

ESTTA Tracking number: **ESTTA559429**

Filing date: **09/13/2013**

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

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| Proceeding. | 92057201 |
| Applicant | Plaintiff NexPay, Inc. |
| Other Party | Defendant StoneEagle Services, Inc. |
| Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)? | Yes |

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, NexPay, Inc. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

NexPay, Inc. has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

NexPay, Inc. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,
/Dyan House/

Dyan M. House

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09/13/2013

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

NexPay, Inc.,

Petitioner,

v.

StoneEagle Services, Inc.,

Registrant.

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Cancellation No. 92057201

**MOTION TO SUSPEND PROCEEDING FOR CIVIL ACTION
WITH CONSENT**

The parties hereby move for a suspension of this proceeding due to the action pending before the U.S. District Court for the Northern District of Texas, *StoneEagle Services, Inc. v. David Gillman, et al*, Case No. 3:11-cv-02408-P (the “Civil Action”).

Attached for the Board’s reference are the operative pleadings in the Civil Action, Plaintiff’s Second Amended Complaint filed June 11, 2013, and Defendants’ Answer to Plaintiff’s Second Amended Complaint filed June 28, 2013, Attachments A and B, respectively. Registrant has alleged trademark infringement, among other things, in the Civil Action. The issues of ownership and validity of the marks that are before the Board in this proceeding are present in the Civil Action. The determination of these issues by the District Court will be dispositive of the issues involved in this proceeding.

The parties therefore respectfully request a six-month suspension of this proceeding pursuant to Trademark Rule 2.117(a), 37 C.F.R. §2.117(a). *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (TTAB 1971) (suspending Cancellation proceeding in light of pending federal litigation because “the outcome of the civil action will have a direct bearing

on the question of the rights of the parties herein and may in fact completely resolve all the issues.”).

Dated this 13th day of September 2013.

Respectfully submitted,

/s/ Dyan M. House

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ATTORNEYS FOR REGISTRANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Suspend Proceedings Pending Civil Action with Consent has been served on Registrant's Attorney, Andriy Lytvyn, Smith & Hopen, P.A., 180 Pine Avenue North, Oldsmar, Florida 34677, via email (by agreement) on this 13th day of September 2013.

/s/ Dyan M. House _____

Dyan M. House

ATTACHMENT A

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