

ESTTA Tracking number: **ESTTA480462**

Filing date: **06/27/2012**

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	H. Lee Moffitt Cancer Center and Research Institute, Inc.
Granted to Date of previous extension	07/04/2012
Address	12902 Magnolia Drive Tampa, FL 33612 UNITED STATES

Attorney information	Ruth E. Freeburg H. Lee Moffitt Cancer Center and Research Institute, Inc. 12902 Magnolia DriveMRC-TTO Tampa, FL 33612 UNITED STATES Ruth.Freeburg@Moffitt.org Phone:813-745-6639
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**Applicant Information**

Application No	85419745	Publication date	03/06/2012
Opposition Filing Date	06/27/2012	Opposition Period Ends	07/04/2012
Applicant	Giomboni, Jason J 508 N Main St. Plains, PA 18705 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 2011/09/01 First Use In Commerce: 2011/09/01 All goods and services in the class are opposed, namely: Business consultation; Business consulting services relating to the integration of the areas of business process technology, organizational learning, change management, and operational sustainability
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2487525	Application Date	10/10/2000
Registration Date	09/11/2001	Foreign Priority Date	NONE
Word Mark	M		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 016. First use: First Use: 1986/12/31 First Use In Commerce: 1986/12/31 Printed material, namely newsletters and educational brochures relating to cancer protection, prevention, detection and treatment</p> <p>Class 041. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 Educational services, namely, conducting classes, seminars and workshops in the field of cancer protection, prevention, detection and treatment</p> <p>Class 042. First use: First Use: 1986/12/31 First Use In Commerce: 1986/12/31 Medical services; medical counseling, medical testing; medical research; telephone hot line counseling , namely offering advice regarding cancer prevention, detection, treatment, research and community resources</p>

U.S. Registration No.	3671302	Application Date	02/22/2008
Registration Date	08/25/2009	Foreign Priority Date	NONE

Word Mark	MOFFITT CANCER CENTER M
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 016. First use: First Use: 2007/11/30 First Use In Commerce: 2007/11/30 Publications, namely, printed instructional and teaching materials, brochures, pamphlets, bulletins, newsletters and magazines, all in the field of health care, cancer protection, prevention, detection and treatment, medical diagnostics and prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases</p> <p>Class 041. First use: First Use: 2007/11/30 First Use In Commerce: 2007/11/30 Medical educational services, namely, conducting lectures, seminars and workshops to health care practitioners, patients and patient caregivers in the field of health care, cancer care and prevention of cancer, and medical diagnostics, prognostics and the evaluation of drug and treatment effectiveness relating to cancer and other diseases</p> <p>Class 042. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31</p>

	<p>Providing an online database and depository for the collection of clinical and molecular data derived from a patient that is accessible by physicians, patients and researchers, namely, an online database in the field of human clinical and molecular data accumulation and analysis for aiding medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases for research purposes; medical and clinical research resources in the field of cancer and other diseases, namely, providing data regarding tumor-specific molecular signatures and the effectiveness of a drug and/or diagnostic test for research purposes; medical and clinical research resources in the field of cancer and other diseases, namely, providing evidence-based treatment protocols by effectively comparing standard treatment therapies with clinical outcomes for research purposes; medical research services consisting of collection and analysis of data in the field of human clinical and molecular data for aiding medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases, namely, matching particular patients to a particular drug, treatment, therapy or clinical trial by the specific molecular signature of the patient; collection and analysis of data services in the field of human clinical and molecular data accumulation and analysis for research assistance for medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases, namely, providing objective data in usable form on the effectiveness of a drug or diagnostic test</p> <p>Class 044. First use: First Use: 2007/11/30 First Use In Commerce: 2007/11/30</p> <p>Providing health care, medical information and counseling in the field of cancer; providing medical screening and diagnostic services with use of patient scanning equipment; providing an online computer database featuring medical information in the field of human clinical and molecular data accumulation and analysis for aiding medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness; medical services, namely, cancer care and prevention of cancer, and medical diagnostics, prognostics and evaluation of drug and treatment effectiveness relating to cancer and other diseases; medical counseling; telephone hot line counseling, namely, offering advice regarding cancer prevention, detection, treatment and clinical testing in the field of cancer and other diseases</p>
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U.S. Application No.	85659393	Application Date	06/22/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	M MOFFITT PARTNER		
Design Mark			
Description of Mark	The mark consists of The letter "M" enclosed in a circle (open at the bottom) with the long lines of the "M" extending into the circle at the bottom; the words "MOFFITT" and "PARTNER" are to the right of the "M" with "MOFFITT" above "PARTNER".		
Goods/Services	Class 044. First use: First Use: 2012/01/02 First Use In Commerce: 2012/01/02 Medical services, namely, prevention, diagnosis, and treatment of oncology-related diseases		

Attachments	76143534#TMSN.gif ( 1 page ) ( bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Ruth E. Freeburg/
Name	Ruth E. Freeburg
Date	06/27/2012

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

<hr/>	:	
<b>H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC.</b>	:	
<b>Opposer,</b>	:	<b>Mark: M</b>
	:	
<b>v.</b>	:	<b>Opposition No. _____</b>
	:	<b>Serial No. 85419745</b>
<b>Jason J. Giomboni, d.b.a. Megason Consulting, LLC</b>	:	
	:	
<b>Applicant.</b>	:	
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Commissioner of Trademarks  
Trademark Trial & Appeal Board  
P.O. Box 1451  
Arlington, VA 22313-1451

**NOTICE OF OPPOSITION**

H. Lee Moffitt Cancer Center and Research Institute, Inc., a non-profit corporation organized and existing under the laws of the State of Florida, believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes same.

The grounds for opposition are as follows:

1. Opposer is a nationally recognized research center and National Cancer Institute-designated comprehensive cancer center, extensively and actively engaged in the

business of medicine, research technology/business and healthcare; medical educational information; research and medical networks, consultation and partnerships.

2. In connection with Opposer's services and goods, Opposer uses and/or has used Opposer's "M" trademarks for twenty-five years.

3. Opposer owns all rights in and to, among others, the federal trademark registrations listed below for printed material, educational services, medical services, and online database and depository:

<u>TRADEMARK</u>	<u>REG./SER. NO.</u>	<u>ISSUE DATE</u>
M (logo)	2487525	9-11-2001
MOFFITT CANCER CENTER & M (logo)	3671302	8-25-2009
M (logo) & MOFFITT PARTNER	85659393	pending

The two registrations are in full force and effect, unrevoked and uncanceled. For the registration issued in 2001, Opposer's ownership of and exclusive rights to use said registered mark in commerce is incontestable pursuant to 15 U.S.C. §1065(b).

4. As a result of the quality of Opposer's services and the widespread promotion and marketing thereof under Opposer's "M" trademarks, Opposer's services have met with substantial commercial success and consumer recognition. Opposer's "M" trademarks have become a symbol of Opposer, its quality products and its goodwill.

5. Opposer's "M" trademarks are of significant value to Opposer in the identification and promotion of its services and goods, and in connection with its business

for its current, developmental and future services and goods. Opposer's "M" trademarks distinguish such services and goods from the services and goods of others.

6. The mark herein opposed is comprised of the letter "M" enclosed in a circle open at the bottom with pointed ends on the top of the "M" and the bottom of the "M" extending into the circle. The Applicant's mark is comprised of the letter "M" enclosed in a circle open at the bottom with pointed ends on the top of the "M" and the bottom of the "M" extending into the circle. The Applicant's mark uses the color blue for the "M." The Opposer's "M" trademark is used predominately in the same shade of blue. The Applicant's mark is virtually identical to Opposer's "M" trademark in sight, sound, and appearance.

7. The use and registration of Applicant's mark is likely to cause confusion, or to cause mistake or to deceive as to the source of Applicant's services and goods.

8. Through the advertisement and promotion of Opposer's "M" trademarks in connection with research, medical education and information, research technology, and healthcare business and communication for twenty-five years; consumers and prospective consumers of Opposer have come to associate Opposer's "M" marks with the services, goods, and business of Opposer. The Opposer's "M" marks are strongly connected with the Opposer's partnerships in medical technology, business, consultation and services. The use of a nearly identical mark by Applicant causes blurring of Opposer's mark in the mind of the public.

9. Granting the registration of Applicant's "M" mark as sought by Applicant, through the application herein opposed, would cause damage to Opposer. Such registration would inhibit Opposer in its use of Opposer's "M" mark in promoting its current and future

services and goods, which would manifest damage upon Opposer. The Applicant seeks to use its proposed “M” mark in business consultation “relating to the integration of the areas of business process technology . . .” which includes the same manner in which the Opposer uses its “M” mark for the promotion of its business processes and services. Registration of Applicant’s mark would constitute *prima facie* evidence of an exclusive right of Applicant to use Applicant’s “M” mark for consulting services and business processes as identified in its application herein opposed and for all confusingly similar uses, thereby enabling Applicant to occupy a position in the trade that would further compound confusion on the part of the consuming public all to the damage of Opposer. Finally, registration of Applicant’s mark would cause dilution of Opposer’s strong mark.

**WHEREFORE**, Opposer prays that the application of Serial No. 85419745, filed September 11, 2011, for registration of “M” in international class 035, be refused and this Opposition be sustained.

Respectfully submitted,

/Ruth E. Freeburg/  
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and Research Institute, Inc.  
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