

TTAB

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

<p>WEB TRACKING SERVICES, L.L.C.,</p> <p>Petitioner,</p> <p>vs.</p> <p>HUNTANA, L.L.C. and WEBSTAT.COM, L.L.C.,</p> <p>Respondents.</p>	<p>Cancellation No. 92043502</p> <p>Mark: WEBSTAT Registration No.: 2,058,787 Filed: October 19, 1995 Registered: May 6, 1997</p>
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PETITIONER'S MEMORANDUM IN OPPOSITION TO THE MOTION OF WEBSTAT.COM, L.L.C., ONE OF THE RESPONDENTS, TO SUSPEND PROCEEDINGS

The Petitioner, Web Tracking Services, L.L.C., hereby opposes the motion to suspend submitted on behalf of one of the two Respondents, i.e. Webstat.com, L.L.C., on the grounds and for the reasons set forth below.

The pertinent background information and facts are:

1. Respondent Webstat.com, L.L.C., has brought to the attention of the Trademark Trial and Appeal Board (TTAB) the pendency of litigation in the Utah Federal District Court, Civil No. 2: 03-CV-977PGC.
2. Huntana is not a party to the litigation, but is a party to this Cancellation Proceeding.
3. Respondent Huntana, L.L.C., is the registrant of U.S. Trademark Registration No. 2,058,787.
4. Huntana, L.L.C., was dissolved by the state of Montana and no longer existed

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after December, 1997. Accordingly, the Registrant, Huntana, L.L.C., could not lawfully thereafter use the mark WEBSTAT of registration 2,058,787 on software and, therefore, did not do so after December, 1997.

5. More than the statutory interval of time for abandonment has taken place, and because Huntana, L.L.C. has remained a dissolved company there is and can be no intent on the part of Huntana, L.L.C., the Registrant, to resume use.

6. Respondent Webstat.com, L.L.C., purports to have obtained an assignment of the trademark registration, i.e. No. 2,058,787, in February 2003, long after Huntana, L.L.C., abandoned the same.

7. One may not assign an invalid or abandoned trademark registration. Webstat.com, L.L.C., took nothing by reason of the purported February, 2003, assignment of Registration No. 2,058,787.

8. Since Huntana, L.L.C., assigned nothing to Webstat.com, L.L.C., it is important that a judgment of abandonment be obtained as to Huntana, L.L.C., a non-party to the Utah litigation.

ARGUMENT

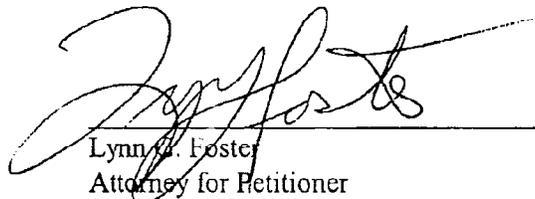
A judgment against Huntana, L.L.C., the Registrant of WEBSTAT, Registration No. 2,058,787, for software, is not possible in the Utah litigation since Huntana, L.L.C. is not a party. However, Huntana, L.L.C., which was dissolved in 1997, could not and did not lawfully use WEBSTAT thereafter. Because Huntana, L.L.C. abandoned WEBSTAT (Reg. No. 2,058,787), Huntana, L.L.C. had nothing to transfer to Webstat.com, L.L.C. although Webstat.com, L.L.C. obtained a phantom assignment of Reg. No. 2,058,787.

It is appropriate and a primary judicial responsibility for the TTAB to render a judgment which is binding against the Registrant (Huntana, L.L.C.), making it clear that the Registrant is the party which abandoned the registration and that there was no residual trademark right in February 2003, to be transferred to any other party, including but not limited to the phantom assignment of Reg. No. 2,058,787 to Webstat.com, L.L.C.

CONCLUSION

Given the foregoing, the motion of Webstat.com, L.L.C., (which was not consented to by Huntana, L.L.C. or Web Tracking Services, L.L.C.), to suspend the proceedings in this Cancellation Proceeding should be denied. The concurrent Motion for Summary Judgment being filed by the Petitioner, Web Tracking Services, L.L.C., should be excluded from any stay and granted.

DATED this 24th day of August, 2004.



Lynn G. Foster
Attorney for Petitioner