

ESTTA Tracking number: **ESTTA447587**

Filing date: **12/21/2011**

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

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| Name | Altria Group, Inc. |
| Granted to Date of previous extension | 12/21/2011 |
| Address | 6601 West Broad Street Richmond, VA 23230 UNITED STATES |

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| Attorney information | Joel D. Leviton Fish & Richardson P.C. 60 South Sixth Street Suite 3200 Minneapolis, MN 55402 UNITED STATES leviton@fr.com, tmdoctc@fr.com, sandler@fr.com Phone:612-337-2591 |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 85280888 | Publication date | 08/23/2011 |
| Opposition Filing Date | 12/21/2011 | Opposition Period Ends | 12/21/2011 |
| Applicant | SCOTT SHERWOOD BOX 788 686 PALM AVENUE GOODLAND, FL 34140 UNITED STATES | | |


Goods/Services Affected by Opposition

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| <p>Class 036. First Use: 2010/02/26 First Use In Commerce: 2010/02/26 All goods and services in the class are opposed, namely: Electronic financial trading services; Financial advice and consultancy services; Financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others; Financial evaluation, tracking, analysis, forecasting, consultancy, advisory and research services relating to securities and other financial instruments; Financial investment brokerage services; Financial planning and investment advisory services; Financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; Financial services, namely, broker/dealer services on securities exchanges and over-the-counter markets; Financial services, namely, investment advice, investment management, investment consultation and investment of funds for others, including private and public equity and debt investment services; Financial services, namely, providing an investment option available for variable annuity and variable life insurance products; Financial services, namely, providing on-line stored value accounts in an electronic environment; Financial services, namely, the trading of financial instruments, securities, shares, options and other derivative products; Insurance and financial information and consultancy services; On-line financial planning services; Providing financial services with respect to securities and other financial instruments and products, namely, trading of and investments in securities and financial instruments and products for others</p> |
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Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

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| U.S. Registration No. | 3029629 | Application Date | 11/07/2001 |
| Registration Date | 12/13/2005 | Foreign Priority Date | NONE |
| Word Mark | ALTRIA | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | <p>Class 035. First use: First Use: 2003/01/27 First Use In Commerce: 2003/01/27 CONDUCTING APPLICANTS SHAREHOLDER AND INVESTOR RELATIONS, NAMELY PROVIDING SHAREHOLDER RECORD KEEPING AND CORPORATE INFORMATION AND ANALYSES</p> <p>Class 036. First use: First Use: 2003/01/27 First Use In Commerce: 2003/01/27 ADMINISTRATION OF EMPLOYEE BENEFIT AND PENSION PLANS, NAMELY DIVIDEND REINVESTMENT PLAN, RETIREMENT PLAN, DEFERRED PROFIT-SHARING PLAN, FLEXIBLE SPENDING ACCOUNTS FOR DEPENDENT CARD AND/OR HEALTH CARE, GROUP LIFE INSURANCE COVERAGE AND STOCK OPTION PROGRAM PROVIDING GRANTS TO CHARITIES AND CHARITABLE GROUPS PROGRAM PROVIDING GRANTS TO CHARITIES AND CHARITABLE GROUPS IN THE FIELD OF HUNGER, DOMESTIC VIOLENCE, CULTURE AND THE ARTS, AIDS, HUMANITARIAN AID, ENVIRONMENT, AGRICULTURE, CULTURAL DIVERSITY FINANCIAL SPONSORSHIP OF CULTURAL EVENTS, NAMELY VISUAL ARTS, DANCE, THEATER</p> <p>Class 042. First use: First Use: 2003/01/27 First Use In Commerce: 2003/01/27 CHARITABLE AND PHILANTHROPIC SERVICES, NAMELY PROVIDING FOOD CLOTHING, SHELTER</p> | | |

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3073900 | Application Date | 11/07/2001 |
| Registration Date | 03/28/2006 | Foreign Priority Date | NONE |
| Word Mark | ALTRIA | | |

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| Design Mark |  |
| Description of Mark | <p>The mark consists of the word ALTRIA and a mosaic design comprised of 25 squares that use 17 different colors. The drawing is lined for the colors Aqua, Light Blue, Blue, Dark Blue, Navy, Light Green, Green, Dark Green, Tan, Beige, Blush, Taupe, Bright Orange, Orange, Red, Dark Red, and Maroon, and color is claimed as a feature of the mark.</p> |
| Goods/Services | <p>Class 035. First use: First Use: 2003/01/27 First Use In Commerce: 2003/01/27 Conducting applicant's shareholder and investor relations, namely providing shareholder record keeping and corporate information and analyses</p> <p>Class 036. First use: First Use: 2003/01/27 First Use In Commerce: 2003/01/27 Administration of employee benefit and pension plans, namely dividend reinvestment plan, retirement plan, deferred profit-sharing plan, flexible spending accounts for dependent care and/or health care, group life insurance coverage and stock option program; providing grants to charities and charitable groups in the field of hunger, domestic violence, culture and the arts, aids, humanitarian aid, environment, agriculture, cultural diversity; financial sponsorship of cultural events, namely visual arts, dance, theater</p> <p>Class 042. First use: First Use: 2003/01/27 First Use In Commerce: 2003/01/27 Charitable and philanthropic services, namely providing food clothing, shelter</p> |

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| Attachments | 76335241#TMSN.gif (1 page)(bytes) 76335234#TMSN.gif (1 page)(bytes) Notice of Opposition.pdf (6 pages)(230669 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.

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| Signature | /Joel D. Leviton/ |
| Name | Joel D. Leviton |
| Date | 12/21/2011 |

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

ALTRIA GROUP, INC.,

Opposer,

v.

SCOTT SHERWOOD

Applicant.

In the matter of Serial No. 85/280,888

For the mark AATRIA

Published on August 23, 2011

Opposition No.: _____

NOTICE OF OPPOSITION

Altria Group, Inc., a Virginia corporation having a principal place of business at 6601 West Broad Street, Richmond, Virginia 23230, believes it will be damaged by registration of the mark shown in Application Serial No. 85/280,888 (the “Application”) and hereby opposes the same pursuant to the provisions of 15 U.S.C. § 1063.

The grounds for opposition are as follows:

1. Altria Group, Inc. (“Opposer” or “Altria”) is the parent company of three premier tobacco operating companies, Philip Morris USA, U.S. Smokeless Tobacco Company, and John Middleton Co., and a leading winery, Ste. Michelle Wine Estates. Under the ALTRIA name and mark, Altria offers various services, including financial, shareholder and investor relations, and charitable and philanthropic services. Since 2003, Altria has used the ALTRIA name and mark continuously in connection with such services.

2. Altria is the owner of Registration No. 3,029,629 for the mark ALTRIA in connection with “conducting applicants shareholder and investor relations, namely providing shareholder record keeping and corporate information and analyses” in International Class 35; “administration of employee benefit and pension plans, namely dividend reinvestment plan,

retirement plan, deferred profit-sharing plan, flexible spending accounts for dependent car[e] and/or health care, group life insurance coverage and stock option program providing grants to charities and charitable groups program providing grants to charities and charitable groups in the field of hunger, domestic violence, culture and the arts, aids, humanitarian aid, environment, agriculture, cultural diversity financial sponsorship of cultural events, namely visual arts, dance, theater” in International Class 36; and “charitable and philanthropic services, namely providing food clothing, shelter” in International Class 42. Registration No. 3,029,629 issued December 13, 2005.

3. Altria is the owner of Registration No. 3,073,900 for the mark ALTRIA and Design in connection with “conducting applicant’s shareholder and investor relations, namely providing shareholder record keeping and corporate information and analyses” in International Class 35; “administration of employee benefit and pension plans, namely dividend reinvestment plan, retirement plan, deferred profit-sharing plan, flexible spending accounts for dependent care and/or health care, group life insurance coverage and stock option program; providing grants to charities and charitable groups in the field of hunger, domestic violence, culture and the arts, aids, humanitarian aid, environment, agriculture, cultural diversity; financial sponsorship of cultural events, namely visual arts, dance, theater” in International Class 36; and “charitable and philanthropic services, namely providing food clothing, shelter” in International Class 42. Registration No. 3,073,900 issued March 28, 2006.

4. Applicant, Scott Sherwood (“Applicant”), seeks to register AATRIA as a service mark for “Electronic financial trading services; Financial advice and consultancy services; Financial and investment services, namely, management and brokerage in the fields of stocks, bonds, options, commodities, futures and other securities, and the investment of funds of others;

Financial evaluation, tracking, analysis, forecasting, consultancy, advisory and research services relating to securities and other financial instruments; Financial investment brokerage services; Financial planning and investment advisory services; Financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; Financial services, namely, broker/dealer services on securities exchanges and over-the-counter markets; Financial services, namely, investment advice, investment management, investment consultation and investment of funds for others, including private and public equity and debt investment services; Financial services, namely, providing an investment option available for variable annuity and variable life insurance products; Financial services, namely, providing on-line stored value accounts in an electronic environment; Financial services, namely, the trading of financial instruments, securities, shares, options and other derivative products; Insurance and financial information and consultancy services; On-line financial planning services; Providing financial services with respect to securities and other financial instruments and products, namely, trading of and investments in securities and financial instruments and products for others” in International Class 36.

5. In the Application, Applicant claims to have first used the AATRIA mark in connection with the services identified on February 26, 2010.

6. Altria began using the ALTRIA name and mark and the ALTRIA and Design mark in connection with financial, shareholder and investor relations, and charitable and philanthropic services before Applicant filed the Application and before Applicant’s claimed date of first use of the AATRIA mark.

7. Altria’s common law and statutory priority dates precede the filing date of the Application and, upon information and belief, any priority date upon which Applicant may rely.

8. Altria has priority over Applicant.

9. Altria's ALTRIA and ALTRIA and Design marks are distinctive, well known, and famous, and became famous before Applicant's claimed date of first use and the filing date of the Application.

10. Prior to filing the Application, Applicant had constructive knowledge of Altria's ALTRIA and ALTRIA and Design marks given Altria's federal registrations set forth above.

11. The services identified in the Application are highly related to services offered by Altria under its ALTRIA name and mark and the ALTRIA and Design mark. The Application covers financial services such as management in the field of stocks; financial evaluation, tracking, and analysis; investment management services, providing an investment option for variable annuity and variable life insurance products; and providing insurance and financial information services, among others, which are highly related to services offered by Altria.

12. Applicant's mark AATRIA so resembles Altria's ALTRIA name and mark and the ALTRIA and Design mark as to be likely, when used in connection with the services identified in the Application, to cause confusion, to cause mistake, or to deceive. Consumers are likely to believe, mistakenly, that the services Applicant allegedly offers under the AATRIA mark are rendered, sponsored, endorsed, or approved by Altria, or are in some way affiliated, connected, or associated with Altria, all to the detriment of Altria. Registration of Applicant's mark, therefore, should be refused under 15 U.S.C. §§ 1052(d) and 1063.

13. Registration of the AATRIA mark would be a further source of damage to Altria, as the mark Applicant seeks to register is likely to cause dilution of Altria's famous ALTRIA and ALTRIA and Design marks to the detriment of Altria. Registration of Applicant's mark should, therefore, be refused under 15 U.S.C. §§ 1052, 1063, and 1125.


14. Registration of the AATRIA mark would be a further source of damage to Altria, as it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Altria's long prior use of the ALTRIA name and mark and the ALTRIA and Design mark.

WHEREFORE, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, Altria respectfully requests that Application Serial No. 85/280,888 in International Class 36 be rejected and that registration of the mark therein for the services therein specified be refused.

Please charge the opposition fee to the Deposit Account of Fish & Richardson P.C.,
Account No. 06-1050.

Respectfully submitted,

Date: 12/21/2011


Joel D. Leviton
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Attorneys for Altria Group, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **NOTICE OF OPPOSITION** has been served this 21st day of December, 2011 by First Class U.S. Mail, postage prepaid, upon Applicant Scott Sherwood at the following addresses:

RICHARD S. ROSS, ESQ.
4801 S UNIVERSITY DR STE 237
FT LAUDERDALE, FL 33328-3836

SCOTT SHERWOOD
BOX 788
686 PALM AVENUE
GOODLAND, FLORIDA 34140


Joel D. Leviton

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