florida, including but not limited to, banking, checking, internet financial services, residential and commercial loans including real estate financing, lockbox, merchant, treasury management, investment services and many related goods and services.

Plaintiff's growth and expansion under the ORION brands have been the subject of acclaim and recognition. For example, in November of 2006, Plaintiff's president became the first banker from the State of Florida to receive American Banker's Community Banker of the Year Award. In July of 2006, Plaintiff was ranked fourth in the nation among community bank holding companies and thrifts

for outstanding performance. In June of 2006, Plaintiff was ranked as Florida's Top Performing Community Bank for the second consecutive year, and was also ranked among the nation's top performing bank holding companies.

In June of this year, American Bankers Association's (ABA) Banking Journal, ranked Orion Bancorp, Inc., fifth in the nation for outstanding financial performance. Plaintiff's efforts and accomplishments have contributed to its extraordinary reputation and goodwill, making Plaintiff and its ORION brands a well known and recognized name in banking and financial services.

Plaintiff's reputation and approach to providing the public with the high quality banking services and products have made it a leader in its field.

### **PLAINTIFF'S TRADEMARK RIGHTS**

Plaintiff is the owner of all right, title, and interest in the marks ORION BANCORP, United States Trademark Registration No. 2783514, ORION BANK, United States Trademark Registration No. 2739085, ORION and design, United States Trademark Registration No. 2834359, (hereinafter collectively referred to as "Plaintiff's Marks"), for banking and related financial services.

Plaintiff's registrations serve as nationwide, constructive notice to the public of Plaintiff and its federally protected trademark rights. Plaintiff's goods and services have been widely advertised and extensively promoted under

Plaintiff's Marks since at least as early as 2002 and, through widespread and favorable public acceptance and recognition, Plaintiff's Marks are a valuable asset of substantial value as a symbol of Plaintiff, its exceedingly high quality goods and services, and its goodwill.

Plaintiff enjoys remarkable success and an enviable reputation in its profession due in large part to its use of, and rights in, Plaintiff's Marks. Plaintiff has made great expenditures and sacrifice to achieve the success it now enjoys. As a result of Plaintiff's favorable reputation and considerable investment and promotion in its goodwill, Plaintiff's Marks have become synonymous with Plaintiff and its high quality goods and services.

Plaintiff enforces its rights herein under Plaintiff's Marks, in part, to protect Plaintiff's consumer's from confusion and to preserve Plaintiff's excellent reputation. Plaintiff's Marks have been extensively and continuously advertised and promoted to the public by Plaintiff in interstate commerce, in the state of Florida, and throughout the United States, through various means and modes, including but not limited to over the internet from the web site [www.orionbank.com](http://www.orionbank.com).

By reason of Plaintiff's long term and considerable expenditures and extensive advertising and promotion under Plaintiff's Marks, the public has come

to recognize Plaintiff's goods and services as emanating solely from Plaintiff.

Plaintiff's Marks are valid, enforceable, and owned exclusively by Plaintiff.

### **DEFENDANT'S ACTS**

Defendant is and has been actively engaged in the business of offering to the consuming public financial and real estate related services utilizing the term ORION or various iterations thereof, including use in interstate commerce, on various signs, advertising, slogans, promotional material, a top level domain name at [www.orionresidentialfinance.com](http://www.orionresidentialfinance.com) and other matters containing the term "ORION", all without Plaintiff's authorization or consent.

It is therefore **ORDERED and ADJUDGED** that Defendant, ORION RESIDENTIAL FINANCE, LLC, is enjoined and restrained, together with its officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith having notice of this order, as follows:

a) from any and all use of the term ORION, ORION RESIDENTIAL FINANCE, or any other confusingly similar term;

b) from using any sign, advertisement, slogans, internet domain name, promotional material, promotional communication, and/or printed or electronic matter containing the term ORION, or any other confusingly similar term.

c) from any act or failure to act in connection with the term ORION, or any other confusingly similar term, likely to cause confusion, or cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods, services, or commercial activities, or causing injury to Plaintiff's business reputation, or dilution of the distinctiveness of Plaintiff's Mark set forth herein, or to Plaintiff's forms of advertisement;

d) from purchasing or using any form of advertising including keywords or "adwords" in internet advertising containing any mark incorporating Plaintiff's Mark, or any confusingly similar mark, and shall, when purchasing internet advertising using keywords, adwords or the like, require the activation of the term "ORION" as negative keywords or negative adwords<sup>1</sup> in any internet advertising purchased or used.

e) directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from Plaintiff;

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<sup>1</sup> For purposes of this court order, a "negative keyword" or "negative adword" shall mean a special kind of advertiser keyword matching option that allows an advertiser to prevent its advertisement from appearing when the specific terms are a part of a given user's internet search or search string. It does not infer that the Defendant may use the specified negative keywords or adwords for any other purpose.

f) from publishing, assembling, marketing, distributing, or otherwise utilizing for commercial or beneficial gain, any literature, business forms, advertisements, signs, or other representations regardless of the medium, which contains the term ORION, or any other confusingly similar term.

g) from making false or misleading statements of fact, false or misleading descriptions, or falsely characterizing the origin, of Plaintiff's services, and from suggesting any affiliation with, or sponsorship by, Plaintiff;

It is further **ORDERED and ADJUDGED** that Defendant, ORION RESIDENTIAL FINANCE, LLC, shall be in full compliance with this order no later than **May 1, 2008**.

Each party in this action will bear its own costs and legal fees incurred in connection with this action.

**DONE** and **ORDERED** in Chambers in Tampa, Florida, on March 25,  
2008.

*s/Richard A. Lazzara*  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

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