

ESTTA Tracking number: **ESTTA678075**

Filing date: **06/15/2015**

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	Motif Investing, Inc.
Granted to Date of previous extension	06/28/2015
Address	400 S. El Camino Real Suite 575 San Mateo, CA 94402 UNITED STATES

Attorney information	Parag Patel The Everest Law Group, APC 6303 Owensmouth Avenue 10th Floor Woodland Hills, CA 91367 UNITED STATES ppatel@everestlaw.com Phone: 3104035811
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**Applicant Information**

Application No	86338841	Publication date	12/30/2014
Opposition Filing Date	06/15/2015	Opposition Period Ends	06/28/2015
Applicant	Mechio Inc. 179 11th Street, 3rd Floor San Francisco, CA 94103 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Personal electronic devices for recording, organizing, transmitting, manipulating, reviewing, and receiving text, data, images and audio files; Personal electronic devices for recording, organizing, transmitting, manipulating, reviewing, and receiving text, data, images and audio files relating to health and wellness; Computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files; Computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files relating to health and wellness
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**Grounds for Opposition**

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

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

U.S. Registration No.	4261998	Application Date	04/15/2011
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Registration Date	12/18/2012	Foreign Priority Date	NONE
Word Mark	MOTIF		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 036. First use: First Use: 2011/01/31 First Use In Commerce: 2012/01/31 Brokerage services in the field of stocks, bonds, exchange traded funds, options, and other security instruments; financial and investment services, namely, assisting others with the completion of financial transactions for stocks, bonds, exchange traded funds, options, and other security instruments and advising others in the selection and construction of investment portfolios and strategies; banking services relating to commercial and investment banking; investment by electronic means; investment in stocks, bonds, exchange traded funds, options, and other security instruments for others; providing information in the field of securities and financial markets; providing research and opinions based on securities, financial markets and general news information regarding investment opportunities</p> <p>Class 038. First use: First Use: 2011/01/31 First Use In Commerce: 2012/01/31 Providing an online forum in the field of stocks, bonds, exchange traded funds, options, and other security instruments</p> <p>Class 041. First use: First Use: 2011/01/31 First Use In Commerce: 2012/01/31 Providing general current events news and information</p> <p>Class 042. First use: First Use: 2011/01/31 First Use In Commerce: 2012/01/31 Providing temporary use of online non-downloadable software to enable users to locate, customize and manage portfolios of stocks, bonds, exchange traded funds, options, and other security instruments built around indexes or themes; providing temporary use of online non-downloadable software and research software tools to determine, implement, track, modify and terminate investment opportunities based on securities, financial markets and general news information</p>		

Attachments	85296736#TMSN.png( bytes ) Opposition to Motif TM Application.pdf(658206 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	/parag patel/
Name	Parag Patel

Date	06/15/2015
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IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of U.S. Service Mark Application Serial No. **86/338,841**  
Published in the *Official Gazette* on December 30, 2014

Motif Investing, Inc.	)	
	)	
	)	Opposer
	)	
	)	
v.	)	Opposition No. _____
	)	
Mechio Inc.	)	
	)	
	)	Applicant
	)	
	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexander, VA 22313-1451

ATTN: Trademark Trial and Appeal Board

**NOTICE OF OPPOSITION**

Motiv Investing, Inc. ("Opposer"), a Delaware Corporation, having a principal place of business at 400 S. El Camino Real, Suite 575, San Mateo, CA 94402, UNITED STATES, believes that it will be damaged by registration of the mark MOTIV shown in US. Service Mark Application Serial No. 86/338,841 filed by Mechio Inc. ("Applicant") and hereby opposes the same.

As grounds for opposition, Opposer states as follows:

1. Opposer, Motiv Investing, Inc., a Delaware Corporation, having a principal place of business at 400 S. El Camino Real, Suite 575, San Mateo, CA 94402, for many years, has been engaged, inter alia, in the advertising, promotion and sale of services relating to financial markets trading activities that are provided through a variety of channels, including software, forums and the internet.

2. Since long prior to the filing date of the application opposed herein, Opposer continuously has used the mark MOTIF in commerce in connection with the wide variety of financial markets trading activities, which are provided through a variety of channels, including software and the internet.

3. Opposer is the owner of US. Trademark Registration No. 4,261,998, issued on: December 18, 2012, for the trademark MOTIF for use in association with: Brokerage services in the field of stocks, bonds, exchange traded funds, options, and other security instruments; financial and investment services, namely, assisting others with the completion of financial transactions for stocks, bonds, exchange traded funds, options, and other security instruments and advising others in the selection and construction of investment portfolios and strategies; banking services relating to commercial and investment banking; investment by electronic means; investment in stocks, bonds, exchange traded funds, options, and other security instruments for others;

providing information in the field of securities and financial markets; providing research and opinions based on securities, financial markets and general news information regarding investment opportunities, in International Class 36; Providing an online forum in the field of stocks, bonds, exchange traded funds, options, and other security instruments, in International Class 38; Providing general current events news and information, in International Class 41; and Providing temporary use of online non-downloadable software to enable users to locate, customize and manage portfolios of stocks, bonds, exchange traded funds, options, and other security instruments built around indexes or themes; providing temporary use of online non-downloadable software and research software tools to determine, implement, track, modify and terminate investment opportunities based on securities, financial markets and general news information, in International Class 42.

4. Opposer has extensively used and promoted its aforesaid mark and as a result of Opposer's extensive sales, advertising and other promotional efforts (including on television shows, such as CNBC, and on the internet), its mark is well known to consumers and have been distinctive and famous since prior to the filing date of the application opposed herein.

5. Applicant, in the application opposed herein, seeks to register the mark MOTIV, for use in association with "Personal electronic devices for recording, organizing, transmitting, manipulating, reviewing, and receiving text, data, images and audio files; Personal electronic devices for recording, organizing, transmitting,

manipulating, reviewing, and receiving text, data, images and audio files relating to health and wellness; Computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files; Computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files relating to health and wellness,” in International Class 9.

6. The opposed application is an application filed on July 16, 2014 with a basis of intent-to-use and without claim to priority.

7. Applicant’s mark, MOTIV, is confusingly similar in sight, sound and in meaning to Opposer’s aforesaid mark owned and used by Opposer. The use and registration of Applicant’s mark MOTIV would result in confusion, mistake and/or deception as to the source or origin of Applicant’s services, leading consumers to believe that some or all of Applicant’s services are somehow affiliated with, approved, sponsored or licensed by Opposer.

8. If Applicant is permitted to use and register Applicant’s mark for the services identified in the Application, confusion in trade, resulting in irreparable damage and injury to Opposer, inevitably would result by reason of the similarity between Applicant’s and Opposer’s marks and the goods and/or services sold and provided under the respective marks and the manner in which such goods and/or services are provided. Any defect, objection, or fault found with the services provided in connection with Applicant’s service mark, MOTIV, would reflect on, and injure, the reputation Opposer

has established for the goods and services provided under its aforesaid trade mark. If Applicant is granted the registration herein opposed, Applicant would obtain a prima facie exclusive right to use the mark set forth in its application for registration. Such registration would become a source of damage and injury to Opposer through the generation of confusion, mistake, and/or deception, and will cause the dilution of Opposer's marks and the diminution of Opposer's ability to control the quality of goods sold thereunder.

9. Moreover, such registration would run contrary to the requirement that all doubts as to the likelihood of confusion must be resolved in favor of Opposer, and against Applicant, who has a legal duty to select a mark dissimilar to marks already in use.

10. Applicant's mark, as used on the services listed in the Application, would dilute, or be likely to dilute, the distinctiveness of Opposer's aforesaid marks, resulting in damage to Opposer, its goodwill and strength and value of its marks.

11. In View of the similarity in sight, sound and meaning between Applicant's mark MOTIV and Opposer's aforesaid mark; the similarity between the respective goods and services of Applicant and Opposer associated With Opposer's aforesaid marks; and the similarity of the channels of trade for Applicant's alleged services and Opposer's services; Applicant's mark MOTIV so resembles Opposer's aforesaid mark as to be likely to cause confusion, and/or to cause mistake, and/or to deceive.

WHEREFORE, Opposer prays that US. Application Serial No. 86/338,841 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer hereby submits the requisite filing fee in the amount of \$300.00 as required in 37 C.F.R. § 2.6(a)(17). Please inform the undersigned if additional fee are owed.

Respectfully submitted,



Parag Patel  
Attorney for Opposer  
The Everest Law Group, A  
Professional Corporation  
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10<sup>th</sup> Floor  
Woodland Hills, CA 91367  
(tel) 310 403 5811  
(fax) 213 341 6602

DATED: June 15, 2015

**CERTIFICATION UNDER 37 C.F.R. SECTION 1.8**

I hereby certify that this NOTICE OF OPPOSITION is being filed electronically with the United States Patent and Trademark Office utilizing the Electronic System for Trademark Trials and Appeals on this 5 day of June 2015.



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**CERTIFICATE OF SERVICE**

I certify that a true copy of this NOTICE OF OPPOSITION was served upon the Applicant by depositing a copy thereof with the US. Postal Service, Via first class mail, postage prepaid, directed to Applicant:

Mechio Inc.  
179 11th Street, 3rd Floor  
San Francisco, CA 94103

Dated: June 15, 2015

By: 

Parag Patel  
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