

ESTTA Tracking number: **ESTTA544848**

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

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

Proceeding	92057136
Party	Plaintiff Catalyst Mortgage
Correspondence Address	SUSAN E HOLLANDER K&L GATES LLP 4 EMBARCADERO, SUITE 1200 SAN FRANCISCO, CA 94111 UNITED STATES ttablitigationdocket@klgates.com, Jocelyn.Belloni@klgates.com
Submission	Opposition/Response to Motion
Filer's Name	Britt L. Anderson
Filer's e-mail	Britt.Anderson@klgates.com, Robin.Goldberg@klgates.com, Felicia.Ellis@klgates.com
Signature	/Britt L. Anderson/
Date	06/24/2013
Attachments	2013.06.24 - Opposition to Motion for Substitution and Extension of Time to Answer.pdf(5175745 bytes)

CATALIST HOMES, INC. & Design under U.S. Reg. No. 2,956,688 (the “CATALIST HOMES Design Mark”), a mark which was abandoned years ago by the proper Respondent in this case, Catalist Homes, Inc.

Even a cursory examination of the assignment at Combined Motion’s Exhibit A makes it abundantly clear that Catalyst Lending’s motion has been made in bad faith and that the assignment itself is a sham. The purported assignment, executed by a void and inoperative Delaware corporation only one day before an answer was due in this case, pertains to an abandoned trademark. Rights in such a trademark cannot be transferred. In any case, the extremely recent transfer, falling well after the filing of the Cancellation Petition, means Catalyst Lending has no connection to the abandonment facts in this case, and is thus inappropriate for joinder or substitution under T.B.M.P. 502.12. This lack of *bona fide* connection is amplified by the fact that Catalyst Lending provides no explanation as to what business purpose it could possibly have in seeking assignment of a mark so unlike any mark it has owned or used. Given the radically different commercial impression of and the lack of overlap between Catalyst Lending’s trademark applications and the services under the CATALIST LENDING Design Mark, Catalyst Lending can secure no rights based on the purported assignment, even if Catalist Homes, Inc. had not abandoned the mark and still had rights to assign.

Based on these factors, Catalyst Lending should not be substituted or joined to this proceeding and the Combined Motion should be denied.

II. FACTUAL BACKGROUND

Petitioner has used the CATALYST MORTGAGE mark in commerce in connection with mortgage lending, brokerage and procurement services since at least as early as November 2005. Petitioner is also the owner of Registration No. 4,175,817 for the word mark CATALYST

MORTGAGE and Registration No. 4,133,466 for the logo mark CATALYST MORTGAGE & Design (the “CATALYST MORTGAGE Marks”).

Registrant and respondent Catalist Homes, Inc. is the record owner of the CATALIST HOMES Design Mark, which was registered in connection with “Real estate brokerage and real estate listing services.” (See Exhibit A.) In addition, Catalist Homes, Inc. was the record owner of the word mark CATALIST HOMES under cancelled U.S. Reg. No. 2991259 (the “CATALIST HOMES Word Mark”), which was also registered in connection with “Real estate brokerage and real estate listing services.” The PTO cancelled the CATALIST HOMES Word Mark on September 21, 2012 because Catalist Homes, Inc. failed to file an acceptable declaration under Section 8. (See *id.*) On May 1, 2013, following Petitioner’s repeated attempts, without success, to find evidence of use of the CATALIST HOMES Mark. Petitioner filed a Petition for Cancellation of the CATALIST HOMES Mark on the basis that the continuance of the CATALIST HOMES Mark is likely to and will diminish the goodwill and value of the CATALYST MORTGAGE Marks (“Cancellation Petition”). Based upon the Board’s May 2, 2013 order, an answer to the Cancellation Petition was due on June 11, 2013.

On June 11, 2013, Catalist Lending filed its Combined Motion, which requested that Catalist Lending be substituted in the action for Catalist Homes, Inc. In support, Catalist Lending attached to its Combined Motion a purported assignment of rights in the CATALIST HOMES Design Mark by Catalist Homes, Inc. (See Combined Motion, Exhibit A.) The assignment was executed and recorded on June 10, 2013, one day prior to the deadline for Catalist Homes, Inc.’s answer in the cancellation. (See *id.*, Exhibits A and B.) The signatory of the assignment and registrant under U.S. Reg. No. 2,956,688, Catalist Homes, Inc. is a void Delaware corporation. (See Exhibit B.) In addition, the California agent for service of process

for the assignor and registrant Catalist Homes, Inc. filed a resignation with the California Secretary of State effective November 7, 2012. (See Exhibit C.) Finally, the online record from the California Secretary of State for Catalist Homes, Inc. reflects that the entity is “forfeited.” (See Exhibit D.)

The assignment found at Exhibit A to the Combined Motion purports to assign “Trademarks” to Catalyst Lending, Inc. as set forth in its “Schedule.” (See Combined Motion, Exhibit A.) The only trademark listed on the Schedule is U.S. Reg. No. 2,956,688, the CATALIST HOMES Design Mark, which is shown below:



Moving party Catalyst Lending has applied on two separate occasions for registrations of trademarks incorporating the term “CATALYST.” Catalyst Lending’s first application, filed on December 6, 2007 under Ser. No. 77/359,588, for the mark CATALYST, based on Section 1(b), was refused based upon the CATALIST HOMES Design Mark, subject of this Cancellation Petition, and the CATALIST HOMES Word Mark. (See Exhibit E.) In responding to this refusal, on or around September 26, Catalyst Lending submitted arguments attempting to overcome the citation by the Examining Attorney, stating that its proposed CATALYST mark (1) had a different commercial meaning relative to the two cited CATALIST HOMES marks because of the differing services, (2) Catalyst Lending’s mark was spelled “CATALYST,” rather than “CATALIST,” with a “Y,” rather than an “I,” and (3) Catalyst Lending offered only “loan brokerage,” while the two CATALIST HOMES marks were registered in connection with “real

estate brokerage” services. (See Exhibit F.) After the PTO issued a final refusal, Catalyst Lending’s Ser. No. 77/359,588 was abandoned on April 30, 2009.

Catalyst Lending subsequently filed an application for the mark CATALYST LENDING, INC. under App. Ser. No. 85/755,734, on October 16, 2012, on a Section 1(a) basis. (See Exhibit G.) As a specimen of use, on February 19, 2013, Catalyst Lending submitted to the PTO a copy of a page from its website at <catalystlending.com> reflecting the following logo design:



(See Exhibit H.) On March 15, 2013, the PTO issued a refusal of Catalyst Lending’s CATALYST LENDING, INC. application because of a likelihood of confusion with Petitioner’s marks under U.S. Registration Nos. 4133466 and 4175817.

III. ARGUMENT

A. The Purported Assignment Is Invalid and Provides No Basis for Substitution or Joinder Because Its Only Subject Matter Is an Abandoned Trademark.

A threshold issue in the validity of a trademark assignment is whether or not the assignor has rights to assign. An abandoned trademark is not capable of assignment, *see, e.g., Avon Shoe Co. v. David Crystal, Inc.*, 171 F. Supp. 293 (S.D.N.Y.), *aff’d*, 279 F.2d 607 (2d Cir. 1960), *cert. denied*, 364 U.S. 909, 81 S. Ct. 272, because such a mark is subject to cancellation by the Trademark Office or a federal court and is therefore invalid. *See* 15 U.S.C. §§ 1064(3), 1119. Furthermore, evidence of recordal of an assignment, which Catalyst Lending provides at Exhibit B to the Combined Motion, is evidence of only execution of the assignment, not the validity of the assignment itself. *See* 15 U.S.C. §1060(a)(3). As the PTO has stated, “[t]he mere act of

recording [an assignment] document is a ministerial act,” and “[t]he Assignment Branch [of the PTO] does not examine the substance of the transaction; rather, it records any assignment “that appears on its face to be an assignment.” *In re Ratny*, 24 U.S.P.Q.2d 1713, 1715 (Com’r Pat. & Trademarks 1992).

Here, because the CATALIST HOMES Design Mark has been abandoned, Catalyst Lending cannot be an “assignee” of the mark because no goodwill was transferred. *See, e.g., Sugar Busters LLC. v. Brennan*, 177 F.3d 258, 266 (5th Cir. 1999) (concluding assignment invalid because assignor’s goodwill was not validly transferred). Accordingly, there is no basis to substitute or join Catalyst Lending under T.B.M.P. § 512.01 to this proceeding because Catalyst Lending does not meet the express requirement under 15 U.S.C. § 1060 that a registered mark be assigned *with the good will* of the business associated with the mark. *See* T.B.M.P. § 512.01; 15 U.S.C. § 1060(a)(1).

In addition, related several factors made clear by Petitioner’s Cancellation Petition as well as the Combined Motion itself emphasize the impropriety of substituting or joining Catalyst Lending to this cancellation proceeding. The Petition for Cancellation was filed on May 1, 2013 and is based on Petitioner’s central allegation that Catalist Homes, Inc. “is no longer in business, has discontinued use of its mark in commerce, and has no intent to resume use of its mark.” *See* Cancellation Petition, ¶ 5. Petitioner’s allegation relates entirely to historical facts about Catalist Homes, Inc., its past business activity, its past lack of continuation of use of the CATALIST HOMES Design Mark, and Catalist Homes, Inc.’s intent regarding use of the mark. Nothing about this allegation of abandonment of rights involves Catalyst Lending, which only now claims rights as assignee as of June 10, 2013, over a month after this proceeding was commenced, one

day prior to Catalist Homes, Inc.'s answer being due, and, most importantly, long after abandonment occurred.

The basis for the Combined Motion also establishes the irrelevance of Catalyst Lending as a party to this proceeding. The party executing the purported assignment filed by Catalyst Lending with the Board is Catalist Homes, Inc., which is identified in the assignment document as a Delaware corporation, with its principal place of business at 2601 Pacific Coast Highway, Suite 302, Hermosa Beach, California 90252. (*See* Combined Motion, Exhibit B.) This is the same Catalist Homes, Inc. which reflected as by the Delaware Secretary of State's records as being inoperative and void, for which the agent for service of process has filed a resignation with the California Secretary of State, and is shown under California state online records as having been "forfeited." (*See* Exhibits B-D.) Petitioner's allegations supporting abandonment as well as this objective evidence of abandonment both relate only to Catalist Homes, Inc., and its cessation of business and loss of goodwill. Given that Catalyst Lending only emerged with a purported assignment a few days ago, no evidence of use of or intent not to abandon the CATALYST HOMES Design Mark can possibly reside with Catalyst Lending. Catalyst Lending's involvement has no effect on goodwill that has been abandoned. Not surprisingly, Catalyst Lending provides no facts in the Combined Motion connecting it to the alleged abandonment by Catalist Homes, Inc. For these reasons, it is unnecessary that Catalyst Lending be a party to this cancellation proceeding. In fact, T.B.M.P. 512.01 provides that, in the case of assignment, the proceeding may be continued in name of assignor, and that neither substitution nor joinder is required. *See, e.g., Avia Group Int'l Inc. v. Faraut*, 25 U.S.P.Q.2d 1625, 1627 (TTAB 1992) (finding improper the joinder of corporate parent where moving party did not provide factual basis connecting parent to issues in case).

B. Catalyst Lending Lack Rights by Assignment to Justify Substitution or Joinder Because the CATALYST LENDING Mark Is Entirely Different from the CATALIST HOMES Design Mark.

Even a cursory examination of the CATALIST HOMES Design Mark and its description of services makes clear that Catalyst Lending’s attempt to appear as a party in this case is based entirely on bad faith. The CATALIST HOMES Design Mark and Catalyst Lending’s analogous design are entirely different. The marks diverge in spellings of CATALIST and CATALYST; Catalyst Lending appends “LENDING,” rather than “HOMES,” to the “CATALYST” or “CATALIST” term, and the marks use completely dissimilar design elements. A comparison between the CATALIST HOMES Design Mark and the analogous design mark appearing on Catalyst Lending’s specimen of use as submitted to the PTO on February 19, 2013 is shown below:

CATALIST HOMES Design Mark	Catalyst Lending Specimen – Ser. No. 85/755,734
	

The Combined Motion entirely fails to explain what business purpose Catalyst Lending could possibly have for receiving an assignment of a mark by Catalist Homes, Inc. which has such a different appearance. The assigned mark plainly has no application for Catalyst Lending given its own mark’s spelling, terms, and design. Importantly, Catalyst Lending can secure no rights supporting its own use of the CATALYST LENDING mark through assignment, because the CATALIST HOMES Design Mark generates a radically different commercial impression. *See, e.g., Ilco Corp. v. Ideal Sec Hardware Corp.*, 527 F.2d 1221, 1224 (C.C.P.A. 1976) (owner

of HOME PROTECTION HARDWARE could not tack on earlier use of HOME PROTECTION CENTER mark for purposes of priority because such mark generated a different commercial impression).

The CATALIST HOMES Design Mark is also registered with different services relative to those services under the CATALYST marks that Catalyst Lending has both used and for which it has attempted to obtain registrations. A substantial change in the nature or quality of goods sold under a mark, whether there is an assignment or not, may so change the nature of good will symbolized by the mark that the mark becomes fraudulent and original rights are lost. *See* 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (“*McCarthy*”), § 18.27 (4th ed. 2013); *see also Sugar Busters*, 177 F.3d at 266 (assignor’s goodwill in retail services for diabetic supplies not validly transferred where mark used by assignee for information and literature applicable to diabetic persons). Below is comparison between the services under the CATALIST HOMES Design Mark and the services under Catalyst Lending’s most recent application for CATALYST LENDING, INC.:

CATALIST HOMES Design Mark Description	CATALYST LENDING, INC Description Ser. No. 85/755,734
<i>Real estate brokerage and real estate listing services.</i>	<i>Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; Mortgage brokerage; Mortgage lending; Mortgage refinancing.</i>

Catalyst Lending’s own statements to the PTO show that Catalyst Lending itself views the CATALIST HOMES Design Mark as so different from its own mark that it can succeed to no rights by the assignment. Catalyst Lending’s first application under its Application Ser. No. 77/359,588 for CATALYST was refused by the PTO based upon the CATALIST HOMES

Design Mark. On September 26, 2008, Catalyst Lending submitted arguments attempting to overcome the citation by the Examining Attorney, stating that the two marks give a “markedly different commercial impression.” (See Exhibit F.)

Specifically, Catalyst Lending argued to the PTO that (1) its proposed CATALYST mark had a different commercial meaning relative to the two cited CATALIST HOMES marks because of the differing services, (2) Catalyst Lending’s mark was spelled CATALYST, with a “Y,” rather than an “I,” and (3) Catalyst Lending offered only “loan brokerage,” while the two CATALIST HOMES marks were registered in connection with “real estate brokerage” services. (See *id.*) Catalyst Lending’s arguments make clear that the purported assignment falls firmly within the circumstances where courts have found assignments to be invalid because of differences in the commercial impressions and areas of use between would-be assignors’ and assignees’ trademarks. See, e.g., *Ilco*, 527 F.2d at 1224; *Sugar Busters*, 177 F.3d at 266. Based on these statements, Catalyst Lending’s attempt to claim rights through the purported assignment of the CATALIST HOMES Design Mark is a disingenuous contradiction and simply emphasizes its bad faith intent in attempting to join this litigation.

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IV. CONCLUSION

Based upon the foregoing, Catalyst Lending cannot claim rights by assignment in the CATALIST HOMES Design Mark. Accordingly, Catalyst Lending is an improper party for either substitution or joinder in this case. Accordingly, the Combined Motion should be denied in its entirety.

Respectfully submitted,

Dated: June 24, 2013



Susan E. Hollander
Britt L. Anderson
Jocelyn M. Belloni
K&L Gates LLP
4 Embarcadero, Suite 1200
San Francisco, CA 94111

Attorneys for Petitioner
Catalyst Mortgage

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSITION TO MOTION FOR SUBSTITUTION OF PARTIES AND OPPOSITION TO EXTENSION OF TIME TO ANSWER** has been properly served, via U.S. mail, on the following correspondent for Registrant on this 24th day of June, 2013.

Michael J. Davin
CATALIST HOMES, INC.
2601 Pacific Coast Highway, Suite 302
Hermosa Beach, CA 90254

Michael W. Reagor, Esq.
Anna E. Lineberger, Esq.
DYMOND REAGOR COLVILLE, LLP
8400 E. Prentice Avenue, Suite 1040
Greenwood Village, CO 80111



Robin Goldberg

EXHIBIT A



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Jun 24 03:20:39 EDT 2013

TESS HOME | NEW USER | STRUCTURED | FREE FORM | BROWSE DATA | SEARCH OIG | BOTTOM | HELP | PREV LIST | CURR LIST | NEXT LIST | FIRST DOC | PREV DOC | NEXT DOC | LAST DOC

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: Record 1 out of 2

TSDR | ASSIGN Status | TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark CATALIST HOMES INC.

Goods and Services IC 036 US 100 101 102 G & S Real estate brokerage and real estate listing services. FIRST USE: 20010320 FIRST USE IN COMMERCE: 20010320

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.15.06 - Advertising, skywriting; Clouds; Fog
07.01.04 - Detached house
07.11.11 - Highways without lines or dividers; intersections (roads) without lines or dividers; Roads without lines or dividers; Streets without lines or dividers
07.13.03 - Advertising, signs, mounted or with posts or standards; Street signs (mounted on posts)
26.11.09 - Rectangles made of geometric figures, objects, humans, plants or animals
26.11.20 - Rectangles inside one another
26.11.21 - Rectangles that are completely or partially shaded
26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

Serial Number 76574261

Filing Date February 6, 2004

Current Basis 1A

Original Filing Basis 1A

Published for Opposition March 8, 2005

Registration Number 2956688

Registration Date May 31, 2005

Owner (REGISTRANT) Catalist Homes, Inc. CORPORATION DELAWARE 2601 Pacific Coast Highway, Suite 302 Hermosa Beach CALIFORNIA 90254

(LAST LISTED OWNER) CATALYST LENDING, INC. CORPORATION COLORADO 6530 SOUTH YOSEMITE STREET #310 GREENWOOD VILLAGE COLORADO 80111

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Julia Anne Matheson, Esq.

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE HOMES INC. APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15 SECT 8 (6-YR).

Live/Dead Indicator LIVE

TESS HOME | NEW USER | STRUCTURED | FREE FORM | BROWSE DATA | SEARCH OIG | TOP | HELP | PREV LIST | CURR LIST | NEXT LIST | FIRST DOC | PREV DOC | NEXT DOC | LAST DOC

EXHIBIT B

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE CERTIFICATE OF INCORPORATION OF "DIMENSION HOMES INC.", WAS RECEIVED AND FILED IN THIS OFFICE THE THIRTEENTH DAY OF MARCH, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THE SAID "DIMENSION HOMES INC." FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "CATALIST HOMES INC", ON THE FIFTEENTH DAY OF MARCH, A.D. 2001, AT 1 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THE SAID "CATALIST HOMES INC" FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "CATALIST HOMES INC.", ON THE SEVENTH DAY OF AUGUST, A.D. 2003, AT 4:01 O'CLOCK P.M.

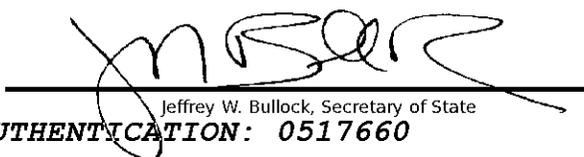
AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS NO LONGER IN EXISTENCE AND GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE HAVING BECOME INOPERATIVE AND VOID THE FIRST DAY OF MARCH, A.D. 2011 FOR NON-PAYMENT OF TAXES.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION WAS SO PROCLAIMED IN ACCORDANCE WITH THE PROVISIONS OF GENERAL CORPORATION LAW OF THE STATE OF DELAWARE ON THE SECOND DAY OF JUNE, A.D. 2011, THE SAME HAVING BEEN REPORTED TO

3192469 8400

130784236




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 0517660

DATE: 06-17-13

Delaware

PAGE 2

The First State

THE GOVERNOR AS HAVING NEGLECTED OR REFUSED TO PAY THEIR ANNUAL TAXES.



3192469 8400

130784236

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 0517660

DATE: 06-17-13

EXHIBIT C



RA-100

State of California Secretary of State

Resignation of Agent Upon Whom Process May Be Served

R0065498
FILED
Secretary of State
State of California
NOV 07 2012

100

There is no fee for filing this form.

IMPORTANT – Read instructions before completing this form.

This Space For Filing Use Only

Entity Type (Identify the type of business from which you are resigning as agent for service of process. Check only one box.)

- | | |
|---|--|
| <input checked="" type="checkbox"/> CORPORATION (domestic or qualified foreign) | <input type="checkbox"/> REGISTERED GENERAL PARTNERSHIP |
| <input type="checkbox"/> LIMITED LIABILITY COMPANY (domestic or registered foreign) | <input type="checkbox"/> UNINCORPORATED ASSOCIATION |
| <input type="checkbox"/> LIMITED PARTNERSHIP (domestic or registered foreign) | <input type="checkbox"/> FOREIGN PARTNERSHIP
(other than a foreign limited partnership) |
| <input type="checkbox"/> LIMITED LIABILITY PARTNERSHIP (domestic or registered foreign) | <input type="checkbox"/> FOREIGN ASSOCIATION |

Entity Name (Enter the name of the entity from whom you are resigning as agent for service of process.)

2. CataList Homes, Inc.

Entity File Number (Enter the file number issued to the above-named entity by the Secretary of State.)

3. C2263124

Jurisdiction (Enter the jurisdiction (state or country) under which the above-named entity was organized.)

4. DE

Statement of Resignation (The following statement declares intent to resign as agent for service of process and should not be altered.)

5. THE UNDERSIGNED HEREBY RESIGNS AS AGENT UPON WHOM PROCESS MAY BE SERVED IN CALIFORNIA FOR THE ABOVE-NAMED ENTITY.

Execution

6. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

11-5-2012
DATE

Michael J Davin
TYPE OR PRINT NAME OF DECLARANT (i.e., the individual or corporation resigning as agent for service of process for the above-named entity)

M Davin
SIGNATURE OF DECLARANT or SIGNATURE OF AUTHORIZED REPRESENTATIVE OF DECLARANT (if declarant is a corporation)

Former President
TITLE OF OFFICE OF AUTHORIZED REPRESENTATIVE OF DECLARANT (if declarant is a corporation)

EXHIBIT D

Business Entities (BE)

- Online Services
 - E-File Statements of Information for Corporations
 - Business Search
 - Processing Times
 - Disclosure Search

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information
(annual/biennial reports)

Filing Tips

Information Requests

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Friday, June 21, 2013. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	CATALIST HOMES INC
Entity Number:	C2263124
Date Filed:	09/26/2000
Status:	FORFEITED
Jurisdiction:	DELAWARE
Entity Address:	2601 PACIFIC COAST HIGHWAY, 3RD FLOOR
Entity City, State, Zip:	HERMOSA BEACH CA 90254

EXHIBIT E

To: Catalyst Lending, Inc. (achagnon@pdrlaw.net)

Subject: TRADEMARK APPLICATION NO. 77359588 - CATALYST - Catalyst Len

Sent: 3/31/2008 3:09:44 PM

Sent As: ECOM116@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
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[Attachment - 33](#)
[Attachment - 34](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/359588

MARK: CATALYST

77359588

CORRESPONDENT ADDRESS:

ASHLEY R. CHAGNON
PETERSON DYMOND REAGOR, LLP
8400 E PRENTICE AVE STE 1040
GREENWOOD VILLAGE, CO 80111-2922

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Catalyst Lending, Inc.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

Catalyst Len

CORRESPONDENT E-MAIL ADDRESS:

achagnon@pdrlaw.net

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 3/31/2008

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

The assigned examining attorney has reviewed the referenced application and determined the following.

SECTION 2(d) – LIKELIHOOD OF CONFUSION

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d),

because the applicant's mark, when used on or in connection with the identified goods, so resembles the marks in U.S. Registration Nos. 2956688 and 2991259 as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* See the enclosed registrations.

Section 2(d) of the Trademark Act bars registration where a mark so resembles a registered mark that it is likely, when applied to the goods, to cause confusion, or to cause mistake or to deceive. TMEP §1207.01. The Court in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider in determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression and the similarity of the goods. The overriding concern is to prevent buyer confusion as to the source of the goods. *Miss Universe, Inc. v. Miss Teen U.S.A., Inc.*, 209 USPQ 698 (N.D. Ga. 1980). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

Comparison of the marks

The examining attorney must look at the marks in their entireties under Section 2(d). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1988). TMEP §1207.01(b)(viii).

In this case, the registered marks, both of which are owned by the same registrant, are as follows:

REG. 2956688: CATALIST HOMES INC. for “real estate brokerage and real estate listing services” in International Class 36.

REG. 2991259: CATALIST HOMES INC. for “real estate brokerage and real estate listing services” in International Class 36.

The proposed mark is CATALYST for “brokerage in the field of residential property loans; mortgage brokerage” in International Class 36.

The registered marks are similar to the applicant's mark because the dominant portions of all three marks are phonetic equivalents. Thus they are similar sounding. Similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963); TMEP §1207.01(b)(iv). Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See e.g., Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd* 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §§1207.01(b)(ii) and (b)(iii).

The mere deletion of wording from a registered mark is not sufficient to overcome a likelihood of confusion under Section 2(d). *See In re Optical Int'l*, 196 USPQ 775 (TTAB 1977) (where applicant filed to register the mark OPTIQUE for optical wear, deletion of the term BOUTIQUE is insufficient to distinguish the mark, *per se*, from the registered mark OPTIQUE BOUTIQUE when used in connection with competing optical wear). In the present case, applicant's mark does not create a distinct commercial impression because it contains the same common wording as registrant's mark, and there is no other wording to distinguish it from registrant's mark.

The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

Comparison of the services

If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980). TMEP §1207.01(b).

In this case, the services of the applicant and registrant are closely related because they are frequently offered by the same source. Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and/or services as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, namely real estate brokerage and mortgage brokerage, are of a kind that may emanate from a single source. *See In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-1218 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 at n.6 (TTAB 1988). As such, the services are likely to travel through the same channels of trade and to the same consumers, those seeking to transact a home purchase, for example.

When confronted by closely related services bearing highly similar marks, a consumer is likely to have the mistaken belief that the services originate from the same source. Because this likelihood of confusion exists, registration of applicant's proposed mark must be refused.

Although the examining attorney has refused registration, the applicant may respond to the refusals to register by submitting evidence and arguments in support of registration.

PRIOR PENDING APPLICATION

The examining attorney encloses information regarding pending Application Serial No. 77310116. 37 C.F.R. §2.83.

There may be a likelihood of confusion between the applicant's mark and the mark in the above noted application under Section 2(d) of the Act. The filing date of the referenced application precedes the applicant's filing date. If the earlier-filed application matures into a registration, the examining attorney may refuse registration under Section 2(d).

QUESTIONS

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Marcie R. Frum Milone/
Trademark Examining Attorney
Law Office 116
571-272-9726

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

DESIGN MARK

Serial Number

76574261

Status

REGISTERED

Word Mark

CATALIST HOMES INC.

Standard Character Mark

No

Registration Number

2956688

Date Registered

2005/05/31

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Catalist Homes, Inc. CORPORATION DELAWARE 2601 Pacific Coast Highway,
Suite 302 Hermosa Beach CALIFORNIA 90254

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Real estate
brokerage and real estate listing services. First Use: 2001/03/20.
First Use In Commerce: 2001/03/20.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE HOMES INC. APART FROM
THE MARK AS SHOWN.

Filing Date

2004/02/06

Examining Attorney

CHOE, KELLY

Attorney of Record

Julia Anne Matheson



CATALIST

HOMES INC.

DESIGN MARK

Serial Number

76574295

Status

REGISTERED

Word Mark

CATALIST HOMES

Standard Character Mark

Yes

Registration Number

2991259

Date Registered

2005/09/06

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Catalist Homes, Inc. CORPORATION DELAWARE 2601 Pacific Coast Highway,
Suite 302 Hermosa Beach CALIFORNIA 90254

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Real estate
brokerage and real estate listing services. First Use: 2001/03/20.
First Use In Commerce: 2001/03/20.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOMES" APART FROM THE
MARK AS SHOWN.

Filing Date

2004/02/06

Examining Attorney

CLARKE, NANCY

Attorney of Record

Julia Anne Matheson

CATALIST HOMES

DESIGN MARK

Serial Number

77310116

Status

NON-FINAL ACTION - MAILED

Word Mark

CATALYST RETAIL GROUP

Standard Character Mark

Yes

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Catalyst Retail Group, LLC LTD LIAB CO GEORGIA Suite 1250 400
Interstate North Parkway Atlanta GEORGIA 30339

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Real estate
brokerage; Real estate consultation. First Use: 2006/03/18. First
Use In Commerce: 2006/03/18.

Filing Date

2007/10/22

Examining Attorney

MCDOWELL, MATTHEW

Attorney of Record

Russell L. Sandidge

CATALYST RETAIL GROUP

DESIGN MARK

Serial Number

78907094

Status

REGISTERED

Word Mark

VIKOR

Standard Character Mark

No

Registration Number

3251336

Date Registered

2007/06/12

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Vikor Group, LLC LTD LIAB CO FLORIDA 1101 Brickell Avenue, Ste 1005-S
Miami FLORIDA 33131

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Real estate advisory services, namely, providing advice related to real estate investment; Mortgage brokerage services; Real estate brokerage services; Raising capital for real estate, namely, managing and arranging for co-ownership of real estate; Financial investment in the field of real estate; Assessment and management of real estate; Real estate investment; Real estate equity sharing, namely, arranging joint ventures for real estate ownership and management. First Use: 1981/10/06. First Use In Commerce: 1981/10/06.

Description of Mark

The mark consists of the word VIKOR in stylized lettering where the "I" is a red arrow pointing upward and the remaining letters are black.

Colors Claimed

The color(s) black and red is/are claimed as a feature of the mark.

Print: Mar 31, 2008

78907094

Filing Date

2006/06/13

Examining Attorney

MARTIN, JENNIFER

vikor

www.vikor.com

DESIGN MARK

Serial Number

78927991

Status

REGISTERED

Word Mark

BANK SAID NO, CALL JOE

Standard Character Mark

Yes

Registration Number

3307217

Date Registered

2007/10/09

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

DAT U JOE REALTY, INC. CORPORATION CALIFORNIA 9590 Chesapeake Drive,
Suite 1 San Diego CALIFORNIA 92123

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Mortgage
brokerage; Mortgage lending; Real estate brokerage; Real estate
consultation. First Use: 2003/01/01. First Use In Commerce:
2003/01/01.

Filing Date

2006/07/12

Examining Attorney

PERRY, KIMBERLY

Attorney of Record

RICHARD L MORRIS JR

BANK SAID NO, CALL JOE

DESIGN MARK

Serial Number

78932714

Status

REGISTERED

Word Mark

VARGASVILLE

Standard Character Mark

Yes

Registration Number

3223111

Date Registered

2007/03/27

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Shan, Muhammed Iqbal INDIVIDUAL AFGHANISTAN 238 Westview Dr South San Francisco CALIFORNIA 94080

Owner

Vargas, Raquel Maria INDIVIDUAL UNITED STATES 238 Westview Dr South San Francisco CALIFORNIA 94080

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Appraisal of real estate; Financial loan consultation; Loan financing; Mortgage brokerage; Mortgage lending; Mortgage procurement for others; Real estate acquisition services; Real estate agencies; Real estate appraisal; Real estate brokerage; Real estate consultancy; Real estate consultation; Real estate escrow services; Real estate investment; Real estate listing; Real estate management; Real estate management consultation; Real estate multiple listing services; Real estate procurement for others; Real estate valuations. First Use: 2004/08/01. First Use In Commerce: 2004/08/01.

Filing Date

2006/07/19

Print: Mar 31, 2008

78932714

Examining Attorney

FINE, STEVE

Attorney of Record

John Alunit

VARGASVILLE

DESIGN MARK

Serial Number

78936240

Status

REGISTERED

Word Mark

VILLAGE HOMES

Standard Character Mark

Yes

Registration Number

3298012

Date Registered

2007/09/25

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Village Homes of Colorado, Inc. CORPORATION COLORADO Suite 200 100
Inverness Terrace East Englewood COLORADO 80112

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Homeowner information and welcoming services, namely, providing commercial and business community information for new residents; incentive award programs to promote the sale of products and services of new homes through referrals; homeowner association services, namely, promoting the interests of homeowners in a specific community. First Use: 1994/10/21. First Use In Commerce: 1994/10/21.

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Providing information on residential home buying to purchasers of new homes; underwriting warranty programs in the field of homes and buildings; providing information to real estate brokers regarding residential communities and homes for sale via the internet; real estate brokerage services; mortgage brokerage and lending services and real estate management services. First Use: 1994/10/21. First Use In Commerce: 1994/10/21.

Goods/Services

Class Status -- ACTIVE. IC 037. US 100 103 106. G & S: Real estate development services; planning, construction services, namely, planning, developing and laying out and custom construction residential communities; new home construction services; real estate construction and repair; electrical contracting services, namely, electrical wiring and cabling of residential homes for entertainment, communications, security and fire alarms; providing information and advice to new homeowners in the field of home construction. First Use: 1984/01/01. First Use In Commerce: 1984/01/01.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Interior and exterior home design services for others; providing information and advice to new homeowners in the fields of architectural and interior design. First Use: 2001/01/01. First Use In Commerce: 2001/01/01.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Community centers and facilities for community activities, namely, providing facilities for recreational activities, educational conventions, fitness and exercise facilities, tennis court and swimming facilities. First Use: 1995/06/00. First Use In Commerce: 1995/06/00.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOMES" APART FROM THE MARK AS SHOWN.

Filing Date

2006/07/24

Examining Attorney

MICHELI, ANGELA M.

Attorney of Record

Sabrina C. Stavish

VILLAGE HOMES

DESIGN MARK

Serial Number

78940777

Status

REGISTERED

Word Mark

LOPEZ FINANCIAL GROUP REAL ESTATE & LOANS

Standard Character Mark

No

Registration Number

3260774

Date Registered

2007/07/10

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Lopez, Carlos C INDIVIDUAL UNITED STATES 1588 Moffett St., Suite F
Salinas CALIFORNIA 93902

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: REAL ESTATE
BROKERAGE AND REAL ESTATE MORTGAGE BROKERAGE SERVICES. First Use:
2006/01/09. First Use In Commerce: 2006/01/09.

Prior Registration(s)

3180234;3186317

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FINANCIAL GROUP" and
"REAL ESTATE & LOANS" APART FROM THE MARK AS SHOWN.

Colors Claimed

The color(s) BLACK, WHITE and GOLD is/are claimed as a feature of the
mark.

Part of Mark in Color

The color BLACK appears in the term LOPEZ, in the letters in the words

REAL ESTATE & LOANS, and in the horizontal lines appearing above and below the wording REAL ESTATE & LOANS. The color WHITE appears in the four columns and two headers comprising the pillar design in the mark, and in the wavy line appearing behind the pillar design. The color GOLD appears in the rectangular background design appearing behind the pillar design, and in the letters of the words FINANCIAL GROUP. The GOLD in the upper portion of the rectangular background design is the same shade of GOLD that appears in the words FINANCIAL GROUP. The bottom half of the rectangular background design appears in a lighter shade of GOLD. The GRAY shading in the columns and header in the pillar design in the mark is for shading and depth purposes only. The gray shading is not part of the mark and the color gray is not claimed as a feature of the mark.

Filing Date

2006/07/30

Examining Attorney

MACFARLANE, JAMES



LOPEZ
Financial Group

REAL ESTATE & LOANS

DESIGN MARK

Serial Number

78940951

Status

REGISTERED

Word Mark

W

Standard Character Mark

No

Registration Number

3302493

Date Registered

2007/10/02

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

John R. Wood, Inc. CORPORATION FLORIDA 3255 Tamiami Trail North Naples
FLORIDA 34103

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Publications, namely booklets, newsletters, magazines,
pamphlets, leaflets, manuals, brochures, handbooks and directories all
of the foregoing on topics of real estate agencies and listing
services and real estate information; and magazines, guides, books,
pamphlets and newsletters all of the foregoing in the field of real
estate. First Use: 2005/12/00. First Use In Commerce: 2005/12/00.

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Real estate
agencies services; real estate listing services; operating
marketplaces for sellers of goods and/or services; providing
information in the field of real estate by linking the web site to
other web sites featuring real estate information; real estate
brokerage services; real estate brokerage and real estate agency
services for home based real estate professionals; providing
information in the field of real estate brokerage and real estate

agencies; providing information in the field of real estate brokerage and real estate agencies via the internet; providing a website featuring real estate listings, information in the field of real estate, real estate brokerage services and real estate brokerage and real estate agency services for home based real estate professionals; and mortgage procurement for others; mortgage services, namely buyer pre-qualification of mortgages for mortgage brokers and banks; mortgage brokerage; financial services, namely credit and financial consultation, financial analysis and consultation, financial consultation, money lending, mortgage planning, and financial valuation of personal property and real estate; financial services, namely, issuance and management of certificates backed by loan portfolios which are subsequently managed to insure the integrity of the certificates; financial services in the nature of cross collateralization, pledged securities, pledged certificates of deposit, no income and asset verification mortgages, foreign national financing, residential lot mortgages, bridge loans, private mortgages, residential investor financing, zero point loans, construction permanent financing with fixed or adjustable rates located at application, no income verification construction loans, loans for credit problem situations, mortgages for property held in the name of a trust, corporation or partnership, new condominium financing, residential mortgages, up to 100% residential financing and commercial financing for types of real estate; providing online financial calculators; providing financial information in the fields of mortgages and real estate; and financial information provided by electronic means. First Use: 2005/12/00. First Use In Commerce: 2005/12/00.

Prior Registration(s)

2238023;2439737

Filing Date

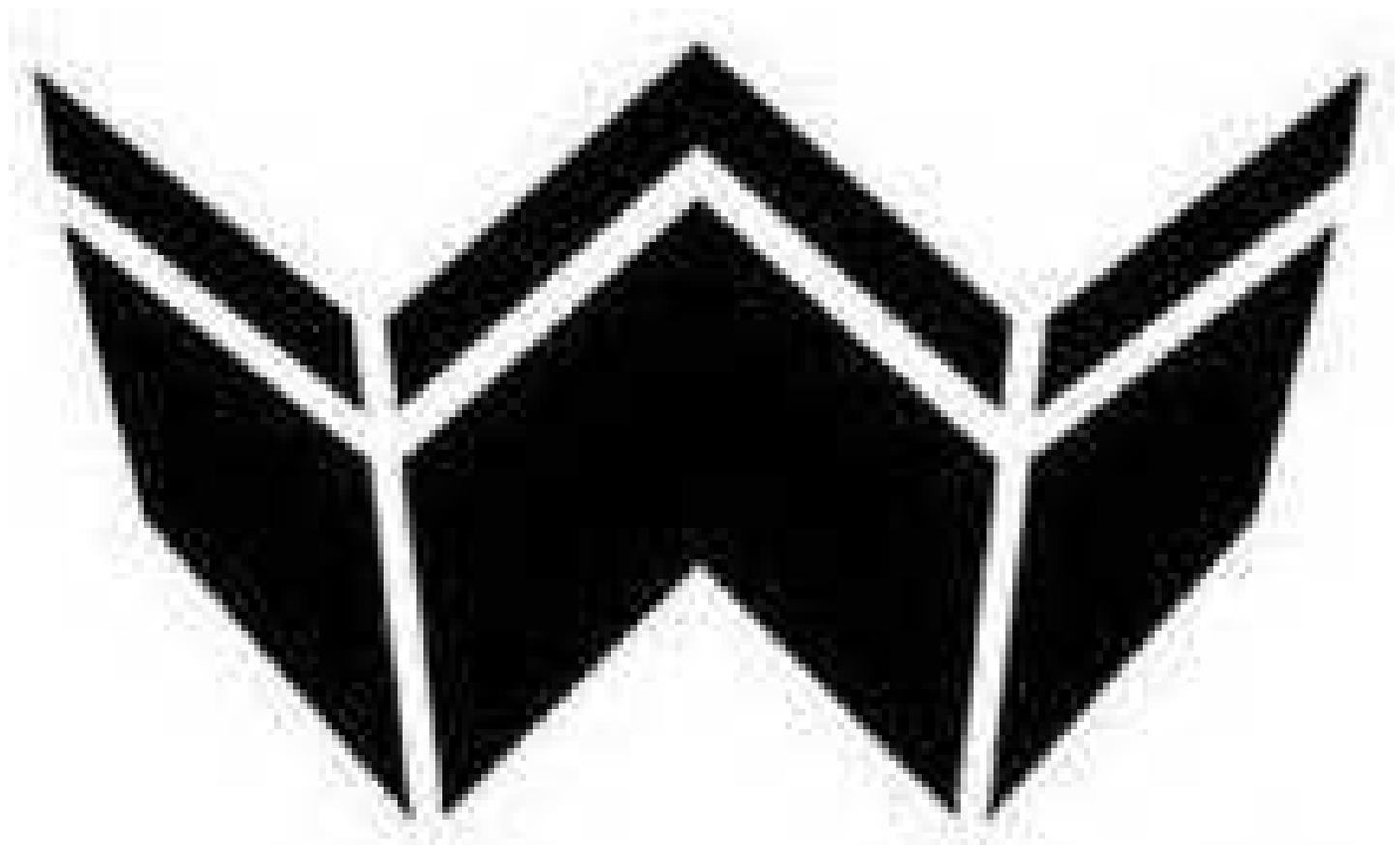
2006/07/31

Examining Attorney

YONTEF, DAVID

Attorney of Record

Jennifer L. Whitelaw



DESIGN MARK

Serial Number

78957364

Status

REGISTERED

Word Mark

HOME IN ONE MORTGAGE & REAL ESTATE NETWORK

Standard Character Mark

No

Registration Number

3256339

Date Registered

2007/06/26

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Home In One CORPORATION NEVADA 508 S. 17th Avenue Wausau WISCONSIN
54401

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Mortgage
brokerage; Real estate brokerage. First Use: 2006/05/01. First Use
In Commerce: 2006/05/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MORTGAGE & REAL ESTATE
NETWORK" APART FROM THE MARK AS SHOWN.

Description of Mark

The mark consists of a house in between two designs of people holding
hands and a house in between and below that the stylized text of the
wording "Home In One Mortgage & Real Estate Network".

Filing Date

2006/08/22

Examining Attorney

FLOWERS, JAY



Home In One

Mortgage & Real Estate Network

DESIGN MARK

Serial Number

78959952

Status

REGISTERED

Word Mark

ASG REAL ESTATE INC.

Standard Character Mark

Yes

Registration Number

3260917

Date Registered

2007/07/10

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

ASG Real Estate Inc CORPORATION CALIFORNIA Suite #660 149 S.
Barrington Avenue Los Angeles CALIFORNIA 90049

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Agencies or brokerage for leasing or renting of land; Agencies or brokerage for renting land; Agencies or brokerage for renting of buildings; Appraisal of real estate; Assessment and management of real estate; Business brokerage; Evaluation of real property; Financial investment in the field of real estate; Financial valuation of personal property and real estate; Investment brokerage; Land acquisition, namely, real estate brokerage; Leasing of real estate; Leasing of real property; Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; Mortgage brokerage; Operating marketplaces for sellers of goods and/or services; Providing information in the field of real estate by means of linking the web site to other web sites featuring real estate information; Real estate acquisition services; Real estate agencies; Real estate appraisal; Real estate brokerage; Real estate consultancy; Real estate consultation; Real estate equity sharing, namely, managing and arranging for co-ownership of real estate; Real estate escrow

services; Real estate investment; Real estate listing; Real estate management; Real estate management consultation; Real estate multiple listing services; Real estate procurement for others; Real estate services, namely, rental of vacation homes, condominiums, cabins, and villas using pay per click advertising on a global computer network; Real estate syndication; Real estate time-sharing; Real estate trustee services; Real estate valuation services; Real estate valuations; Vacation real estate time share exchange services; Vacation real estate time-sharing. First Use: 2006/01/01. First Use In Commerce: 2006/01/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "Real Estate Inc." APART FROM THE MARK AS SHOWN.

Filing Date

2006/08/24

Examining Attorney

KHOURI, SANI

ASG Real Estate Inc.

DESIGN MARK

Serial Number

78972923

Status

REGISTERED

Word Mark

AMJEM

Standard Character Mark

No

Registration Number

3280001

Date Registered

2007/08/14

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Amsalem, Jennifer INDIVIDUAL CANADA 3640 Yacht Club Drive, Unit 308
Aventura FLORIDA 33180

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Financial services, namely, the purchase of residential mortgages on behalf of others and the issuance of mortgage-backed securities; Maintaining mortgage escrow accounts; Mortgage banking; Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; Mortgage brokerage; Mortgage lending; Mortgage procurement for others; Mortgage services, namely, buyer pre-qualification of mortgages for mortgage brokers and banks; Mortgaging of securities for others; Real estate brokerage; Real estate consultation; Real estate escrow services; Real estate investment; Real estate listing; Real estate management; Real estate management consultation; Real estate multiple listing services; Real estate services, namely, rental of vacation homes, condominiums, cabins, and villas using pay per click advertising on a global computer network. First Use: 2006/07/01. First Use In Commerce: 2006/07/01.

Print: Mar 31, 2008

78972923

Description of Mark

The mark consists of The mark consists of logo in the form of a house and the name of the trade.

Filing Date

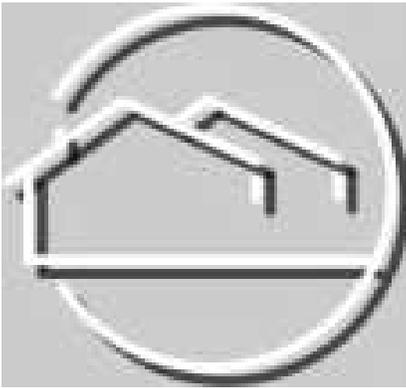
2006/09/12

Examining Attorney

EVANKO, PATRICIA

Attorney of Record

Frank Amsalem,



AMJEM

DESIGN MARK

Serial Number

78973884

Status

REGISTERED

Word Mark

THE SMITH PATTON GROUP

Standard Character Mark

Yes

Registration Number

3291068

Date Registered

2007/09/11

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

THE SMITH PATTON GROUP, INC. CORPORATION CALIFORNIA 56 Maxwell Irvine
CALIFORNIA 92618

Goods/Services

Class Status -- ACTIVE. IC 036. US 100 101 102. G & S: Land acquisition, namely, real estate brokerage; Leasing of real estate; Leasing of real property; Mortgage brokerage; Mortgage lending; Mortgage services, namely, buyer pre-qualification of mortgages for mortgage brokers and banks; Real estate brokerage; Real estate consultation; Real estate listing; Real estate management; Real estate management consultation; Real estate procurement for others. First Use: 2006/01/19. First Use In Commerce: 2006/01/19.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GROUP" APART FROM THE MARK AS SHOWN.

Name/Portrait Statement

"The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual."

Print: Mar 31, 2008

78973884

Filing Date

2006/09/13

Examining Attorney

SAPPENFIELD, ANN E.

The Smith Patton Group

To: Catalyst Lending, Inc. (achagnon@pdrlaw.net)
Subject: TRADEMARK APPLICATION NO. 77359588 - CATALYST - Catalyst Len
Sent: 3/31/2008 3:09:49 PM
Sent As: ECOM116@USPTO.GOV
Attachments:

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 3/31/2008 FOR
APPLICATION SERIAL NO. 77359588

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77359588&doc_type=OOA& (or copy and paste this URL into the address field of your browser), or visit <http://tportal.uspto.gov/external/portal/tow> and enter the application serial number to access the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable response time period. Your response deadline will be calculated from **3/31/2008**.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**

sfdgsnrdfytgze

EXHIBIT F

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77359588
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_1-70112117236-162041944 . Response to Office Action 9-26-08.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT3\IMAGEOUT3\773\595\77359588\xml1\ROA0002.JPG
	\\TICRS\EXPORT3\IMAGEOUT3\773\595\77359588\xml1\ROA0003.JPG
	\\TICRS\EXPORT3\IMAGEOUT3\773\595\77359588\xml1\ROA0004.JPG
ORIGINAL PDF FILE	evi_1-70112117236-162041944 . Attachment 1 - CH.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT3\IMAGEOUT3\773\595\77359588\xml1\ROA0005.JPG
	\\TICRS\EXPORT3\IMAGEOUT3\773\595\77359588\xml1\ROA0006.JPG
ORIGINAL PDF FILE	evi_1-70112117236-162041944 . Attachment 2 - CH INC.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT3\IMAGEOUT3\773\595\77359588\xml1\ROA0007.JPG
	\\TICRS\EXPORT3\IMAGEOUT3\773\595\77359588\xml1\ROA0008.JPG
DESCRIPTION OF EVIDENCE FILE	File 1 - Applicant's Argument; File 2 - Attachment 1 to Applicant's Argument (Office Action regarding CATALIST HOMES); File 3 - Attachment 2 to Applicant's Argument (Office Action regarding CATALIST HOMES, INC.)

SIGNATURE SECTION	
RESPONSE SIGNATURE	/Ashley R. Chagnon/
SIGNATORY'S NAME	Ashley R. Chagnon
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	09/26/2008
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Sep 26 16:36:05 EDT 2008
TEAS STAMP	USPTO/ROA-70.112.117.236- 20080926163605072564-7735 9588-4307a5342bda0a3213ba 0a46b1e84954cdd-N/A-N/A-2 0080926162041944424

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action To the Commissioner for Trademarks:

Application serial no. **77359588** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of File 1 - Applicant's Argument; File 2 - Attachment 1 to Applicant's Argument (Office Action regarding CATALIST HOMES); File 3 - Attachment 2 to Applicant's Argument (Office Action regarding CATALIST HOMES, INC.) has been attached.

Original PDF file:

[evi 1-70112117236-162041944 . Response to Office Action 9-26-08.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi 1-70112117236-162041944 . Attachment 1 - CH.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi 1-70112117236-162041944 . Attachment 2 - CH INC.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Response Signature

Signature: /Ashley R. Chagnon/ Date: 09/26/2008

Signatory's Name: Ashley R. Chagnon

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77359588

Internet Transmission Date: Fri Sep 26 16:36:05 EDT 2008

TEAS Stamp: USPTO/ROA-70.112.117.236-200809261636050

72564-77359588-4307a5342bda0a3213ba0a46b

1e84954cdd-N/A-N/A-20080926162041944424

Certification of Transmission

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on the date shown below.

/Ashley R. Chagnon/

Ashley R. Chagnon

Date: September 26, 2008

Response to Office Action

Applicant Catalyst Lending, Inc. (“applicant”), through its attorneys, Peterson Dymond Reagor, LLP, hereby responds to the March 31, 2008 Office Action issued by USPTO Examining Attorney Marcie R. Frum Milone, Law Office 116, regarding applicant’s trademark application for “CATALYST”, Serial No. 77359588, as follows:

Response to Refusal Based on Section 2(d) Likelihood of Confusion:

The Examiner states that the applicant’s mark is likely to cause confusion because the dominant portion of the applicant’s mark is a phonetic equivalent of CATALIST HOMES, INC., Reg. 2956688, and CATALIST HOMES, INC., Reg. 2991259, both registered in Class 36 for real estate brokerage and real estate listing services. However, word marks are to be compared based on appearance, sound, meaning, and commercial impression. 1207.01(b)(i). “The meaning or connotation of a mark must be determined in relation to the named goods or services.” TMEP 1207.01(b)(v). In addition, TMEP 1207.01(b)(v) provides that:

Even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties’ goods or services so that there is no likelihood of confusion. *See, e.g., In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987) (CROSS-OVER for bras held not likely to be confused with CROSSOVER for ladies’ sportswear, the Board finding that the term was suggestive of the construction of applicant’s bras, but was likely to be perceived by purchasers either as an entirely arbitrary designation or as being suggestive of sportswear that “crosses over” the line between informal and more formal wear when applied to ladies’ sportswear); *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (PLAYERS for men’s underwear held not likely to be confused with PLAYERS for shoes, the Board finding that the term PLAYERS implies a fit, style, color and durability adapted to outdoor activities when applied to shoes, but “implies something else, primarily indoors in nature” when applied to men’s underwear); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (BOTTOMS UP for ladies’ and children’s underwear held not likely to be confused with BOTTOMS UP for men’s clothing, the Board finding

that the term connotes the drinking phrase “Drink Up” when applied to men’s suits, coats and trousers, but does not have this connotation when applied to ladies’ and children’s underwear).

TMEP 1207.01(b)(v).

The CATALIST HOMES and CATALIST HOMES, INC. trademarks give a markedly different commercial impression than does the CATALYST trademark. The former marks employ a play on the word “catalyst” which, because it is coupled with the word “homes”, serves immediately to clue the consuming public into the fact the marks are associated with residential real estate *listing* services. These marks seem borderline descriptive on the trademark spectrum, hence the examining attorney’s requirement that the owner disclaim the right to use “HOMES” apart from the marks. TMEP 1209.01(a), 1209.01(b). *See also Attachment 1*, Priority Action dated August 30, 2004, and *Attachment 2*, Priority Action dated September 2, 2004.

In contrast to the registrant’s highly suggestive marks for real estate listing services, applicant’s mark is much less suggestive, to the point of being seen by consumers as entirely arbitrary as applied to mortgage loan brokerage, or as suggestive of a vehicle for securing a mortgage. *See i.e. In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987) *cited above*. In viewing the mark alone with no other information, a consumer would have no way of knowing or even guessing what goods or services are associated with the mark. This cannot be said of CATALIST HOMES or CATALIST HOMES, INC.

In addition to giving differing commercial impressions, the registered marks and applicant’s mark are clearly not identical. The marks are visually dissimilar both due to the replacement of the “Y” in CATALYST with an “I” in CATALIST, and also with the addition of HOMES and HOMES, INC. in CATALIST HOMES and CATALIST HOMES, INC., respectively.

Also of importance is the fact that the selection of mortgage services, if not also real estate services, is not a transaction entered into on impulse due to the significant financial investment involved. Consequently, potential consumers of these services are sophisticated enough not only to appreciate the difference between loan brokerage and real property brokerage services, but also not to be likely to suffer confusion as to the source of CATALYST services based on any phonetic similarities between the CATALYST mark and the CATALIST HOMES and CATALIST HOMES, INC. marks. TMEP 1207.01, 1207.01(a)(i).

Furthermore, although real estate brokerage and mortgage brokerage services can be offered together, neither the owner of the CATALIST HOMES and CATALIST HOMES, INC. trademarks nor this applicant are offering such services together. In fact, there are currently no registered marks similar to applicant’s specifically for mortgage loan brokerage services.

Prior Pending Application

The application for the trademark "CATALYST RETAIL GROUP", Application Serial No. 77310116, was abandoned on August 2, 2008. Accordingly, that mark cannot serve as a bar to registration of applicant's trademark.

Accordingly, for the reasons provided above, registration of CATALYST should be permitted.

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/574295

APPLICANT: Catalist Homes, Inc.

76574295

CORRESPONDENT ADDRESS:

JULIA ANNE MATHESON
FINNEGAN, HENDERSON, FARABOW, GARRETT
1300 I STREET, N.W.
WASHINGTON, D.C. 20005-3315

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

MARK: CATALIST HOMES

CORRESPONDENT'S REFERENCE/DOCKET NO: 9419.0001

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

PRIORITY ACTION

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 704.02.

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE. This case will be given priority as an amended case if you respond to the requirements stated below within two months.

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

Serial Number 76/574295

The following issues were discussed in communication with Julia Anne Matheson, Esq., on August 30, 2004:

DISCLAIMER REQUIRED

The applicant must disclaim the descriptive wording "HOMES" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a). The wording is merely descriptive because it refers to a feature or characteristic of the applicant's services. The applicant's real estate brokerage and real estate listing services include the brokerage and listing of homes. The applicant's specimen states, for example, that the applicant is "the first full-service real estate firm in California exclusively dedicated to **home** sellers...[the applicant's] entire marketing strategy is designed for one thing, getting top dollar for your **home**" (emphasis added).

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP §1213.08(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use HOMES apart from the mark as shown.

ADDITIONAL INFORMATION REQUIRED

The applicant must state whether the word HOMES in the mark has any meaning in relation to the services. 37 C.F.R. Section 2.61(b); TMEP Section 808.01(c).

NOTICE: TRADEMARK OPERATION RELOCATING OCTOBER AND NOVEMBER 2004

The Trademark Operation is relocating to Alexandria, Virginia, in October and November 2004. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

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

To reach the undersigned attorney by telephone after October 12, 2004, please call (571) 272 - 9253.

Applicants, registration owners, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at www.uspto.gov.

Nancy Clarke
/nancy clarke/
Trademark Examining Attorney
Law Office 102
Tel. (703) 308-9102, Ext. 212
Fax (703) 746-8102

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/574261

APPLICANT: Catalyst Homes, Inc.

76574261

CORRESPONDENT ADDRESS:

JULIA ANNE MATHESON
FINNEGAN, HENDERSON, FARABOW, GARRETT
1300 I STREET, N.W.
WASHINGTON, D.C. 20005-3315

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

MARK: CATALIST HOMES INC.

CORRESPONDENT'S REFERENCE/DOCKET NO: 9419.0004

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

PRIORITY ACTION

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 704.02.

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE. This case will be given priority as an amended case if you respond to the requirements stated below within two months.

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

Serial Number 76/574261

The following issues were addressed via communication with Julia Matheson on August 31, 2004.

GRAY SHADING

Applicant must clarify whether the gray tones in the drawing are intended to indicate the color gray.

(1) If the color gray is a feature of the mark, then applicant must submit a color claim and description as follows: "The color gray is a feature of the mark. The color gray appears in <specify where color gray appears>." 37 C.F.R. §§2.52(b) and (b)(1).

(2) If the color gray is intended to indicate shading only, then applicant must submit a new drawing showing the mark in black and white only, with the gray tones deleted.

DISCLAIMER

Applicant must insert a disclaimer of HOMES INC. in the application because HOMES merely describes the subject matter of applicant's services. Additionally, terms such as "Inc." and "Ltd." must be disclaimed because they merely specify applicant's entity type and do not function as a trademark or service mark to indicate source. See *In re Patent & Trademark Services, Inc.*, 49 USPQ2d 1537, 1539-40 (TTAB 1998); *In re Industrial Relations Counselors, Inc.*, 224 USPQ 309, 310 n.2 (TTAB 1984); *In re E. I. Kane, Inc.*, 221 USPQ 1203, 1206 (TTAB 1984); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 919 (TTAB 1984); TMEP §1213.03(d).

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP section 1213.09(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use "HOMES INC." apart from the mark as shown.

See *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

Please note, a disclaimer does not remove the disclaimed matter from the mark. It is simply a statement that the applicant does *not* claim exclusive rights in the disclaimed wording or design apart from the mark as shown in the drawing.

DECLARATION

The declaration page of record appears cut off as only the last two sentences and the signature block is part of the record. Therefore, applicant may simply re-submit the original declaration page in its entirety.

Applicant must submit a statement attesting to the facts set forth in the application, and confirming that the mark is in use in commerce and was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 15 U.S.C. §1051(a)(3)(C); 37 C.F.R. §2.34(a)(1)(i); TMEP §§804.02, 806.01(a) and 901. This statement must be dated and signed by a person authorized to sign under 37 C.F.R. §2.33(a), and verified with a notarized affidavit or signed declaration under 37 C.F.R. §2.20. 37 C.F.R. §§2.32(b) and 2.33.

If the declaration is filed electronically through TEAS, then applicant should sign the declaration by entering a "symbol" that applicant has adopted as a signature (e.g., *ljohn doel*, *ldrll*, and *1544-4925/*). The Office will accept *any* combination of letters, numbers, spaces and/or punctuation marks as a valid signature if it is placed between two forward slash ("/") symbols. 37 C.F.R. §§ 2.33(d) and 2.193(c)(1)(iii); TMEP §§304.08 and 804.05.

NOTICE: TRADEMARK OPERATION RELOCATING OCTOBER AND NOVEMBER 2004

The Trademark Operation is relocating to Alexandria, Virginia, in October and November 2004. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

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

Applicants, registration owners, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at www.uspto.gov.

To reach the undersigned attorney by telephone after October 27, 2004, please call (571) 272-9429.

To submit a fax response to this Office action after that date, send your response to the Law Office fax number, namely (571) 273-9113.

If applicant has any questions or needs assistance in responding, applicant is encouraged to telephone or email the assigned examining attorney.

Kelly A Choe
/KAC/
Trademark Attorney
USPTO Law Office 113
Tel. 703. 308.9113 x167
Response. www.uspto.gov/teas

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

EXHIBIT G



[Trademarks](#) > [Trademark Electronic Search System \(TESS\)](#)

TESS was last updated on Mon Jun 24 03:20:39 EDT 2013

[TESS Home](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [Browse Data](#) | [SEARCH OG](#) | [Bottom](#) | [HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Catalyst Lending, Inc.

Word Mark	CATALYST LENDING, INC.
Goods and Services	IC 036. US 100 101 102. G & S. Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; Mortgage brokerage; Mortgage lending; Mortgage refinancing. FIRST USE: 20071015. FIRST USE IN COMMERCE: 20071015
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85755734
Filing Date	October 16, 2012
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Catalyst Lending, Inc. DBA Catalyst Lending CORPORATION COLORADO 6530 S Yosemite St, Suite 310 Greenwood Village COLORADO 80111
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LENDING, INC." APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[TESS Home](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [Browse Data](#) | [SEARCH OG](#) | [Top](#) | [HELP](#)

EXHIBIT H

Applicant's website homepage (www.catalystlending.com) demonstrating the mark as related to various mortgage services:

Log In | Contact Us | Help

CATALYST
LENDING INCORPORATED

HOME
FULL APPLICATION
SHORT APPLICATION
FREE CONSULTATION
CHECK LOAN STATUS
ABOUT US

Apply Now

- Full Application
- Short Application
- Get Your Credit

Resources & Tools

- Mortgage Calculators
- Printable Forms
- Mortgage Checklist
- Check Loan Status

Learning Center

- Mortgage Glossary
- How to Get a Loan
- Types of Loans
- Home Purchase Basics
- Credit Facts

Company Info

- About Us
- NMLS and State Licensing
- Employee Login

Welcome to Catalyst Lending, Inc. We look forward to putting our mortgage services to work for you!

Company philosophy:
The name, Catalyst, is derived from our philosophy "to be an agent for positive change in the lives of everyone we touch". We want you to know that our service is an extension of our belief in the spirit of helping others achieve their goals in order to attain ours - the true definition of win/win. We are here to help you every step of the way helping you match the right financing package to your goals and needs.

What makes us different?
Proactive communication. We understand that for many a mortgage transaction is the largest financial transaction they will experience. Among other things, we want you to know what to expect before you begin, the status of your loan along the way and what you will need to know for your closing... before you get there. We have developed open lines of communication to assist you with the knowledge you need to have a smooth, worry-free financing experience.

What should I do next?
Contact one of our experienced and knowledgeable loan originators who can explain and guide you through the loan process. You have many options when financing your home and without proper guidance and support, it can all seem very confusing and at times very difficult. Let us ease your

BBB ACCREDITED BUSINESS

Recipient of the 2011 BBB Gold Star Award

APPLY NOW

Select a loan application:
Full Application

LOG IN

Email:
Password:

HOME VALUATION

Home Value Estimate
Free, instant home valuations
e.g. 1763 E Mcmillan St.

Zillow

Applicant's web page (www.catalystlending.com) demonstrating the mark as related to mortgage applications:

The screenshot displays the Catalyst Lending Incorporated website. At the top left is the company logo, and at the top right are links for 'Log In', 'Contact Us', and 'Help'. A navigation menu on the right side includes links for 'HOME', 'FULL APPLICATION', 'SHORT APPLICATION', 'FREE CONSULTATION', 'CHECK LOAN STATUS', and 'ABOUT US'. The main content area features a 'Full Application' section with a description and a list of required documents. A sidebar on the left contains various utility links such as 'Apply Now', 'Resources & Tools', 'Learning Center', and 'Company Info'. The footer contains contact information, a BBB Accredited Business logo, and an Equal Housing Opportunity logo.

CATALYST LENDING INCORPORATED

Log In | Contact Us | Help

- ▶ HOME
- ▶ FULL APPLICATION
- ▶ SHORT APPLICATION
- ▶ FREE CONSULTATION
- ▶ CHECK LOAN STATUS
- ▶ ABOUT US

Apply Now

- ▶ Full Application
- ▶ Short Application
- ▶ Get Your Credit

Resources & Tools

- ▶ Mortgage Calculators
- ▶ Printable Forms
- ▶ Mortgage Checklist
- ▶ Check Loan Status

Learning Center

- ▶ Mortgage Glossary
- ▶ How to Get a Loan
- ▶ Types of Loans
- ▶ Home Purchase Basics
- ▶ Credit Facts

Company Info

- ▶ About Us
- ▶ NMLS and State Licensing
- ▶ Employee Login

Full Application

Click Apply Now to start your loan application. As you complete the application, please use your best estimate if documentation is not available.

What you will need

Documentation for all borrowers, including:

- Social Security Number
- Contact and employment information
- Best estimates of income, assets, and liabilities

After you have finished

We will contact you to:

- Guide you through the loan process
- Complete your loan application package
- Help you select the best program and interest rate

Apply Now

Full Application | Short Application | Get Your Credit | Mortgage Calculators | Printable Forms | Mortgage Checklist | Check Loan Status | Mortgage Glossary | How to Get a Loan | Types of Loans | Home Purchase Basics | Credit Facts | About Us | NMLS and State Licensing | Employee Login

BBB ACCREDITED BUSINESS

Catalyst Lending, Inc. NMLS #18812 CO-Regulated by the Division of Real Estate KS-Kansas Licensed Mortgage Company
6530 S Yosemite Street, Suite 310, Greenwood Village, CO 80111
Direct: (303) 843-4540
superadmin@catalystlending.net
Copyright © 2013
[Privacy Policy](#) | [Security Statement](#) | [Site Map](#)

EQUAL HOUSING OPPORTUNITY

Applicant's web page (www.catalystlending.com) demonstrating the mark as related to mortgage services and describing the business, services offered, locations, and business hours:

Log In | Contact Us | Help

CATALYST
LENDING INCORPORATED

[HOME](#)
[FULL APPLICATION](#)
SHORT APPLICATION
[FREE CONSULTATION](#)
[CHECK LOAN STATUS](#)
[ABOUT US](#)

Apply Now

- Full Application
- Short Application
- Get Your Credit

Resources & Tools

- Mortgage Calculators
- Printable Forms
- Mortgage Checklist
- Check Loan Status

Learning Center

- Mortgage Glossary
- How to Get a Loan
- Types of Loans
- Home Purchase Basics
- Credit Facts

Company Info

- About Us**
- NMLS and State Licensing
- Employee Login

About Us

We have built a strong reputation as an outstanding mortgage originator, serving the lending needs of real estate professionals, builders and individual homebuyers in several states.

We're a full service mortgage banker with an experienced staff offering expertise in every area of mortgage lending...from purchase to refinance to construction lending. We have access to a full range of mortgage sources and all of our lending specialists are dedicated to finding the right loan with the best rates, terms and costs to meet your unique needs. But that's just the beginning of our service. Throughout the lending process, we provide regular loan updates and progress reports so you always know the status of your loan.

And, now it's our pleasure to offer all of our exceptional mortgage services online. Through us you not only have access to the best loans available in the marketplace, but you can also review loan alternatives, and even apply for your loan, at your convenience, online - 24 hours a day.

Thank you for visiting our website. We look forward to putting our mortgage service to work for you!

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ACCREDITED BUSINESS

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EQUAL HOUSING OPPORTUNITY



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