

ESTTA Tracking number: **ESTTA485571**

Filing date: **07/25/2012**

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	Elevation Management, LLC
Granted to Date of previous extension	08/01/2012
Address	2800 Sand Hill Road, Suite 160 Menlo Park, CA 94025 UNITED STATES

Attorney information	Rochelle D. Alpert Morgan, Lewis & Bockius LLP One Market, Spear Street Tower San Francisco, CA 94105 UNITED STATES ralpert@morganlewis.com, sftrademarks@morganlewis.com, jrubel@morganlewis.com Phone:415-442-1326
----------------------	--

**Applicant Information**

Application No	85171899	Publication date	04/03/2012
Opposition Filing Date	07/25/2012	Opposition Period Ends	08/01/2012
Applicant	Finish Strong Ventures, Inc. 300 West Sixth Street, Suite 2200 Austin, TX 78701 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 041. First Use: 2010/10/22 First Use In Commerce: 2010/10/22 All goods and services in the class are opposed, namely: Online educational services, namely, providing web seminars, temporary use of non-downloadable videos and books, live events, namely, seminars and conferences, and on-line journals, namely, blogs all in the field of financial strategies and techniques employed by highly successful wealth administrators, entrepreneurs, and asset managers in the areas of taxation, investment, personal finance management, charitable giving, and business growth
---

**Grounds for Opposition**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Lack of Use as of the date of the Application and as alleged in the Application.

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3093993	Application Date	03/22/2004
Registration Date	05/16/2006	Foreign Priority Date	NONE
Word Mark	ELEVATION PARTNERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2004/06/00 First Use In Commerce: 2004/06/00 Investment services; financing services		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ELEVATION		
Goods/Services	Investment and financing services.		

Attachments	78388734#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition (Serial No 85171899) - Exh A.pdf ( 9 pages )(105169 bytes )
-------------	--

## Certificate of Service

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

Signature	/RDA/
Name	Rochelle D. Alpert
Date	07/25/2012

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

ELEVATION MANAGEMENT, LLC,

Opposer,

v.

FINISH STRONG VENTURES, INC.,

Applicant.

In re Application Serial No. 85/171899  
Mark: **THE ELEVATION GROUP**

Published: April 3, 2012

**NOTICE OF OPPOSITION**

Opposer Elevation Management, LLC (“Opposer” or “Elevation”), a limited liability company organized under the laws of Delaware, located at 2800 Sand Hill Road, Suite 160, Menlo Park, California 94025, believes it will be damaged by registration of the THE ELEVATION GROUP designation that Finish Strong Ventures, Inc. (“Applicant”) seeks to protect in Application Serial 85/171,899, and hereby opposes this application under the provisions of Sections 2(d) and 13 of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d), and 1063.

As grounds for the opposition, Elevation alleges that:

**Elevation’s Trade Name and Trademark Rights**

1. Elevation uses and is the owner of all right, title and interest in and to the trademark ELEVATION PARTNERS, which is the subject of U.S. Trademark Registration Number 3093993. Elevation filed an intent-to-use application for the mark ELEVATION PARTNERS on or about March, 22, 2004. Elevation’s intent to use application, which was

subsequently amended to establish use, registered on or about May 16, 2006. The ELEVATION PARTNERS registration covers “investment services; financing services” in Class 36.

2. Elevation’s federal registration for ELEVATION PARTNERS is incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitutes conclusive evidence of Elevation’s exclusive right to use the mark in commerce in connection with the services specified in the registration.

3. Elevation exclusively has used the ELEVATION PARTNERS mark in interstate commerce in connection with the services covered by the registration and otherwise since at least as early as June 1, 2004.

4. Elevation has used the trade names Elevation and Elevation Partners since at least as early as June 2004 in connection with investment and financing services. Moreover, Elevation owns and uses the elevation.com domain name to promote its services.

5. Elevation has developed substantial goodwill and consumer recognition in the ELEVATION PARTNERS mark and trade name through expenditures of time, effort and other resources in the advertising and promotion of the services Elevation offers and provides under the ELEVATION PARTNERS mark and the Elevation and Elevation Partners trade name, including giving speeches, making television appearances and posting of information on its website at elevation.com.

6. As a result of Elevation’s regular and extensive use and promotion of the ELEVATION PARTNERS mark and its Elevation and Elevation Partners trade name, the ELEVATION PARTNERS mark and trade name is associated exclusively with Opposer and its services.

## **The Opposed Application**

7. On November 11, 2011, Applicant filed the opposed application under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), for federal registration of the designation THE ELEVATION GROUP, Application Serial No. 85/171,899 for “online educational services, namely, providing web seminars, temporary use of non-downloadable videos and books, live events, namely, seminars and conferences, and on-line journals, namely, blogs all in the field of financial strategies and techniques employed by highly successful wealth administrators, entrepreneurs, and asset managers in the areas of taxation, investment, personal finance management, charitable giving, and business growth” in Class 41 (the “Application”).

8. Applicant claims a date of first use of October 22, 2010 on its Application for the designation THE ELEVATION GROUP, which is well after Elevation’s ELEVATION PARTNERS mark registered and its mark and trade name were first used in interstate commerce.

9. Through its longstanding, continuous use of the incontestable federal registration for the ELEVATION PARTNERS mark and its use of the trade name Elevation and Elevation Partners, Elevation has acquired exclusive rights in the ELEVATION PARTNERS mark and trade name that substantially predate any rights Applicant claims.

10. Applicant’s designation THE ELEVATION GROUP was published for opposition in the Official Gazette on April 3, 2012.

11. The Trademark Trial and Appeal Board extended the opposition period for the Applicant’s Designation by granting Elevation’s timely request for an extension. The opposition period for Application Serial No. 85/171,899 currently expires on August 1, 2012. Therefore, Elevation timely files this opposition.

**FIRST CAUSE OF ACTION**  
**Likelihood of Confusion**

12. Elevation incorporates herein as if fully set forth the allegations of paragraphs 1-11.

13. On its face, the applied-for designation — THE ELEVATION GROUP — is substantially similar if not virtually identical in sight, sound and meaning to Elevation’s ELEVATION PARTNERS mark and its Elevation Partners and Elevation trade name. The dominant element of the applied-for designation is the word ELEVATION, which is the dominant element of Elevation’s incontestable, federally registered mark and its trade name.

14. The services covered by the Application are related to, if not competitive with, those offered by Elevation and covered by Elevation’s ELEVATION PARTNERS mark and trade name as both parties’ services relate to the field of investment and finance. Indeed, in its services description, Applicant expressly refers to providing “financial strategies and techniques employed by highly successful wealth administrators, entrepreneurs, and asset managers,” which can be viewed as describing the business of Elevation.

15. Elevation believes it will be damaged by the applied-for Application under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because consumers are likely to believe, mistakenly, that Applicant or Applicant’s services emanate from, are sponsored by, or are otherwise associated or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**SECOND CAUSE OF ACTION**  
**Lack of Use**

16. Elevation incorporates herein as if fully set forth the allegations of paragraphs 1-11 and 13-15.

17. Based on the specimen Applicant provided with its application at the date of filing, November 8, 2010, Applicant was not using the applied-for designation on the date claimed.

18. The specimen of use filed in connection with the application consisted of a print-out from an individual's website found at <http://mikedillard.net/the-elevation-group/> dated November 8, 2010, simply stating "coming soon...." A true and correct copy is attached hereto as Exhibit A for ease of reference.

19. The specimen shows a logo version of the words THE ELEVATION GROUP and invites people to connect with "Elevation Group" on Facebook and Twitter. Under the heading "About The Elevation Group," the only content is the words "Coming soon...." The specimen contains no substantive content and certainly no content that can reasonably be described as educational services of any type.

20. Applicant's specimen did not demonstrate use in commerce for the applied-for services, "online educational services, namely, providing web seminars, temporary use of non-downloadable videos and books, live events, namely, seminars and conferences, and on-line journals, namely, blogs all in the field of financial strategies and techniques employed by highly successful wealth administrators, entrepreneurs, and asset managers in the areas of taxation, investment, personal finance management, charitable giving, and business growth," on or before Applicant filed its used-based application on November 8, 2010.

21. Applicant's failure to demonstrate use in commerce of the applied-for designation for the applied-for services on or before November 8, 2010 requires that this application be rejected in its entirety.

WHEREFORE, Opposer believes it will be damaged by applied-for designation THE ELEVATION GROUP shown in Application Serial No. 85/171,899 and respectfully requests that the registration sought by Applicant be refused on any or all of the aforementioned grounds and that this Opposition be sustained in favor of Opposer.

Dated: July 25, 2012

Respectfully submitted,

By: /s/ Rochelle D. Alpert

Rochelle D. Alpert

Morgan, Lewis & Bockius LLP

One Market, Spear Street Tower

San Francisco, CA 94105

Tel: (415) 442-1326; Fax: (877) 432-9652

Email: ralpert@morganlewis.com

Jordana S. Rubel

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

Tel.: (202) 739-3000; Fax: (877) 432-9652

Email: jrubel@morganlewis.com

Attorneys for Opposer

Elevation Management, LLC

# **EXHIBIT A**

**to Notice of Opposition (Serial No. 85/171,899)**

PhGmlg Epstjw

WtHtHtWtRQ JURYS

GtWtDdSLDQD

EhWtHtDhZ RUNtU

PtDhWtFVSRQRUIQJ



About The Elevation Group  
Coming soon ...

Connect with Elevation Group on...

The Elevation Group.net on Facebook

Like

5,417 people like The Elevation Group.net

Deloris	Small Ahmed	Kimberly	Janette	Bevan	Alexator	Ken
Kirk Tshovo	Suzette	David	Jack	Jerry	Dumilani	Him

PhGmlg Epstjw



Copyright © 2010 Mike Dillard, Inc. All rights reserved. Registration on or use of this site constitutes acceptance of our Terms of Service and Privacy Policy. | Disclaimer

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Opposition has been sent via first class mail, postage pre-paid on this 25th day of July 2012 to:

**HOWARD N. ARONSON  
LACKENBACH SIEGEL LLP  
LACKENBACH SIEGEL BUILDING  
1 CHASE ROAD  
SCARSDALE, NY 10583-4156**

*Counsel for Applicant*

/s / Rochelle D. Alpert \_\_\_\_\_