

ESTTA Tracking number: **ESTTA568794**

Filing date: **11/04/2013**

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

Proceeding	91202952
Party	Plaintiff Atari Interactive, Inc.
Correspondence Address	SUSAN PROGOFF DORSEY WHITNEY LLP 51 WEST 52ND STREET NEW YORK, NY 10019 UNITED STATES ny.trademark@dorsey.com, progoff.susan@dorsey.com, sunderji.fara@dorsey.com
Submission	Opposition/Response to Motion
Filer's Name	Susan Progoff
Filer's e-mail	ny.trademark@dorsey.com, progoff.susan@dorsey.com, sunderji.fara@dorsey.com
Signature	/sp/
Date	11/04/2013
Attachments	Oppose Motion Reopen.pdf(15795 bytes)

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

-----X
ATARI INTERACTIVE, INC., :
 :
 Opposer, : Opposition No. 91202952
 :
 v. :
 :
 ANDREW N. GREENBERG, :
 :
 Applicant. :
-----X

ATARI'S OPPOSITION TO APPLICANT'S MOTION TO REOPEN

Opposer Atari Interactive, Inc. ("Atari") respectfully submits this brief in opposition to Applicant's Motion to Reopen Proceedings filed by Applicant Andrew N. Greenberg ("Applicant").

Applicant's motion is based on the erroneous assumption that the initial filing of a plan of reorganization with the bankruptcy court signals the conclusion of the bankruptcy process. Applicant is incorrect. The filing of a plan for reorganization commences the process of having the creditors review and either approve or object to the proposed plan. Until the court formally confirms Atari's reorganization plan, the plan could be modified in ways that could require Atari to sell additional assets, including the pleaded trademark and registration, or in the most drastic scenario, Atari might be required to liquidate the company by selling all its assets. Accordingly, until the plan is confirmed by the court, the stay in this opposition should remain in place and Applicant's motion must be denied.

On August 7, 2012, the Board issued an Order suspending the instant proceeding pending conclusion of the bankruptcy auction of the pleaded registration. *See* Order at 2.

Although the pleaded registration ultimately was not sold in the Chapter 11 bankruptcy asset auction that occurred over the summer, and Atari recently filed a plan of reorganization under Chapter 11 of Title 11 the Bankruptcy Code in which it stated that it *plans* to reemerge from bankruptcy as the owner of the pleaded registration, there is still a possibility that the pleaded registration and trademark will be sold to a third party.

Applicant's motion to reopen must be denied because the initial filing of a plan of reorganization in a Chapter 11 bankruptcy proceeding does not conclude the bankruptcy process with respect to the debtor's assets. Section 1128 of the Bankruptcy Code requires the court, after notice, to conduct a hearing to consider confirmation of the plan (the "Confirmation Hearing"). 11 U.S.C. § 1128(a). Any party in interest may appear at the Confirmation Hearing and object to confirmation of the plan of reorganization. *See* 11 U.S.C. § 1128(b); *In re Quigley Co.*, 383 B.R. 19 (Bankr. S.D.N.Y. 2008). In addition, Bankruptcy Code § 1129 requires the court to make an independent assessment of any plan's compliance with the statutory requirements of the Bankruptcy Code. *See In re Williams*, 50 F.2d 250, 253 (5th Cir. 1988). Atari, as the Debtor, may also modify the plan at any time before confirmation, provided that the plan as modified continues to meet certain established statutory requirements of the Bankruptcy Code. *See* 11 U.S.C. § 1128. It is important to note that objections and changes to plans of reorganization are commonplace. Accordingly, the plan filed by Atari in September 2013 is not final and the confirmation process could take some time depending on the number and type of objections filed and the contentiousness of the Confirmation Hearing. *See* 11 U.S.C. § 1128. Moreover, if a reorganization plan is repeatedly modified, for example, because the creditors object to the plan, Atari may be forced to liquidate the company and sell off all its assets in a Chapter 7 proceeding. Thus, until the bankruptcy court formally approves of Atari's plan through the plan confirmation

process, there still remains a possibility that the pleaded registration will be auctioned off to a third party. *See* 11 U.S.C. § 1141(b) (“the confirmation of a plan vests all of the property of the estate in the debtor”). A continued suspension of the instant opposition proceeding is therefore appropriate until the ownership of the pleaded registration has been finalized.

For the foregoing reasons, Atari requests that Applicant’s motion be denied.

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: November 4, 2013

By _____/sp/_____

Susan Progoff
Fara Sunderji

51 West 52nd Street
New York, New York 10019
Tel.: (212) 415-9200
E-mail: ny.trademark@dorsey.com

Attorneys for Opposer,
Atari Interactive, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing ATARI'S OPPOSITION TO APPLICANT'S MOTION TO REOPEN is being served upon Applicant via e-mail at hdiandrew@earthlink.net, as previously agreed between Applicant and Opposer's counsel, and by first class mail, postage prepaid, addressed as follows:

Andrew N. Greenberg
1846 Hebron Hills Drive
Tucker, GA 30084-5901

On November 4, 2013

/tk/

Thomas Kearney