

ESTTA Tracking number: **ESTTA647947**

Filing date: **01/02/2015**

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	LIV Development LLC
Granted to Date of previous extension	01/04/2015
Address	2204 Lakeshore Drive Suite 450 Birmingham, AL 35209 UNITED STATES
Attorney information	Timothy A. Bush, Esq. Sirote & Permutt, PC 2311 Highland Ave. S. Birmingham, AL 35205 UNITED STATES tbush@sirote.com, tmcclain@sirote.com Phone:205.930.5282

**Applicant Information**

Application No	85965241	Publication date	07/08/2014
Opposition Filing Date	01/02/2015	Opposition Period Ends	01/04/2015
Applicant	IPA Holding, LLC 1600 S. Beacon Boulevard; Suite 260 Grand Haven, MI 49417 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 036. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Leasing of apartments; Management of apartments
Class 037. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Real estate development

**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. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	LIV		

Goods/Services	leasing and management of apartments		
U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	LIV DEVELOPMENT		
Goods/Services	real estate development and construction services		

Related Proceedings	91216183
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Attachments	241.pdf(443845 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/TAB/
Name	Timothy A. Bush, Esq.
Date	01/02/2015

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

_____	)	
LIV Development LLC	)	
(Opposer)	)	
	)	<b>Opposition No.:</b> _____
-v-	)	<b>Appl. Serial No.:</b> 85/965241
	)	<b>Published in the Official Gazette on July 8,</b>
	)	<b>2014</b>
IPA Holding, LLC	)	
(Applicant)	)	
_____	)	

**NOTICE OF OPPOSITION**

LIV Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, located and doing business in Birmingham, Alabama (hereinafter “Opposer”), believing that it will be damaged by the registration of the mark LIV NORTH SCOTTSDALE as shown in the above identified application, hereby opposes, pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.101, Application Serial No. 85/965241, filed June 20, 2013 (the “Application”), under the Trademark Act of 1946, in the name of IPA Holding, LLC (hereinafter “Applicant”), published for opposition in the *Official Gazette* on July 8, 2014, for the mark LIV NORTH SCOTTSDALE in Class 36 for leasing of apartments and management of apartments and Class 37 for real estate development (collectively, the “Applicant’s Services”).

As grounds for opposition, it is alleged that:

1. The Opposer, LIV Development LLC, since prior to any date of first use upon which Applicant can rely, has adopted and continuously used the service mark LIV for the leasing and management of apartments and the service mark LIV DEVELOPMENT for real estate development and construction services (said two marks hereinafter collectively “Opposer’s Marks” and said services associated therewith the “Opposer’s Services”).

2. Opposer has significant common law interests and rights in and to Opposer's Marks as service marks for Opposer's Services, and said marks have been in use by Opposer in intrastate and interstate commerce since at least as early as June 21, 2012.

3. Commencing prior to the filing date of the Application, Opposer has used, is now using, and continues to use, Opposer's Marks in connection with Opposer's Services provided by Opposer in interstate commerce. Thus, Opposer has long-standing common law ownership rights in Opposer's Marks in connection with Opposer's Services, which rights arose prior to the filing date of the Application.

4. Since its initial use of Opposer's Marks, Opposer has made a substantial investment in advertising and promoting Opposer's Services under Opposer's Marks.

5. Opposer has extensively used, advertised, promoted, and offered Opposer's Services using Opposer's Marks to the public through various channels of trade in commerce, including the internet, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's Marks and associate same with Opposer and/or services offered by Opposer, including Opposer's Services.

6. As a result of the high quality of Opposer's Services and the extensive use, promotion, sales, and public acceptance of Opposer's Services, such services have acquired an outstanding reputation, and Opposer has built extensive goodwill in connection with the offering of services, including Opposer's Services, under Opposer's Marks.

7. Because of Opposer's extensive use, advertisement, promotion, offering, and sale to the public of Opposer's Services bearing Opposer's Marks through various channels of trade in commerce, Opposer's Marks have become famous and are entitled to a broad scope of protection.

8. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's Marks, on June 20, 2013, Applicant filed an application for registration of the mark LIV NORTH SCOTTSDALE that appears in the Application for the services listed in the Application. The Application was assigned Application Serial No. 85/965241, and was published for Opposition in the *Official Gazette* on July 8, 2014.

9. The words LIV NORTH SCOTTSDALE in the Application are identical to or so resemble Opposer's Marks in sight, pronunciation, commercial impression, and connotation as to be likely, when used with the proposed services of Applicant, to cause confusion or mistake or to deceive purchasers, resulting in damage and detriment to Opposer and its reputation.

10. Upon information and belief, the services identified in the Application are either identical, or closely related, to some or all of Opposer's Services. Upon information and belief, Opposer's Services and Applicant's Services will be offered to and purchased by the same general class of purchasers.

11. Upon information and belief, Opposer's rights in Opposer's Marks precede any rights Applicant may have in the mark set forth in the Application.

12. Upon information and belief, Opposer avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's Services to be marketed under Applicant's proposed LIV NORTH SCOTTSDALE mark as set forth in the Application and misled into believing that such services are offered by, emanate from, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

13. Upon information and belief, Opposer avers that it will be damaged by the registration by Applicant of the LIV NORTH SCOTTSDALE service mark set forth in the Application in that the mark is identical or confusingly similar to Opposer's Marks and will be used in connection with services identical, or closely related, to the services offered to the public by Opposer.

14. Upon information and belief, Opposer avers that the registration of Applicant's LIV NORTH SCOTTSDALE mark set forth in the Application will result in dilution of the distinctive quality of the famous Opposer's Marks to the detriment of Opposer.

15. Given Opposer's longstanding and prior trademark rights in and to the marks LIV and LIV DEVELOPMENT for Opposer's Services, any federal trademark registration for LIV NORTH SCOTTSDALE, conferring exclusive, nationwide rights, would be improper and would interfere with Opposer's prior rights.

16. If Applicant is permitted to attain the registration, a cloud will be placed on Opposer's title in and to Opposer's Marks and on its rights to enjoy the free and exclusive use thereof in connection with the sale and provision of its services, and any such registration would give color of exclusive statutory rights to Applicant, all to the great injury of Opposer and in violation and derogation of the prior and superior rights of Opposer.

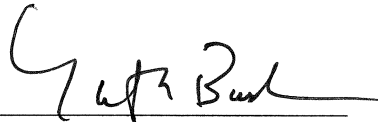
WHEREFORE, because this Opposer, LIV Development LLC, believes and avers that it is being and will continue to be damaged by the registration of the LIV NORTH SCOTTSDALE mark set forth in the Application, Opposer prays that Application Serial No. 85/965241 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed Timothy A. Bush, Esq., a member of the law firm of Sirote & Permutt, P.C., and a member of the Bar of the State of Alabama, to prosecute this Opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

Timothy A. Bush, Esq.  
Sirote & Permutt, P.C.  
2311 Highland Ave. S.  
Birmingham, AL 35205

The Commissioner is hereby authorized to charge the \$600 filing fee for this Opposition to Account No. 501346.

Respectfully submitted,



Attorney for Opposer  
Timothy A. Bush, Esq.  
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Date: 1/2/15

**CERTIFICATE OF SERVICE**

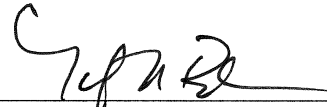
I hereby certify that a copy of the foregoing "NOTICE OF OPPOSITION" was served on Applicant's counsel by Express Mail Post Office to Addressee, on the 2<sup>nd</sup> day of January, 2015, at the following address:

Thomas L. Lockhart, Esq.  
Varnum, Riddering, Schmidt & Howlett, LLP  
P.O. Box 352  
Grand Rapids, MI 49501-0352

Timothy E. Eagle, Esq.  
Varnum, Riddering, Schmidt & Howlett, LLP  
P.O. Box 352  
Grand Rapids, MI 49501-0352

And by electronic transmission to:

teeagle@varnumlaw.com  
trademarks@varnumlaw.com

By   
Timothy A. Bush, Esq.  
Attorney for Opposer

Dated: 1/2/15