

ESTTA Tracking number: **ESTTA544607**

Filing date: **06/24/2013**

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	TrimTabs Investment Research, Inc.
Granted to Date of previous extension	07/03/2013
Address	302 Third St. Sausalito, CA 94965 UNITED STATES

Correspondence information	TrimTabs Investment Research, Inc. 302 Third St. Sausalito, CA 94965 UNITED STATES charles.biderman@trimtabs.com Phone:(415) 324 5873
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Applicant Information

Application No	85683552	Publication date	03/05/2013
Opposition Filing Date	06/24/2013	Opposition Period Ends	07/03/2013
Applicant	Dobi, Stephen J 142 West End Avenue, Apartment 18U New York, NY 10023 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: Charitable foundation services, namely, providing financial assistance for programs and services of others

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	No Bona Fide Intent to Use at Filing, Trademark Act Â§1(b); Applicant Is Not the Owner of the Mark He Applied for, Trademark Act Â§1(a)(1)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4312259	Application Date	07/13/2012
Registration Date	04/02/2013	Foreign Priority Date	NONE
Word Mark	TRIMTABS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 1996/01/15 First Use In Commerce: 1996/01/15 Financial and securities investment analysis and consultation; research services in the fields of finance and investments; financial and investment information services Class 041. First use: First Use: 1996/01/15 First Use In Commerce: 1996/01/15 providing a website featuring blogs and non-downloadable publications in the nature of articles and data in the fields of finance, investments and securities

Attachments	trimtabs_notice_of_opposition.pdf(368930 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 First Class Mail on this date.

Signature	/cbiderman/
Name	TrimTabs Investment Research, Inc.
Date	06/24/2013

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

In the matter of Trademark Application s/n 85683552
For the mark “TRIMTAB PRODUCTIONS INC”
Published in the Official Gazette on March 5, 2013

TrimTabs Investment Research, Inc.,
Opposer

v.

Stephen J. Dobi,
Applicant

NOTICE OF OPPOSITION

Opposer's name and address:

TrimTabs Investment Research, Inc.
302 Third St.
Sausalito, CA 94965

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same. The grounds for opposition are as follows:

Introduction

1. Opposer, a California-based corporation, is the owner of U.S. Registration No. 4,312,259 for the service mark TRIMTABS in International Classes 36 and 41. Attached herewith as Exhibit A, said registration recites, within class 36, the following services: “Financial and securities investment analysis and consultation; research services in the fields of finance and investments;

financial and investment information services.” The listed date of first use in commerce is January 15, 1996.

2. Applicant has filed the intent-to-use application subject of this proceeding for “TRIMTAB PRODUCTIONS INC,” a service mark in International Class 36, with the recitation: “Charitable foundation services, namely, providing financial assistance for programs and services of others.” Said application disclaims the phrase “PRODUCTIONS INC.”
3. In light of Applicant's above-mentioned disclaimer, the word TRIMTAB remains his first and only source-identifying component within the subject service mark, also in International Class 36, also for finance-related services.
4. Opposer's registration is use-based, whereas Applicant's application merely cites an intent-to-use. Opposer has priority of use in interstate commerce.

Standing and Likelihood of Confusion

5. Opposer repeats the above allegations.
6. Applicant's subject service mark so resembles Opposer's registered service mark as to be likely, when used on or in connection with his services, to cause confusion, mistake, or to deceive.
7. Registration to Applicant should be refused on the ground of likelihood of confusion. Trademark Act §2(d).

No Bona Fide Intent to Use at Filing

8. Opposer repeats the above allegations.
9. Upon information and belief, Applicant had no *bona fide* intention to use the subject mark in interstate commerce in connection with the recited services at the time he applied for it. Trademark Act §1(b). The necessary information lies within Applicant's control.

Applicant Is Not the Owner of the Mark He Applied for

10. Opposer repeats the above allegations.

11. Applicant is or has been president of a New York corporation whose name is identical to the subject mark, “TRIMTAB PRODUCTIONS INC.” Attached herewith as Exhibit B is a corporate record of said New York corporation, signed by Applicant, listing himself as president thereof.
12. Trademark rights, if any, in any trade name used by said NY corporation, are proprietary with the *same*, as a separate legal entity.
13. TMEP §1201.02(c) provides that, “If the president of a corporation is identified as the owner of the mark when in fact the corporation owns the mark, and there is no inconsistency in the original application between the owner name and the entity type (such as a reference to a corporation in the entity section of the application), the application is void as filed because the applicant is not the owner of the mark.” *Id.*
14. Only the owner of a mark may apply for registration. Applicant is not the owner of the mark he applied for. Thus, Registration to Applicant should be refused on the ground that his application has been *void ab initio*. See Trademark Act §1(a)(1) (“The owner of a trademark ... may request registration”.)

Respectfully submitted,

Charles Biderman

TrimTabs Investment Research, Inc.

Exhibit A

Generated on: This page was generated by TSDR on 2013-06-21 15:25:43 EDT

Mark: TRIMTABS

TRIMTABS

US Serial Number: 85676836
Application Filing Date: Jul. 13, 2012
US Registration Number: 4312259
Registration Date: Apr. 02, 2013
Register: Principal
Mark Type: Service Mark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Apr. 02, 2013
Publication Date: Jan. 15, 2013

Mark Information

Mark Literal Elements: TRIMTABS
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Financial and securities investment analysis and consultation; research services in the fields of finance and investments; financial and investment information services

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 15, 1996

Use in Commerce: Jan. 15, 1996

For: providing a website featuring blogs and non-downloadable publications in the nature of articles and data in the fields of finance, investments and securities

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 15, 1996

Use in Commerce: Jan. 15, 1996

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: TrimTabs Investment Research, Inc.
Owner Address: 302 Third Street
Sausalito, CALIFORNIA 94965
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: CALIFORNIA

Attorney/Correspondence Information

Attorney of Record**Attorney Name:** Rose Auslander**Docket Number:** TRI33 002**Correspondent****Correspondent Name/Address:** ROSE AUSLANDER
CARTER LEDYARD & MILBURN LLP
2 WALL ST FL 13
NEW YORK, NEW YORK 10005-2072
UNITED STATES**Domestic Representative - Not Found****Prosecution History**

Date	Description	Proceeding Number
Apr. 02, 2013	REGISTERED-PRINCIPAL REGISTER	
Jan. 15, 2013	PUBLISHED FOR OPPOSITION	
Dec. 26, 2012	NOTICE OF PUBLICATION	
Dec. 11, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
Dec. 06, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 29, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Nov. 29, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Nov. 29, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 13, 2012	NON-FINAL ACTION MAILED	
Nov. 09, 2012	NON-FINAL ACTION WRITTEN	81858
Nov. 06, 2012	ASSIGNED TO EXAMINER	81858
Aug. 09, 2012	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	70997
Jul. 27, 2012	ASSIGNED TO LIE	70997
Jul. 23, 2012	TEAS VOLUNTARY AMENDMENT RECEIVED	
Jul. 21, 2012	NOTICE OF PSEUDO MARK MAILED	
Jul. 20, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

TM Staff and Location Information**TM Staff Information - None****File Location****Current Location:** PUBLICATION AND ISSUE SECTION**Date in Location:** Apr. 02, 2013

Exhibit B

Form **990-EZ**

**Short Form
Return of Organization Exempt From Income Tax**

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

▶ Sponsoring organizations of donor advised funds, organizations that operate one or more hospital facilities, and certain controlling organizations as defined in section 512(b)(13) must file Form 990 (see instructions). All other organizations with gross receipts less than \$200,000 and total assets less than \$500,000 at the end of the year may use this form.

▶ The organization may have to use a copy of this return to satisfy state reporting requirements.

OMB No 1545-1150

2010

Open to Public

Inspection

Department of the Treasury
Internal Revenue Service

A For the 2010 calendar year, or tax year beginning _____, and ending _____

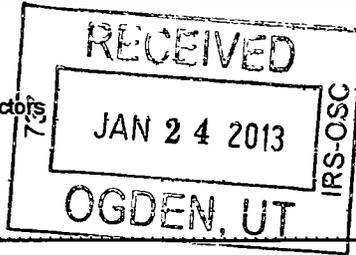
B Check if applicable: <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending	C Name of organization Trimtab Productions Inc.		D Employer identification number 13-3090412
	Number and street (or P O box, if mail is not delivered to street address) Room/suite 142 West End Ave		E Telephone number
	City or town, state or country, and ZIP + 4 New York NY 10023		F Group Exemption Number ▶
	G Accounting Method <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual Other (specify) ▶ _____		
I Website: ▶ N/A			
J Tax-exempt status (check only one) — <input checked="" type="checkbox"/> 501(c)(3) <input type="checkbox"/> 501(c)() (insert no) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527 (Form 990, 990-EZ, or 990-PF)			
K Check <input type="checkbox"/> if the organization is not a section 509(a)(3) supporting organization and its gross receipts are normally not more than \$50,000. A Form 990-EZ or Form 990 return is not required though Form 990-N (e-postcard) may be required (see instructions). But if the organization chooses to file a return, be sure to file a complete return.			

L Add lines 5b, 6c, and 7b, to line 9 to determine gross receipts. If gross receipts are \$200,000 or more, or if total assets (Part II, line 25, column (B) below) are \$500,000 or more, file Form 990 instead of Form 990-EZ. ▶ \$ **200**

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (see the instructions for Part I.)

Check if the organization used Schedule O to respond to any question in this Part I

		1	200
Revenue	1 Contributions, gifts, grants, and similar amounts received	1	200
	2 Program service revenue including government fees and contracts	2	
	3 Membership dues and assessments	3	
	4 Investment income	4	
	5a Gross amount from sale of assets other than inventory	5a	
	b Less: cost or other basis and sales expenses	5b	
	c Gain or (loss) from sale of assets other than inventory (Subtract line 5b from line 5a)	5c	
	6 Gaming and fundraising events		
	a Gross income from gaming (attach Schedule G if greater than \$15,000)	6a	
b Gross income from fundraising events (not including _____ of contributions from fundraising events reported on line 1) (attach Schedule G if the sum of such gross income and contributions exceeds \$15,000)	6b		
c Less: direct expenses from gaming and fundraising events	6c		
d Net income or (loss) from gaming and fundraising events (add lines 6a and 6b and subtract line 6c)	6d		
7a Gross sales of inventory, less returns and allowances	7a		
b Less: cost of goods sold	7b		
c Gross profit or (loss) from sales of inventory (Subtract line 7b from line 7a)	7c		
8 Other revenue (describe in Schedule O)	8		
9 Total revenue. Add lines 1, 2, 3, 4, 5c, 6d, 7c, and 8	9	200	
Expenses	10 Grants and similar amounts paid (list in Schedule O)	10	
	11 Benefits paid to or for members	11	
	12 Salaries, other compensation, and employee benefits	12	
	13 Professional fees and other payments to independent contractors	13	
	14 Occupancy, rent, utilities, and maintenance	14	
	15 Printing, publications, postage, and shipping	15	
	16 Other expenses (describe in Schedule O)	16	180
	17 Total expenses. Add lines 10 through 16	17	180
Net Assets	18 Excess or (deficit) for the year (Subtract line 17 from line 9)	18	20
	19 Net assets or fund balances at beginning of year (from line 27, column (A)) (must agree with end-of-year figure reported on prior year's return)	19	80
	20 Other changes in net assets or fund balances (explain in Schedule O)	20	
	21 Net assets or fund balances at end of year. Combine lines 18 through 20	21	100



SCANNED FEB 08 2013

For Paperwork Reduction Act Notice, see the separate instructions.

Form **990-EZ** (2010)

DAA

12P

	Yes	No
33 Did the organization engage in any activity not previously reported to the IRS? If "Yes," provide a detailed description of each activity in Schedule O		X
34 Were any significant changes made to the organizing or governing documents? If "Yes," attached a conformed copy of the amended documents if they reflect a change to the organization's name. Otherwise, explain the change on Schedule O (see instructions)		X
35 If the organization had income from business activities, such as those reported on lines 2, 6a, and 7a (among others), but not reported on Form 990-T, explain in Schedule O why the organization did not report the income on Form 990-T		
a Did the organization have unrelated business gross income of \$1,000 or more or was it a section 501(c)(4), 501(c)(5), or 501(c)(6) organization subject to section 6033(e) notice, reporting, and proxy tax requirements?		X
b If "Yes," has it filed a tax return on Form 990-T for this year (see instructions)?		
36 Did the organization undergo a liquidation, dissolution, termination, or significant disposition of net assets during the year? If "Yes," complete applicable parts of Schedule N		X
37a Enter amount of political expenditures, direct or indirect, as described in the instructions ▶ <u>37a</u>		
b Did the organization file Form 1120-POL for this year?		X
38a Did the organization borrow from, or make any loans to, any officer, director, trustee, or key employee or were any such loans made in a prior year and still outstanding at the end of the tax year covered by this return?		X
b If "Yes," complete Schedule L, Part II and enter the total amount involved	<u>38b</u>	
39 Section 501(c)(7) organizations. Enter:		
a Initiation fees and capital contributions included on line 9	<u>39a</u>	
b Gross receipts, included on line 9, for public use of club facilities	<u>39b</u>	
40a Section 501(c)(3) organizations. Enter amount of tax imposed on the organization during the year under section 4911 ▶ _____, section 4912 ▶ _____, section 4955 ▶ _____		
b Section 501(c)(3) and 501(c)(4) organizations Did the organization engage in any section 4958 excess benefit transaction during the year, or did it engage in an excess benefit transaction in a prior year, that has not been reported on any of its prior Forms 990 or 990-EZ? If "Yes," complete Schedule L, Part I		X
c Section 501(c)(3) and 501(c)(4) organizations Enter amount of tax imposed on organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 ▶ _____		
d Section 501(c)(3) and 501(c)(4) organizations Enter amount of tax on line 40c reimbursed by the organization ▶ _____		
e All organizations At any time during the tax year, was the organization a party to a prohibited tax shelter transaction? If "Yes," complete Form 8886-T		X
41 List the states with which a copy of this return is filed ▶ <u>None</u>		

42a The organization's books are in care of ▶ _____ Telephone no. ▶ _____

Located at ▶ _____ ZIP + 4 ▶ _____

	Yes	No
b At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? If "Yes," enter the name of the foreign country ▶ _____ See the instructions for exceptions and filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts.		X
c At any time during the calendar year, did the organization maintain an office outside of the U S ? If "Yes," enter the name of the foreign country ▶ _____		X

43 Section 4947(a)(1) nonexempt charitable trusts filing Form 990-EZ in lieu of Form 1041 — Check here and enter the amount of tax-exempt interest received or accrued during the tax year ▶ 43

	Yes	No
44a Did the organization maintain any donor advised funds during the year? If "Yes," Form 990 must be completed instead of Form 990-EZ		X
b Did the organization operate one or more hospital facilities during the year? If "Yes," Form 990 must be completed instead of Form 990-EZ		X
c Did the organization receive any payments for indoor tanning services during the year?		X
d If "Yes," to line 44c, has the organization filed a Form 720 to report these payments? If "No," provide an explanation in Schedule O		

Part V Other Information (Note the statement requirements in the instructions for Part V)

Check if the organization used Schedule O to respond to any question in this Part V



	Yes	No
45 Is any related organization a controlled entity of the organization within the meaning of section 512(b)(13)?		X
a Did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? If "Yes," Form 990 and Schedule R may need to be completed instead of Form 990-EZ (see instructions)		X
46 Did the organization engage, directly or indirectly, in political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I		X

Part VI Section 501(c)(3) organizations and section 4947(a)(1) nonexempt charitable trusts only. All section 501(c)(3) organizations and section 4947(a)(1) nonexempt charitable trusts must answer questions 47-49b and 50, and complete the tables for lines 50 and 51

Check if the organization used Schedule O to respond to any question in this Part VI

	Yes	No
47 Did the organization engage in lobbying activities? If "Yes," complete Schedule C, Part II		X
48 Is the organization a school as described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E		X
49a Did the organization make any transfers to an exempt non-charitable related organization?		X
b If "Yes," was the related organization a section 527 organization?		

50 Complete this table for the organization's five highest compensated employees (other than officers, directors, trustees and key employees) who each received more than \$100,000 of compensation from the organization. If there is none, enter "None."

(a) Name and address of each employee paid more than \$100,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
None				

f Total number of other employees paid over \$100,000 ▶ _____

51 Complete this table for the organization's five highest compensated independent contractors who each received more than \$100,000 of compensation from the organization. If there is none, enter "None."

(a) Name and address of each independent contractor paid more than \$100,000	(b) Type of service	(c) Compensation
None		

d Total number of other independent contractors each receiving over \$100,000 ▶ _____

52 Did the organization complete Schedule A? Note: All section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A ▶ Yes No

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here Date 1/13/13
 Signature of officer: Stephen J. Dobi
 Type or print name and title: STEPHEN J. DOBI, PRESIDENT

Paid Preparer Use Only

Print/Type preparer's name Lawrence J. Kaplan CPA	Preparer's signature Lawrence J. Kaplan CPA	Date 01/11/13	Check <input type="checkbox"/> if self-employed PTIN
Firm's name ▶ Lawrence J. Kaplan, CPA	Firm's EIN ▶ 11-3453179		
Firm's address ▶ 7 Deer Run East Islip, NY 11730-3808	Phone no 631-859-3759		

May the IRS discuss this return with the preparer shown above? See instructions ▶ Yes No

SCHEDULE O
(Form 990 or 990-EZ)Department of the Treasury
Internal Revenue Service

Name of the organization

Supplemental Information to Form 990 or 990-EZComplete to provide information for responses to specific questions on
Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.

OMB No 1545-0047

2010Open to Public
Inspection**Trimtab Productions Inc.**Employer identification number
13-3090412

Form 990-EZ, Part I, Line 16 - Other Expenses

Description	Amount
Expenses	
Bank Charge	\$ 180
Total \$	180

Form 990-EZ, Part III - Primary Exempt Purpose

The Corporation was organized exclusively for one or more of the following purposes: religious, charitable, scientific, literary or educational purposes.. The Corporation further proposed to provide artistic programs to audiences in developing neighborhoods in New York City.

Certificate of Service

The undersigned hereby certifies that a copy of the notice of opposition has been served upon Applicant on this date by postage-prepaid USPS first-class mail on this date to the following address:

STEPHEN J. DOBI
142 W END AVE APT 18U
NEW YORK, NY 10023-6108

Respectfully submitted,

Charles Biderman

Dated: _____

Certificate of Mailing

The undersigned hereby certifies that a copy of the notice of opposition has been mailed to the TTAB by postage-prepaid USPS first-class mail on this date to the following address:

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Respectfully submitted,

Charles Biderman

Dated: _____