

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Baxley

Mailed: July 12, 2013

Cancellation No. 92057136

Catalyst Mortgage

v.

Catalist Homes, Inc. and  
Catalyst Lending, Inc.  
(joined as party defendant)

**Andrew P. Baxley, Interlocutory Attorney:**

Petitioner seeks to cancel involved Registration No. 2956688 on the ground of abandonment. On June 11, 2013, the due date for respondent's answer, Catalyst Lending, Inc. ("Lending") filed a motion to substitute itself as party defendant herein and to extend its time to answer by thirty days. The motion has been fully briefed.

The record herein indicates that, on June 10, 2013, following the commencement of this proceeding, the involved registration was assigned to Lending. A copy of the assignment document is recorded with the USPTO's Assignment Branch at Reel 5044/Frame 0608<sup>1</sup> and is included as an

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<sup>1</sup> Recordation of an assignment document with the Assignment Branch is a ministerial act and is not a determination by the USPTO of the validity of the assignment document or the effect that document has on the title to an application or registration. Patent and Trademark Rule 3.54; TMEP Section 503.01 and

exhibit to Lending's motion. Inasmuch as Lending is identified in USPTO records as the owner of the involved registration, the motion to substitute is granted to the extent that Lending is joined, rather than substituted, as a party defendant herein. See Patent and Trademark Rule 3.73(b); TBMP Section 512.01 (3d ed. rev. 2. 2013).

Because Lending acted prior to the expiration of time to file an answer, it need only show "good cause" for the extension sought. See Fed. R. Civ. P. 6(b)(1)(A); TBMP Section 509.01(a). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992). As a practical matter, the Board tends to be particularly liberal in granting motions to extend of time to answer because denying such motions usually places the defendant in default. The Board prefers to decide cases on the merits where possible. See TBMP Section 312.02.

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503.01(c). Assignment of the registration does not cure any abandonment of the registered mark that may have occurred prior to such assignment. See *Auburn Farms Inc. v. McKee Foods Corp.*, 51 USPQ2d 1439 (TTAB 1999). However, any determination as to the validity of the assignment is a matter for resolution on the merits.

The Board finds that Lending's recent retaining of counsel and recent acquisition of the involved registration constitutes good cause to extend time to answer.<sup>2</sup> Moreover, there is no evidence of prejudice to petitioner, and, in view of the fact that this is the first extension sought in this proceeding, the privilege of extensions has not been abused. Accordingly, the motion to extend is granted.<sup>3</sup>

Dates herein are reset as follows.

Answer Due	8/10/2013
Deadline for Discovery Conference	9/9/2013
Discovery Opens	9/9/2013
Initial Disclosures Due	10/9/2013
Expert Disclosures Due	2/6/2014
Discovery Closes	3/8/2014
Plaintiff's Pretrial Disclosures Due	4/22/2014
Plaintiff's 30-day Trial Period Ends	6/6/2014
Defendant's Pretrial Disclosures Due	6/21/2014
Defendant's 30-day Trial Period Ends	8/5/2014
Plaintiff's Rebuttal Disclosures Due	8/20/2014
Plaintiff's 15-day Rebuttal Period Ends	9/19/2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits,

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<sup>2</sup> Parties should not seek extensions through a date certain in an unconsented motion to extend. The better practice is to request an extension of a specified duration to run from the date of the Board's decision on the motion to extend. See TBMP Section 509.02.

<sup>3</sup> Any further unconsented motions to extend in this case shall be decided by telephone conference promptly after the filing thereof. See Trademark Rule 2.120(i)(1); TBMP Section 502.06(a). A movant should notify the Board attorney assigned to this case by telephone upon the filing of any unconsented motion to extend in this case.

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must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.