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

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| Proceeding | 92051017 |
| Party | Plaintiff Forethought Financial Services, Inc. |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Registration of
Enigma Marketing & Travel Solutions, Inc.

Registration No.: 3,539,936

Registration Date: December 2, 2008

Mark: EXCLUSIVELY FORE THOUGHT

Forethought Financial Services, Inc.,
Petitioner

v.

Enigma Marketing & Travel Solutions, Inc.
Respondent

RESPONSE TO MOTION FOR SUSPENSION OF CANCELLATION PROCEEDING

Petitioner, Forethought Financial Services, Inc. ("Forethought") provides the following response to the Motion for Suspension of Cancellation Proceeding (the "Motion") filed by Enigma Marketing & Travel Solutions, Inc. ("Enigma") on July 29, 2009:

1. The central issue in the District Court Case¹ hinges on Forethought's contention that Enigma fraudulently obtained U.S. Registration No. 3,539,936 (the "936 Registration") for the mark EXCLUSIVELY FORE THOUGHT (the "Mark") with the United States Patent and Trademark Office (the "USPTO"). For that reason, as Enigma recognized in its Motion, Forethought has filed a motion in the District Court Case to stay that action pending the outcome of this Cancellation Proceeding. Forethought's motion to stay the District Court

¹ Capitalized terms not defined herein shall have the meanings ascribed to those terms in the Motion.

Case will be fully briefed on August 10, 2009, and will be taken under advisement by the District Court.

2. The Board's authority and expertise in analyzing and adjudicating trademark validity issues has been recognized and given collateral estoppel effect in the Seventh Circuit, the Circuit in which the District Court Case is pending. See, e.g., EZ Loader Boat Trailers, Inc. v. Cox Trailers, Inc., 746 F.2d 375 (7th Cir. 1984). As Forethought explained in its briefing on the stay motion in the District Court Case, the Board not only has the experience and expertise to adjudicate the validity of the registration obtained by Enigma, but, as a specialized administrative body, has a strong institutional interest in policing and maintaining the integrity of its own proceedings. Whether Enigma defrauded the USPTO in obtaining the 936 Registration is the exact type of issue that, under the doctrine of primary jurisdiction, the Board should address in the first instance. E.g., The Driving Force, Inc. v. Manpower, Inc. 498 F.Supp. 21, 25 (E.D. Pa. 1980) (TTAB created especially to resolve such disputes and is better equipped to make initial determination given expertise and experience). The Board has a special interest in adjudicating this issue because it concerns the (i) underlying legitimacy of the administrative process that Board safeguards and (ii) abuse of the USPTO's administrative process by Enigma.

3. Enigma argues that staying this proceeding would promote judicial efficiency and would unreasonably delay adjudication of other matters at issue in the District Court Case. This argument, however, is without merit. First, Forethought has moved to stay the District Court Case, and the District Court will rule on that stay motion in due course. Second, a proceeding before the Board would yield a decision prior to a trial in the District Court Case, even if that action were to proceed. Additionally, this already streamlined process could be further expedited via the Board's Accelerated Case Resolution mechanism. Either

way, it is in the interest of judicial economy to move forward with this proceeding because a Board decision will decrease the number of issues in the District Court Case.

4. Further, Forethought filed its Petition to Cancel on May 22, 2009. Since that time, Enigma's position has been far from consistent. Rather than immediately request that the Board suspend the proceeding, Enigma instead obtained an extension of time to answer and the parties discussed a possible suspension of the District Court Case pending the outcome of this proceeding. After those discussions ended, Forethought then filed its stay motion in the District Court Case in the interest of judicial economy so that the District Court action would not proceed further until it had the benefit of the Board's determination on the petition to cancel the wrongfully obtained 936 Registration. Only after Forethought moved to stay the District Court Case did Enigma then file its Motion in apparent reaction to Forethought's stay motion.

5. Forethought maintains the Board has a strong institutional interest in adjudicating this particular matter and requests that the Enigma's Motion be denied. As the parties are attempting to negotiate a framework for the mediation and possible settlement of this matter, Forethought has no objection to Enigma's request for an additional thirty (30) day extension of time to answer.

Respectfully submitted,

Date: August 4, 2009

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 4, 2009, a copy of the foregoing Petition to Cancel was served by depositing a true copy of same in a sealed envelope, first-class United States mail, postage prepaid, addressed to:

David S. Klinestiver
Peter S. French
Sara R. Bradbury
Lewis & Kappes, P.C.
One American Square, Suite 2500
Indianapolis, Indiana 46282

/Louis T. Perry/_____