

Mailed: December 31, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re NexBank Capital, Inc.

Serial No. 86394529

Jerry C. Harris, Jr. of Wick Phillips Gould & Martin, LLP,
for NexBank Capital, Inc..

Anne M. Farrell, Trademark Examining Attorney, Law Office 118,
Michael W. Baird, Managing Attorney.

Coggins, Administrative Trademark Judge:

The ex parte appeal is briefed and ready for decision; however, Registration No. 4380835, one of the registrations which forms the basis for refusal under Section 2(d), was registered on August 6, 2013, and a Section 8 Declaration of Use and/or Excusable Nonuse was due by August 6, 2019 (or may be filed within a six-month grace period through February 6, 2020). 15 U.S.C. § 1058. *See also* TMEP § 1604.04 (Oct. 2018). Office records do not reflect the filing of such declaration yet.

If a Section 8 affidavit or declaration is not filed by February 6, 2020, the cited registration will automatically be cancelled by the Office. Accordingly, the Board

hereby suspends action on this appeal pending a determination as to whether the cited registration will be cancelled.¹

¹ When the Board sua sponte suspends action in an appeal for the potential cancellation of a cited registration, the applicant ordinarily is given an opportunity to state whether it wishes the Board to render a decision without waiting to determine whether the cited registration will be cancelled. *See* TBMP § 1213 (2019). However, under the circumstances of this case, when the potential cancellation was discovered relatively close to the expiration of the grace period, the Board exercises its discretion to suspend the appeal without providing Applicant a response period. The status of the cited registration should be known approximately March 11, 2020; one month and five days following expiration of the grace period.