

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 77/728,597  
 Filed May 4, 2009  
 For the Mark: **TITAN CAPITAL FUNDS**  
 Published in the Official Gazette on April 20, 2010

TITAN CAPITAL GROUP III, L.P.	X	
	:	
	:	
Opposer,	:	
	:	Serial No. 77/728,597
v.	:	
	:	Opposition No: <u>91196108</u>
NATHAN R. RICHEY	:	
	:	
	:	
Applicant.	X	

United States Patent and Trademark Office  
 Trademark Trial and Appeal Board  
 BOX TTAB  
 2900 Crystal Drive  
 P.O. Box 1451  
 Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

In the matter of pending application Serial No. 77/728,597, filed May 4, 2009, by Nathan R. Richey ("Applicant"), published in the Official Gazette on April 20, 2010, for the mark TITAN CAPITAL FUNDS, Titan Capital Group III, L.P. ("Opposer") states that Opposer believes it will be damaged by the registration of the above mark, has a real interest in the outcome of the proceeding and hereby gives notice of its opposition to the above application for registration on the following grounds:

1. On May 4, 2009 Applicant filed U.S. trademark application number 77-728,597 for TITAN CAPITAL FUNDS, an intent to use-based application in class 36



08-20-2010

for "Financial services, namely, private equity financing in the field of distressed assets" (the "Application").

2. Upon information and belief, Applicant has not used, or is not currently using the mark TITAN CAPITAL FUNDS in commerce.

3. Since on or about 2001 Opposer by itself, and through its related entities, subsidiaries, affiliated companies and predecessors in interest have and continue to use the mark TITAN CAPITAL and marks comprised in whole or in part with the words TITAN and TITAN CAPITAL (collectively, the "Titan Capital Marks") in connection with financial services in the nature of operation and management of various funds, many of which utilize in whole or in part, the Titan Capital Marks as the name of the fund.

4. Opposer's services and the funds bearing the Titan Capital Marks ("Titan Funds") are widely respected and recognized in the financial industry on the global stage. The Titan Funds which have hundreds of millions of dollars under management, invest or trade in such securities including global equities, indices, fixed income, distressed assets and currencies. Opposer has been nominated for and won many industry wide awards.

5. Opposer has invested substantial resources in connection with the promotion, development and provision of its services, including the use of the Titan Capital Marks. Opposer employs only the top analysts and traders and the most talented financial minds in the industry, often hiring such employees away from the top tier banks and financial institutions worldwide. In addition to its New York offices, Opposer is set to open up an office in Hong Kong to expand its global presence.

6. The transactions, deals and news related to Opposer and the Titan Funds are extremely newsworthy in the financial industry, and as such articles related to the

same are routinely found in such top financial media outlets as *The Wall Street Journal*, *Forbes*, *Bloomberg News*, and *Reuters*. The activities of the Titan Funds are carefully studied by Opposer's competitors who seek to emulate its success. .

7. Opposer has spent considerable resources in connection with the development of its business, as well as the promotion, development and use of the Titan Capital Marks. Opposer's strong and consistent track record of profitability is reflected in the goodwill it has achieved with investors, and is invaluable when seeking to raise new funds. The goodwill associated therewith constitutes one of its primary assets.

8. Opposer has common law rights in the Titan Capital Marks and has developed valuable goodwill associated thereto.

9. Applicant's mark is confusingly similar to Opposer's Titan Capital Marks. Applicant's addition of the descriptive word FUND would not prevent the likely confusion, deception, and mistake among consumers as to the origin of Applicant's services should Applicant's mark be used or registered. Consumers will invest in or otherwise enter into financial transactions with Applicant in the mistaken belief that Applicant is Opposer or that Applicant's services originate with or are otherwise licensed, sponsored or authorized by Opposer.

10. Opposer's business and the Titan Capital Marks will be tarnished in the event Applicant's performance is not as successful as Opposer or in the event Applicant engages in any questionable acts, as consumers will confuse Applicant's results and misdeeds with that of Opposer and not invest in, or otherwise enter into transactions with Opposer.

11. The likelihood of confusion is heightened by the substantially identical nature of Applicant's and Opposer's services provided and similar channels of trade.

12. If Applicant is permitted to register the mark TITAN CAPITAL FUNDS, Opposer would be damaged and injured. Confusion or deception would result in damage to the Opposer.

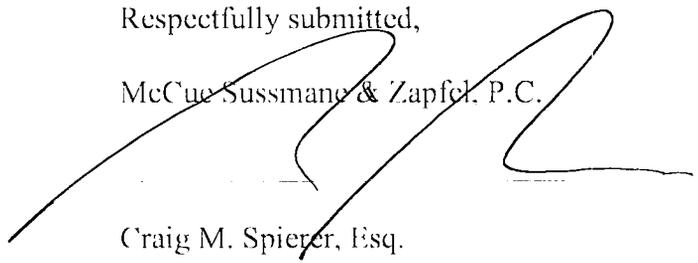
**WHEREFORE,** Opposer respectfully requests that this Notice of Opposition be sustained and the registration of TITAN CAPITAL FUNDS by Applicant be refused.

Opposer hereby appoints Craig M. Spierer and Ken Sussmane of the law firm of McCue Sussmane & Zapfel, P.C. and all attorneys associated with said firm to prosecute the above opposition with full power of substitution and revocation and to transact all business in the Patent and Trademark Office in connection therewith: correspondence address McCue Sussmane & Zapfel, P.C., 521 Fifth Avenue, 28<sup>th</sup> floor, New York, New York 10175, telephone (212) 931-5500; facsimile (212) 931-5508.

Dated August 17, 2010

Respectfully submitted,

McCue Sussmane & Zapfel, P.C.



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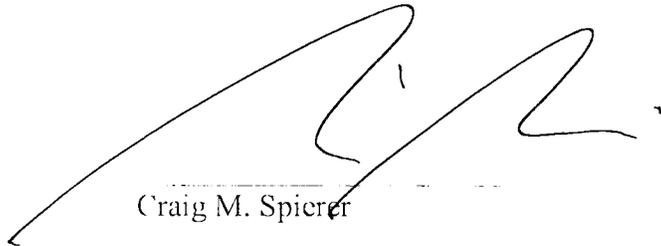
Attorneys for Opposer  
Titan Capital Group III, L.P.

Certificate of Service

It is hereby certified, that I am over the age of eighteen years old and not a party to this action, and that on August 17, 2010 I caused a copy of the foregoing Notice of Opposition to be served upon the Applicant at the below address by placing is in a sealed envelope with postage thereon fully prepaid, in the United States mail:

Nathan R. Richey  
145 Park Place, #3C  
Brooklyn, New York 11217

Date: August 17, 2010



Craig M. Spierer

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: August 17, 2010

Opposition No. 91196108  
Serial No. 77218437

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Titan Capital Group III, LP

v.

Richey, Nathan E.

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ESTTA363637

A notice of opposition to the registration sought by the above-identified application has been filed. A service copy of the notice of opposition was forwarded to applicant (defendant) by the opposer (plaintiff). An electronic version of the notice of opposition is viewable in the electronic file for this proceeding via the Board's TTABVue system: <http://ttabvue.uspto.gov/ttabvue/v?qs:91196108>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the "MOP").

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for

the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address:

<http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Time to Answer	9/26/2010
Deadline for Discovery Conference	10/26/2010
Discovery Opens	10/26/2010
Initial Disclosures Due	11/25/2010
Expert Disclosures Due	3/25/2011
Discovery Closes	4/24/2011
Plaintiff's Pretrial Disclosures	6/8/2011
Plaintiff's 30-day Trial Period Ends	7/23/2011
Defendant's Pretrial Disclosures	8/7/2011
Defendant's 30-day Trial Period Ends	9/21/2011
Plaintiff's Rebuttal Disclosures	10/6/2011
Plaintiff's 15-day Rebuttal Period Ends	11/5/2011

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and

introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stdnagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for

pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 202.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

**ESTTA NOTE:** For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.