

ESTTA Tracking number: **ESTTA25929**

Filing date: **02/14/2005**

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	Ameritrade IP Company, Inc.
Granted to Date of previous extension	02/13/2005
Address	4211 South 102nd Street Omaha, NE 68127 UNITED STATES

Correspondence information	Julia Anne Matheson Attorney for Opposer Finnegan, Henderson, Farabow, Garrett & Dunner LLP 901 New York Avenue Washington, DC 20001 UNITED STATES docketing@finnegan.com Phone:(202) 408-4020
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Applicant Information

Application No	78254497	Publication date	08/17/2004
Opposition Filing Date	02/14/2005	Opposition Period Ends	02/13/2005
Applicant	Amerivest Partners, LLC Suite 1816 50 Broad Street		

New York, NY 10004 UNITED STATES

Goods/Services Affected by Opposition

Class 036. First Use: 19990000 First Use In Commerce: 19990000

All goods and services in the class are opposed, namely: Financial services, namely, the offering of equity execution services to institutional broker/dealer clients; broker/dealer services, namely, brokerage in the field of equity securities; broker dealer-to-broker dealer services specializing in the trading of financial instruments, namely, equity securities

Attachments	0001000.TIF (3 pages)
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Signature	/JAM/
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Name	Julia Anne Matheson
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Date	02/14/2005
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERITRADE IP COMPANY, INC.,)	
)	
)	
Opposer,)	Opposition No. _____
)	
v.)	
)	
AMERIVEST PARTNERS, LLC,)	
)	
Applicant.)	

Applicant Serial No.: 78/254,497
Filed: May 27, 2003
Published for Opposition: August 17, 2004
Mark: AMERIVEST PARTNERS, LLC

NOTICE OF OPPOSITION

Opposer, Ameritrade IP Company, Inc. ("Opposer" or "Ameritrade"), a corporation of Delaware having an address at 6940 Columbia Gateway Drive, Suite 200, Columbia, Maryland 21046, believes that it would be damaged by the registration of the mark AMERIVEST PARTNERS, LLC for "financial services, namely, the offering of equity execution services to institutional broker/dealer clients; broker/dealer services, namely, brokerage in the field of equity securities; broker dealer-to-broker dealer services specializing in the trading of financial instruments, namely, equity securities," in Class 36, as shown in Application Serial No. 78/254,497 and hereby opposes same.

As grounds for its opposition, Ameritrade alleges that:

1. Ameritrade is a leading online discount brokerage firm, and has been in business since 1975. Ameritrade offers trading on stocks, mutual funds, options, and

bonds to its account holders under a family of AMERI-formative marks, which includes AMERITRADE, AMERIFLEX, and AMERIVEST. Ameritrade has earned numerous industry awards for its technology and its services, including: having the highest level of client satisfaction among online brokerages, according to Forrester Research in March 2002; being ranked “#1 in Online Trades” by J.P. Morgan in April 2002; being named “Top Choice” Internet Broker by *The Wall Street Journal* in May 2002; a four-star rating in Barron’s 2003 Online Broker Survey; being named one of the “Best of the Web” by *Forbes* magazine in Winter 2002, 2003, and 2004; and *Stocks and Commodities* “Reader’s Choice Award” for best online brokerage company, February 2004.

2. Since at least as early as August 20, 1991, well prior to the filing date of Application No. 78/254,497, Ameritrade has used the trademark AMERIVEST in the United States in connection with its financial investment services in the areas of stocks, bonds, mutual funds, and individualized managed accounts. In fact, a related entity was the owner of Registration No. 1,760,239 for the identical mark, which was registered on March 23, 1993 and inadvertently canceled on May 27, 2004.

3. Upon information and belief, Applicant Amerivest Partners, LLC (“Applicant”) is a limited liability company organized in New York, having a place of business at 40 Wall Street, 45th Floor, New York, New York 10045.

4. On or about May 27, 2003, Applicant filed the subject application for the identical mark AMERIVEST for “financial services, namely, the offering of equity execution services to institutional broker/dealer clients; broker/dealer services, namely, brokerage in the field of equity securities; broker dealer-to-broker dealer services

specializing in the trading of financial instruments, namely, equity securities” in Class 36.

5. As the registration for the AMERIVEST mark was valid and subsisting at the time Applicant filed its application, Applicant is charged with knowledge of Ameritrade’s prior rights.

6. In view of the similarity of the parties’ marks and the closely related nature of the parties’ goods and services, Ameritrade alleges that Applicant’s mark so resembles Ameritrade’s longstanding mark as to be likely to cause confusion, or to cause mistake, or to deceive.

7. Furthermore, Ameritrade will be damaged by the registration of Applicant’s mark, and in fact has been damaged because Ameritrade’s Application Serial No. 78/418,528 for its own AMERIVEST mark has been refused and suspended on the basis of a likelihood of confusion with Applicant’s mark.

WHEREFORE, Ameritrade respectfully requests that Application Serial No. 78/254,497 be refused and that this opposition be sustained.

Respectfully submitted,

AMERITRADE IP COMPANY, INC.

Dated: February 14, 2005

By: 

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