

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

Baxley

Mailed: September 27, 2007

Cancellation No. 92043195

Horizon Healthcare Services,  
Inc.

v.

Allied National, Inc.

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

This proceeding has been suspended since September 27, 2004 pending final determination of a civil action between the parties styled *Horizon Healthcare Services, Inc. v. Allied National Inc., et al.*, Case No. 03-4098 in the United States District Court for the District of New Jersey.

On July 16, 2007, the Board issued to the parties an inquiry as to the status of the the civil action. After respondent filed a response indicating that Case No. 03-4098 remains pending, the Board, in an August 8, 2007 order, continued suspension of this case.

On August 9, 2007, petitioner filed a response to the July 16, 2007 order. The Board will treat petitioner's response as a request for reconsideration of the August 8, 2007 order.

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Therein, petitioner indicated that, in a February 10, 2006 order ("the February 10, 2006 order"), the district court granted petitioner's motion for partial summary judgment in Case No. 03-4098 and ordered the cancellation of involved Registration No. 2724437; and that the civil action has moved forward only with regard to issues unrelated to this proceeding. Petitioner further contends that it filed a certified copy of the February 10, 2006 order with the Office of the Solicitor on March 13, 2006 and that no action has been taken with regard to petitioner's request for cancellation of the involved registration. Accordingly, petitioner asks that proceedings herein be resumed and that involved Registration No. 2724437 be cancelled forthwith.

Notwithstanding the district court's issuance of the February 10, 2006 order and petitioner's subsequent filing of a certified copy of that order with the Office of the Solicitor, the Board finds that resumption of this proceeding is premature. Proceedings were suspended pending final determination, i.e., including any appeals and remands, of Case No. 03-4098. Because that case remains pending, the Board remains of the opinion that the August 8, 2007 order is correct. Petitioner's request for reconsideration of the August 8, 2007 order is denied.

In addition, inasmuch as involved Registration No. 2724437 is the subject of a pending cancellation proceeding, the certified copy of the February 10, 2006 order that petitioner filed with the Office of the Solicitor on March

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13, 2006 has been forwarded to the Board for appropriate action. The Board notes initially that petitioner complied with Trademark Act Section 37, 15 U.S.C. Section 1119, by filing a certified copy of the February 10, 2006 order. See TMEP Section 1610 (4th ed. 2005).

The Office, however, is authorized to cancel registrations under Section 37 only pursuant to the final order of the court in an action involving a registered mark. See TMEP Section 1607 (4th ed. 2005); *id.* The February 10, 2006 order does not dispose of all the claims raised in Case No. 03-4098 and is therefore not a final judgment under 28 U.S.C. Section 1291. See *Dannenberg v. Software Toolworks, Inc.*, 16 F.3d 1073, 1074 (9th Cir. 1994). Accordingly, the Board finds that cancellation of Registration No. 2724437 is premature.

Proceedings herein remain suspended in accordance with the August 8, 2007 order.