

THIS DISPOSITION IS NOT
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THE TTAB

Mailed: Sept. 29, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

CurtCo Media Labs, L.L.C.

v.

Vincent Testa and Maria Testa

Cancellation No. 92040726

Steven J. Nataupsky and Elenore Niu of Knobbe, Martens,
Olson & Bear, LLP for CurtCo Media Labs, L.L.C.

Myron Amer, Esq. for Vincent Testa and Maria Testa

Before Simms, Seeherman and Chapman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

CurtCo Media Labs, L.L.C. has petitioned to cancel, on
the ground of abandonment, the registration of Vincent Testa
and Maria Testa (hereafter "respondent") for the mark HOME
ENTERTAINMENT QUARTERLY, registered on the Supplemental
Register for "magazine dealing with products used at home to

provide entertainment."¹ Petitioner has alleged that respondent has failed to use the mark with no intent to initiate or resume use, and that petitioner has a pending application which has been refused registration due to respondent's registration. Respondent denied these allegations in its answer.

The record includes the pleadings; the file of the registration sought to be cancelled; and the testimony, with exhibits, of William J. Curtis, the CEO of petitioner. Respondent did not take any testimony or submit any evidence. Only petitioner filed a brief.

Petitioner's witness, William J. Curtis, testified that he has been involved in the publishing industry since 1979. His company has published a magazine called "Robb Report Entertainment and Design" since about 2002.

Mr. Curtis stated that home entertainment products are part of the consumer electronics industry. He also testified that it is imperative for a publisher of a magazine dealing with consumer electronics to attend trade shows in this field, and to that end he has attended the Consumer Electronics Show for fifteen years, and has also attended the Consumer Electronic Dealer Industry Association

¹ Registration No. 1280281, issued May 29, 1984; Section 8 affidavit accepted. The registration originally issued to Home Entertainment Quarterly, but an assignment to Vincent Testa and Maria Testa, was recorded in the U.S. Patent and Trademark Office on October 8, 1998.

trade shows. He further testified that he has not seen the publication "Home Entertainment Quarterly," or a publication with a variant of that name, for at least ten years; that he has not seen any marketing efforts for such publication for at least ten years; and that if such a publication had been published in the last ten years, he would know about it.

To support Mr. Curtis's statements, he introduced various exhibits, including a search done on ISSN Online, which allows one to search for every publication published in the United States. A search for "Home Entertainment Quarterly" retrieved the information that this "Title no longer being published," indicating a "start date" of 1982 and an "end date" of 1983. The place of publication for the publication was Carle Place, New York. A search of the Columbus Metropolitan Library online catalog retrieved the title "Home Entertainment (Carle Place, N.Y.)"; listed as a previous title, "Home Entertainment Quarterly"; and stated that the library "has Back Issues: May 1985-May 87." Mr. Curtis deduced from this that the magazine was published as of 1982 under the title "Home Entertainment Quarterly," that the name was subsequently changed to "Home Entertainment," and that the magazine was not published after May 1987. It should be noted that Carle Place, which was listed in both search reports as the address of the magazine, is the

address listed for the original registrant on the certificate of registration.

Also of record is a printout from the Audit Bureau of Circulations, an organization that audits and attests to the size of a magazine's circulation to verify the circulation figures for advertisers. In excess of 15 magazines are listed on each page of the 41-page document; neither "Home Entertainment Quarterly" nor "Home Entertainment" appears.

Finally, petitioner has introduced a printout taken from the website of Testa Communications, www.testa.com, printed on September 11, 2003. It lists various titles, including "The Club Show," "Music & Sound Retailer," "DJ Times" and "Sound & Communications." "Home Entertainment Quarterly" and "Home Entertainment" are not among them.

Petitioner, as the publisher of "Robb Report Entertainment & Design," has shown that it has a real interest in the proceeding and a real basis for its belief of damage resulting from the continuing registration of respondent's mark. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). See also, *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000).

Therefore, petitioner has demonstrated its standing.²

² As noted above, one of the allegations in the petition for cancellation is that petitioner's application has been rejected on the basis of the registration sought to be cancelled. However, petitioner has not submitted any evidence with respect to this allegation.

The testimony of Mr. Curtis shows that he is well aware of activities in the magazine publishing field, and that he is in a position to know if a publication called "Home Entertainment Quarterly" is being published. We find credible his testimony that respondent has not published such a magazine for at least ten years. This testimony is further supported by the documentary exhibits.

Accordingly, we find that petitioner has established non-use by respondent of the mark HOME ENTERTAINMENT QUARTERLY for a "magazine dealing with products used at home to provide entertainment" for at least three years. Section 45 of the Trademark Act, 15 U.S.C. §1127, provides, in part, that a mark shall be deemed to be abandoned:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

Accordingly, petitioner has demonstrated prima facie evidence of abandonment. Respondent, who has not submitted any evidence whatsoever, has clearly not shown that it had an intent to resume use, nor in any way has it rebutted petitioner's prima facie case. As a result, we find that respondent has abandoned the mark HOME ENTERTAINMENT QUARTERLY for a magazine.

Cancellation No. 92040726

Decision: The petition for cancellation is granted,
and Registration No. 1280281 will be cancelled in due
course.