



3. Since 1996, Opposer has continuously used its **NETBANK®** mark in interstate commerce for electronic bill payment and banking services provided over the Internet.

4. Opposer's **NETBANK®** mark was registered on the Principal Register on August 22, 1995 as Registration No. 1,913,750, in International Class 36, and had a filing date of July 13, 1994.

5. Opposer took the **NETBANK®** mark by assignment from Software Agents, Inc., P.O. Box 541, Germantown, Maryland 20875, and said assignment has been recorded with the PTO.

6. The PTO accepted Opposer's Section 8 and 15 affidavits demonstrating continuous use of the **NETBANK®** mark, and Opposer's registration has become incontestable.

7. Opposer's first use of the **NETBANK®** mark predates Applicant's filing date for the proposed mark **MEDNET BANK**.

8. Applicant intends to use its proposed mark **MEDNET BANK** in conjunction with providing banking services for health care professionals over the Internet.

9. Applicant's proposed use of **MEDNET BANK** is likely to cause confusion as to the source or affiliation of the services Med on Web, Inc. offers in violation of 15 U.S.C. §1114.

10. Applicant's proposed use of **MEDNET BANK** is likely to cause confusion, mistake or deception among consumers to the detriment and damage of Opposer in violation of 15 U.S.C. §§ 1114 and 1125.

11. Applicant's proposed use of **MEDNET BANK** dilutes the distinctive commercial impression of Opposer's **NETBANK** mark in violation of 15 U.S.C. §1125(c).

12. Opposer has a specific and personal interest in the subject registration and in the disposition of this matter, beyond any interest shared by the general public, and consequently has the requisite standing to bring and prosecute this petition.

**COUNT ONE**  
**LIKELIHOOD OF CONFUSION**

13. Opposer hereby incorporates and realleges the facts and contentions contained in Paragraphs 1 through 12 as if fully set forth herein.

14. Opposer alleges that the goods and services of Opposer and Applicant are offered in similar channels of commerce and offered to the same or similar customers.

15. Applicant's proposed mark is likely to cause confusion, mistake or deception among consumers to the detriment and damage of Opposer because of the confusing similarity and impression between Applicant's and Opposer's marks and because Applicant intends to use its mark in connection with similar goods and services as Opposer, targeting the same or similar customers in similar channels of commerce.

**COUNT TWO**  
**TRADEMARK DILUTION**

16. Opposer hereby incorporates and realleges the facts and contentions contained in Paragraphs 1 through 15 as if fully set forth herein.

17. Opposer has used its **NETBANK®** mark in commerce since 1996 and such mark has become famous in the Internet banking industry.

18. Applicant markets its services offered under its proposed **MEDNET BANK** mark to substantially the same customers and potential customers in the banking industry where Opposer markets its services.

19. Applicant's adoption of **MEDNET BANK** dilutes the distinctive commercial impression of Opposer's **NETBANK®** mark, and such dilution is likely to continue as long as Applicant uses **MEDNET BANK**.

**WHEREFORE**, Opposer respectfully requests that the Intent to Use application for **MEDNET BANK**, Serial No. 76/090,263, filed by Applicant Med on Web, Inc. be **DENIED**, and prays for such other and further relief as is deemed just and proper.

Please charge Deposit Account 501429 in the amount of \$300.00 for the Opposition filing fee.

Respectfully submitted,

By: 

Elizabeth Ann Morgan  
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Ryan T. Pumpian  
Georgia Bar No. 589822

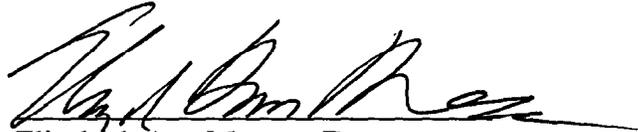
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Attorneys for Opposer NetBank, Inc.

**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that a copy of this **Notice of Opposition** is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on December 3, 2001, and under the mailing label No. EK786158529US and addressed to the Commissioner for Trademarks, Attn: Box TTAB NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

This 3rd day of December, 2001.



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