

To:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court United States District Court for the Western District of Washington on the following: Patents or X Trademarks:

DOCKET NO.	DATE FILED	US District Court	United States District Court for the Western District of Washington
2:08-cv-01440-RAJ	9/25/08		
PLAINTIFF		DEFENDANT	
Archstone Communities LLC		Archstone Company	
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	
1. See attached	6.	11.	
2.	7.	12.	
3. 2,850,512	8.	13.	
4.	9.	14.	
5.	10.	15.	

In the above-entitled case, the following patents(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	Amendment	Answer	Cross Bill	Other Pleading
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.		
1. 2,521,194	6.		11.	
2.	7.		12.	
3. 2,615,654	8.		13.	
4.	9.		14.	
5. 2,517,934	10.		15.	

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT

CLERK	(BY) DEPUTY CLERK	DATE
Bruce Rifkin	DJ	9/26/08

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ARCHSTONE COMMUNITIES LLC,

Plaintiff,

v.

THE ARCHSTONE COMPANY d/b/a
ARCHSTONE SEATTLE,

Defendant.

No.

COMPLAINT FOR TRADEMARK
INFRINGEMENT

JURY DEMAND

Plaintiff, Archstone Communities LLC (“Archstone”), by and through its attorneys,
alleges its complaint against The Archstone Company d/b/a Archstone Seattle (“Defendant”) as
follows:

NATURE OF THE ACTION

1. This is a trademark infringement action brought pursuant to the trademark laws of the United States, known as the Lanham Act, Title 15, United States Code § 1051 *et seq.*
2. Archstone is the owner of a series of federal registrations for the ARCHSTONE mark and variations thereof, including Registration Nos. 2527794, 2615654, 2517934, and 2850512 covering various real estate services, including real estate development and construction (the “ARCHSTONE Registrations”).

1 ARCHSTONE Registrations to Archstone on October 5, 2007. Copies of the ARCHSTONE
2 Registrations are attached hereto as Exhibits A-D.

3 6. On information and belief, Defendant, The Archstone Company, was incorporated
4 in the State of Washington on February 8, 2008, after canceling its former limited liability
5 company, The Archstone Company LLC, which was formed in the State of Washington on
6 May 7, 2002. Defendant also operates in the State of Washington under the registered name
7 "Archstone Seattle." Defendant's principal place of business is 2542 29th Avenue W, Seattle,
8 Washington 98199. Defendant is engaged in the residential construction business and related
9 real estate services.

10 **JURISDICTION AND VENUE**

11 7. This Court has jurisdiction over this matter pursuant to the Lanham Act, 15
12 U.S.C. § 1121, 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331.

13 8. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b) because
14 Archstone and Defendant are doing business in this District and a significant number of events
15 leading up to this dispute and potential for confusion involve this District.

16 **BACKGROUND FACTS**

17 9. Archstone is involved in all areas of real estate ownership, construction,
18 development and management, and is the owner of the ARCHSTONE Registrations, covering
19 various services related to real estate development and construction. The use of the
20 ARCHSTONE trademark dates back over 10 years, to June of 1998.

21 10. The ARCHSTONE Registrations entitle Archstone to broad and exclusive rights
22 to use the ARCHSTONE mark nationwide, including in the Seattle area. Moreover, since the
23 late 1990s, Archstone has made actual use of the ARCHSTONE mark in the Seattle area in
24 connection with its real estate development and construction business.

25 11. Archstone has marketed its ARCHSTONE services through advertising,
26 promotional signage and website use. Archstone attaches hereto as Exhibits E-M examples of

1 Archstone's use of its mark in the Seattle area. Through the years of use Archstone has acquired
2 considerable goodwill and customer recognition in its ARCHSTONE marks, making the
3 ARCHSTONE mark a valuable financial asset and a protectable trademark.

4 12. Defendant adopted the identical mark nearly 5 years after Archstone's actual use
5 in Seattle and 5 years after its federal ARCHSTONE registration and the constructive notice it
6 provides. Defendant knew or should have known of Archstone's prior use when it began using
7 the ARCHSTONE mark in connection with its competing business.

8 13. Defendant's continued interference with Archstone's exclusive ownership and use
9 of the ARCHSTONE marks will cause irreparable harm to Archstone's ability to leverage its
10 brand of services.

11 14. Archstone is the senior user and owner of the federal ARCHSTONE Registrations
12 and all of the common law and federal rights associated therewith.

13 **DEFENDANT'S INFRINGEMENT**

14 15. Despite Archstone's widespread and longstanding use of the ARCHSTONE
15 trademarks nationwide and specifically in the Seattle area, Defendant adopted and began using
16 the same mark in connection with a business performing real estate and construction services.

17 16. Defendant incorporated the ARCHSTONE mark into its business name The
18 Archstone Company, its trade name "Archstone Seattle" and into its domain name
19 <www.archstoneco.com>.

20 17. On information and belief, Defendant began its unauthorized use of the
21 ARCHSTONE mark around 2002 with the creation of "The Archstone Company LLC," many
22 years after Archstone's prominent actual use of the trademark in the Seattle area and after several
23 of Archstone's trademarks were already registered, granting Archstone nationwide constructive
24 use rights. Defendant, as recently as February 8, 2008, once again filed under the ARCHSTONE
25 mark to incorporate "The Archstone Company" and filed to operate under the trade name
26 "Archstone Seattle."

1 18. Defendant's use of an identical mark in connection with residential construction
2 and related services will inevitably cause consumer confusion and constitutes a violation of
3 Archstone's federal and common law trademark rights.

4 19. On July 22, 2008, immediately after becoming aware of Defendant's infringing
5 activity and conducting an investigation, Archstone sent a cease and desist letter to Defendant's
6 governing person, Lukas F. Delen, a copy of which is attached hereto as Exhibit N. In its letter,
7 Archstone expressly notified Defendant of its infringement and demanded that Defendant: 1)
8 stop using Archstone's mark in connection with its business; 2) change its name to a name that
9 is not confusingly similar to the ARCHSTONE mark; and 3) transfer the
10 <www.archstoneco.com> domain name to Archstone. In an effort to amicably resolve the
11 conflict, Archstone offered to provide reasonable time for Defendant to transition to a new name.

12 20. On or about August 4, 2008, Mr. Randall Thomson, Defendants' then-attorney,
13 contacted Archstone's attorney, Ms. Joan Long, and said he would be discussing the matter with
14 Defendant and would thereafter respond to the cease and desist letter. Having received no
15 response by August 13, 2008, Ms. Long called Mr. Thomson, who requested additional time to
16 provide a response from Defendant.

17 21. On or about August 19, 2008, Mr. John Janesway of The Archstone Company
18 called Ms. Long directly and said that he had "looked at the registrations" and didn't believe
19 there was any overlap since the Defendant is engaged in construction. Ms. Long pointed out that
20 construction services are one of the enumerated services covered in the ARCHSTONE
21 Registrations. Additionally, Ms. Long pointed out that the marks are identical and used in the
22 same geographic area. Mr. Janesway, however, maintained there was no overlap. Ms. Long
23 advised him that the next step would be to put the matter before a court to decide. Mr. Janesway
24 agreed.

25 22. Defendant's use of the identical ARCHSTONE mark in connection with the same
26 services in the same geographic area is likely to cause consumer confusion and damage

1 Archstone's use of and rights in its marks, all in violation of Archstone's rights under Section
2 43(a) of the Lanham Act of 1946, 15 U.S.C. § 1125.

3 23. As a result of Defendant's unauthorized use of the ARCHSTONE mark,
4 Archstone has suffered and will continue to suffer irreparable damage to its goodwill and
5 reputation, as well as its ability to distinguish its services from those of Defendants' in the minds
6 of the consumers.

7 **COUNT I - LANHAM ACT VIOLATION**

8 24. Archstone incorporates by reference the allegations contained in the preceding
9 paragraphs.

10 25. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1), states in pertinent part:
11 Any person who, or in connection with any goods . . . uses in commerce
any word . . . which

12 (A) is likely to cause confusion, or to cause mistake, or
13 to deceive as to the affiliation, connection, or association of such
14 person with another person, or to the origin, sponsorship, or
15 approval of his or her goods, services, or commercial activities
by another person . . . shall be liable in a civil action by any
person who believes that he or she is likely to be damaged by
such act.

16 26. Defendant's use of the ARCHSTONE mark is likely to cause others to be
17 mistaken or deceived into believing that there is an association, connection or sponsorship
18 between Archstone and Defendant.

19 27. Defendant has infringed Archstone's ARCHSTONE mark by using an identical
20 name to sell and advertise the same services in the same geographical area.

21 28. Since on or about December 22, 1997, Archstone has given constructive notice of
22 its claim of ownership in the ARCHSTONE mark by filing its first federal trademark application.
23 Since then, Archstone has filed for and obtained three more registrations for the ARCHSTONE
24 mark. Additionally, Archstone has prominently used the ARCHSTONE mark in the Seattle area
25 for at least 5 years before the Defendant adopted the identical mark. Finally, Archstone has
26

1 expressly notified Defendant of its infringement, but Defendant has refused to cease its
2 infringing activity.

3 29. As a result of Defendant's unauthorized use of the ARCHSTONE mark,
4 Archstone has suffered irreparable injury and will continue to suffer further irreparable injury by
5 Defendant's false representation and false designation of origin and by confusion in the
6 marketplace and among consumers as to the true source and ownership of the ARCHSTONE
7 mark.

8 30. Defendant's acts have injured Archstone and will continue to cause damage and
9 irreparable harm unless Defendant is restrained and enjoined from such further conduct.

10 WHEREFORE, Archstone respectfully requests that this Court enter an order awarding to
11 Archstone the following relief:

12 (A) That Defendant, its officers, agents, servants, affiliates, employees, parent and
13 subsidiary corporation, and all persons in privity or acting in concert with Defendant be
14 preliminarily and permanently enjoined from (i) using ARCHSTONE as a trademark, service
15 mark, trade name or domain name or as any part thereof; and (ii) using any other mark or
16 engaging in any other conduct that is likely to cause confusion, mistake, deceive or otherwise
17 mislead the public into believing that Defendant is in some way connected to Archstone.

18 (B) That pursuant to the powers granted this Court under 15 U.S.C. § 1118, order that
19 all uses of the mark and advertisement in the possession of Defendant bearing or including the
20 mark ARCHSTONE shall be delivered up and destroyed.

21 (C) That Defendant be required to pay all of Archstone's litigation expenses,
22 including reasonable attorneys' fees and costs of this action for Defendant's willful infringement.

23 (D) That Defendant be required to pay to Archstone all costs and damages related to
24 the allegations of this complaint.

25 (E) Any other and further relief as the Court deems just and proper.
26

1 DATED this 25th day of September, 2008.

2 BYRNES & KELLER LLP

3
4 By /s/ Bradley S. Keller

5 Bradley S. Keller, WSBA #10665
6 1000 Second Avenue, 38th Floor
7 Seattle, WA 98104-4082
8 Telephone: (206) 622-2000
9 Facsimile: (206) 622-2522
10 bkeller@byrneskeller.com

11 MAYER BROWN LLP

12 Joan L. Long*
13 Victoria Friedman*
14 71 S. Wacker Drive
15 Chicago, IL 60606
16 Telephone: (312) 782-0600
17 Facsimile: (312) 701-7711
18 JLong@mayerbrown.com
19 VFriedman@mayerbrown.com

20 *Attorneys for Plaintiff*

21 *Application for admission pro hac vice will be filed shortly.

EXHIBIT A

Int. Cls.: 35, 36, and 37

Prior U.S. Cls.: 100, 101, 102, 103, and 106

United States Patent and Trademark Office

Reg. No. 2,527,794

Registered Jan. 8, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

ARCHSTONE

ARCHSTONE COMMUNITIES TRUST
7670 CHESTER STREET SUITE 100
ENGLEWOOD, CO 80112

FOR: PROMOTING THE GOODS AND SERVICES OF OTHERS BY DISTRIBUTING LITERATURE, MAKING SALES PRESENTATIONS, MEDIA ADVERTISING, ARRANGING FOR ENDORSEMENTS AND ASSISTING CUSTOMERS IN COMPLETING THE SUBSCRIPTION APPLICATIONS OF OTHERS; AND INDEPENDENT SALES REPRESENTATIVES IN THE FIELDS OF TELECOMMUNICATIONS, UTILITIES AND FINANCIAL SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-7-1998; IN COMMERCE 10-0-1998.

FOR: REAL ESTATE INVESTMENT TRUST MANAGEMENT; REAL ESTATE ACQUISITION SERVICES, NAMELY, REAL ESTATE BROKERAGE;

REAL ESTATE MANAGEMENT OF MULTI-FAMILY PROPERTIES; AND LEASING OF REAL PROPERTY, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-7-1998; IN COMMERCE 7-7-1998.

FOR: CONSTRUCTION SERVICES, NAMELY, PLANNING, LAYING OUT, CUSTOM CONSTRUCTION, AND REPAIR OF RESIDENTIAL PROPERTIES; AND SUPERVISION OF CONSTRUCTION OF RESIDENTIAL BUILDINGS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 7-7-1998; IN COMMERCE 10-0-2000.

SN 75-409,324, FILED 12-22-1997.

LAURA KOVAISKY, EXAMINING ATTORNEY



EXHIBIT B

Int. Cls.: 36 and 37

Prior U.S. Cls.: 100, 101, 102, 103, and 106

United States Patent and Trademark Office

Reg. No. 2,615,654

Registered Sep. 3, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

ARCHSTONE AT PRESTON

THE TRUSTEES OF ARCHSTONE COMMUNITIES TRUST, A MARYLAND REAL ESTATE INVESTMENT TRUST, THE TRUSTEES COMPRISING OF C. ROLAND BLANKENSHIP, JAMES A. CARDWELL, NED S. HOLMES, JOHN T. KELLEY III, CONSTANCE B. MOORE, JAMES H. POLK III, R. SCOT SELLERS, JOHN M. RICHMAN AND JOHN C. SCHWEITZER, ALL CITIZENS OF THE UNITED STATES (MARYLAND REAL ESTATE INVESTMENT TRUST)

SIX PEEDMONT CENTER
SUITE 600
ATLANTA, GA 30305

FOR: LEASING OF REAL ESTATE, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-1-1998; IN COMMERCE 6-1-1998.

FOR: REAL ESTATE DEVELOPMENT, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 6-1-1998; IN COMMERCE 6-1-1998.

SN 75-598,020, FILED 12-2-1998.

LAURA KOVAISKY, EXAMINING ATTORNEY

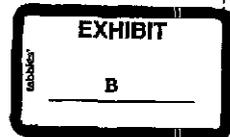


EXHIBIT C

Int. Cls.: 35, 36, and 37

Prior U.S. Cls.: 100, 101, 102, 103, and 106

Reg. No. 2,517,934

United States Patent and Trademark Office Registered Dec. 11, 2001

SERVICE MARK
PRINCIPAL REGISTER



THE TRUSTEES OF THE ARCHSTONE COMMUNITIES TRUST, A MARYLAND REAL ESTATE INVESTMENT TRUST, THE TRUSTEES COMPRISING OF JAMES A. CARDWELL, NED S. HOLMES, JOHN T. KELLEY, III, CALVIN K. KESSLER, CONSTANCE B. MOORE, JAMES H. POLK, III, JOHN M. RICHMAN, JOHN C. SCHWEITZER, R. SCOT SELLERS, AND C. RONALD BLANKENSHIP (ADVISORY TRUSTEE) ALL U.S. CITIZENS (MARYLAND REAL ESTATE INVESTMENT TRUST)

7670 SOUTH CHESTER STREET, SUITE 100
ENGLEWOOD, CO 80112

FOR: PROMOTING THE GOODS AND SERVICES OF OTHERS BY DISTRIBUTING LITERATURE, MAKING SALES PRESENTATIONS, MEDIA ADVERTISING, ARRANGING FOR ENDORSEMENTS AND ASSISTING CUSTOMERS IN COMPLETING THE SUBSCRIPTION APPLICATIONS OF OTHERS; INDEPENDENT SALES REPRESENTATIVES IN THE FIELDS OF TELECOMMUNICATIONS, UTILITIES AND FINANCIAL SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-0-1998; IN COMMERCE 10-0-1998.

FOR: REAL ESTATE INVESTMENT TRUST MANAGEMENT; REAL ESTATE ACQUISITION SERVICES, NAMELY, REAL ESTATE BROKERAGE; REAL ESTATE MANAGEMENT OF MULTI-FAMILY PROPERTIES; AND LEASING OF REAL PROPERTY, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-7-1998; IN COMMERCE 7-7-1998.

FOR: CONSTRUCTION SERVICES, NAMELY, PLANNING, LAYING OUT, CUSTOM CONSTRUCTION, AND REPAIR OF RESIDENTIAL PROPERTIES; AND SUPERVISION OF CONSTRUCTION OF RESIDENTIAL BUILDINGS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 10-0-2000; IN COMMERCE 10-0-2000.

SN 75-598,943, FILED 12-2-1998.

LAURA KOVAISKY, EXAMINING ATTORNEY



EXHIBIT D

Int. Cls.: 36 and 37

Prior U.S. Cls.: 100, 101, 102, 103 and 106

Reg. No. 2,850,512

United States Patent and Trademark Office

Registered June 8, 2004

**SERVICE MARK
PRINCIPAL REGISTER**

ARCHSTONE-SMITH

TRUSTEES OF THE ARCHSTONE-SMITH OPERATING TRUST, TRUSTEES COMPRISING JAMES A. CALDWELL, ERNEST A. GERARDI, JR., NED S. HOLMES, ROBERT P. KOGOD, JAMES H. POLK III, JOHN M. RICHMAN, JOHN C. SSHWEITZER, R. SCOT SELLERS AND ROBERT H. SMITH, ALL U.S. CITIZENS, THE (UNITED STATES INDIVIDUAL)

9200 EAST PANORAMA CIRCLE
SUITE 400
ENGLEWOOD, CO 80112

FOR: REAL ESTATE INVESTMENT TRUST MANAGEMENT; AND REAL ESTATE ACQUISITION SERVICES, NAMELY, REAL ESTATE BROKERAGE; REAL ESTATE MANAGEMENT OF MULTIFAMILY PROPERTIES; AND LEASING OF REAL PROPERTY, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-26-2001; IN COMMERCE 10-26-2001.

FOR: CONSTRUCTION SERVICES, NAMELY, PLANNING, LAYING OUT, CUSTOM CONSTRUCTION, AND REPAIR OF RESIDENTIAL PROPERTIES; AND SUPERVISION OF CONSTRUCTION OF RESIDENTIAL BUILDINGS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 10-26-2001; IN COMMERCE 10-26-2001.

OWNER OF U.S. REG. NOS. 2,517,934, 2,527,794, AND 2,615,654.

SER. NO. 76-518,222, FILED 5-28-2003.

CHRISTOPHER BUONGIORNO, EXAMINING ATTORNEY

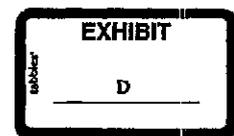
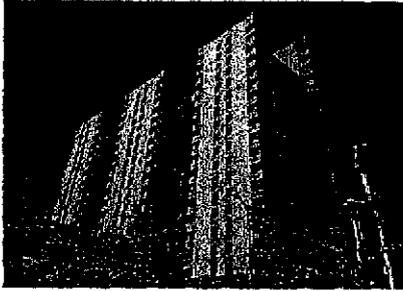


EXHIBIT E

Archstone Belltown
500 Wall St.
Seattle, WA 98121

(877) 665-3346

Community Home



In the heart of Seattle, situated perfectly between the Seattle Center and Belltown, lies an apartment community that brings the best of the Pacific Northwest to your doorstep. Great apartments, great service and the amenities you deserve - with plenty of shopping, dining and theaters for your enjoyment. All at a location that's exactly right, exactly where you want to be.

Community Features

- On-site concierge
- Fitness center under sky-lit solarium
- On-site deli, grocery and drugstore
- Pet-friendly
- Business center
- Conference room
- Barbeque grills
- Garage parking
- Tanning beds
- Close to the I-5 Highway and SR 520
- Minutes to great shopping centers: Belltown, Seattle Center Grounds, Westlake Center, Seattle Waterfront, and Pacific Place Mall
- Opera House, Experience Music Project, Seattle Repertory Theater, Intiman Playhouse nearby
- Close to Seattle Aquarium, Key Arena, and Pacific Science Center
- Close to Lake Union, with great views of Space Needle, Seattle Center and the Seattle waterfront

Apartment Features

- Spectacular views!
- Studio, one, and two-bedroom apartments
- Spacious floor plans
- Hardwood floors
- Large closets
- Pedestal sinks in bathrooms*
- Beveled mirrors
- Updated kitchens
- Stainless-steel appliances*
- Pantry
- Tile flooring
- Built-in computer desks*
- Pendulum light fixtures
- Large windows in all apartments

* Select apartments

All of our apartments are backed by our unconditional Seal of Service:SM

- Lease Apartments Online
- Flexible Lease Terms
- 100% Move-in Satisfaction Guarantee
- 1-day Service Guarantee
- The Relocation Guarantee
- Exclusive access to our Resident Services Web Site

EXHIBIT

E

EXHIBIT F

Archstone Redmond Court
14629 N. E. 37th Pl.
Bellevue, WA 98007

(888) 523-6916

Community Home



Archstone Redmond Court invites you to live life on your own terms. These apartments in Seattle are situated perfectly between Bellevue and Redmond, with plenty of great restaurants and shopping right outside your door, bringing the best of Seattle right at your doorstep. Great apartments in Seattle, great service and the amenities you deserve. All at a location that's exactly right, exactly where you want to be.

Community Features

- Pool
- Spa
- Fitness center
- Playscape
- Clothes-care facility
- Pet-friendly
- Storage on every patio/balcony
- Covered parking
- Close to major highways S4-520, I-405, and I-90
- Great dining and shopping nearby
- Located across the street from the Microsoft Campus

Apartment Features

- One and two-bedroom apartments
- Vaulted ceilings *
- Spacious closets
- Ceiling fans *
- Private balcony
- Private patio
- Eat-in kitchen *
- Disposal
- Cable ready
- High-speed Internet access
- Washers and dryers available *

* Select apartments

All of our apartments are backed by our unconditional Seal of Service™

- [Lease Apartments Online](#)
- [Flexible Lease Terms](#)
- [100% Move-in Satisfaction Guarantee](#)
- [1-day Service Guarantee](#)
- [The Relocation Guarantee](#)
- [Exclusive access to our Resident Services Web Site](#)



EXHIBIT G