

Hearing: November 25, 2024

Mailed: March 31, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Garan Services Corp.

v.

Jesus Villa

Cancellation No. 92074777

G. Roxanne Elings of Davis Wright Tremaine LLP,
for Garan Services Corp.

Erik M. Pelton of Erik M. Pelton & Associates, PLLC,
for Jesus Villa.

Before Dunn, English, and Lavache,¹
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Jesus Villa (Respondent) owns a Principal Register registration for the standard character mark HALFANIMAL for “Beanies; Hats; Pants; Shorts; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; T-shirts; Wind resistant jackets” in International Class 25.²

¹ Administrative Trademark Judge Lavache has been substituted on this panel due to the retirement of Administrative Trademark Judge Cataldo.

² Registration No. 3424615 issued May 6, 2008, and has been renewed.

Garan Services Corp. (Petitioner) pleaded ownership of more than 20 registrations for marks including the term GARANIMALS for clothing, and seeks cancellation of Respondent's registration on the grounds of abandonment, fraudulent maintenance of the registration, and false suggestion of a connection with Petitioner.³

Respondent's Answer denies the salient allegations of the Petition for Cancellation.⁴ Both parties have briefed the case.⁵

We grant the petition to cancel on the ground of abandonment. In view thereof, we need not reach the remaining grounds for cancellation. *See Fender Musical Instruments Corp. v. Win-D-Fender, LLC*, 2022 TTAB LEXIS 482, *14 n. 21.

I. Evidence and Objections

The record includes the pleadings; the submissions of the parties during their respective trial periods; and pursuant to Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b),

³ 32 TTABVUE (second amended petition to cancel). The TTABVUE citations refer to the Board's electronic docket, with the first number referring to the docket entry and the second number, if applicable, referring to the page within the entry.

⁴ 33 TTABVUE. The answer also pleads amplifications of Respondent's denials as "affirmative defenses," which is permissible in pleading but differs from true affirmative defenses. *See Keystone Consol. Indus. v. Franklin Inv. Corp.*, 2024 TTAB LEXIS 290, *3 n.5. *See also H.D. Lee Co. v. Maidenform, Inc.*, 2008 TTAB LEXIS 21, *10 ("An affirmative defense is defined as follows: A defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all allegations in the complaint are true.") (citation omitted).

As part of an ongoing pilot, this opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites to the LEXIS legal database and cites only precedential decisions, unless otherwise noted. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 101.03(a) (2024).

⁵ Petitioner's motion (79 TTABVUE) to accept a late trial brief of acceptable page length is granted. The operative briefs appear at 80 and 81 TTABVUE (Petitioner's corrected confidential and public versions of its trial brief); 78 TTABVUE (Respondent's trial brief); and 82 and 83 TTABVUE (Petitioner's public and confidential versions of its rebuttal brief).

the file of Respondent's subject registration.⁶

Although we do not list its contents, the entire record has been carefully considered, and relevant evidence is discussed throughout this opinion. *See Quiktrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1036 (Fed. Cir. 2021) ("We have held 'on multiple occasions that failure to explicitly discuss every issue or every piece of evidence does not alone establish that the tribunal did not consider it.'") (citation and internal quotation marks omitted); *In re Miracle Tuesday LLC*, 695 F.3d 1339, 1348 (Fed. Cir. 2012) ("[T]he mere fact that the Board did not recite all of the evidence it considered does not mean the evidence was not, in fact, reviewed.") (citation omitted).

Petitioner filed an appendix to its trial brief raising objections to some of Respondent's evidence. Respondent's brief includes its response to the objections. We decline to make specific rulings on each objection. The Board is capable of assessing the proper evidentiary weight to be accorded the testimony and evidence, taking into account the concerns raised by the objections, and we see no need to exclude it outright. *Inter IKEA Sys. B.V. v. Akea, LLC*, 2014 TTAB LEXIS 166, *4-5. We will point out in this decision any limitations of the evidence or otherwise note that the evidence cannot be relied upon in the manner sought. While we have considered all the evidence and arguments of the parties, we do not rely on evidence not discussed in the opinion.

II. Entitlement to a Statutory Cause of Action

Under Section 14 of the Trademark Act, "[a] petition to cancel a registration of a mark, stating the grounds relied upon, may ... be filed as follows by any person who

⁶ The documents from the registration file accompanying Respondent's declaration (50 TTABVue 14-120) are duplicative. The Board discourages duplicative filings. *ITC Entm't Grp. Ltd. v. Nintendo of Am. Inc.*, 1998 TTAB LEXIS 13, *1-2.

believes that he is or will be damaged... by the registration ... (3) [a]t any time if the registered mark becomes the generic name for the goods or services, ... or has been abandoned, or its registration was obtained fraudulently....” 15 U.S.C. § 1064. To establish entitlement to a statutory cause of action, Petitioner must demonstrate (i) an interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by the registration or continued registration of the mark. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020).

Based on the evidence of record, we find that Petitioner has cleared the “low threshold for a plaintiff to go from being a mere intermeddler to one with an interest in the proceeding.” *Estate of Biro v. Bic Corp.*, 1991 TTAB LEXIS 65, *14. Respondent’s registration covers various items of apparel, with no restriction as to the ultimate consumer. The Chief Operating Officer for Petitioner’s parent company avers that Petitioner is “a worldwide leader in the design, manufacture, distribution, marketing, licensing and promotion of children’s apparel.”⁷ The record establishes that the parties are competitors. *Peterson v. Awshucks SC, LLC*, 2020 TTAB LEXIS 520, at *20 (TTAB 2020) (Entitlement to abandonment claim based on refusal of Petitioner’s application, and “We further find, based on the testimony of Petitioner, that she and her late husband have been continually using the mark AW SHUCKS since 1982, and that Petitioner is a competitor of Respondent.”). *See also NT-MDT LLC v. Kozodaeva*, 2021

⁷ 43 TTABVUE 2. This testimony tracks Par. 31 of the operative notice of opposition (32 TTABVUE 8), so we disagree with Respondent’s argument (78 TTABVUE 15) that no “tangible facts” were pleaded in support of Petitioner’s entitlement to a statutory claim. While it would be better practice to specifically plead Petitioner’s belief in damage, “the purpose of notice pleading is to obviate the need to allege particular ‘magic words.’” *Fair Indigo LLC v. Style Conscience*, 2007 TTAB LEXIS 89, *7.

TTAB LEXIS 112, *15 (“In view of this testimony, we find that Petitioner has established, by a preponderance of the evidence, that it (i) is a competitor of Respondent; (ii) uses a mark with the same wording and design as the mark of the [] registration; (iii) has an interest in cancelling the registration that is squarely within the zone of interests protected by the statute; and (iv) has a reasonable belief that damage is proximately caused by continued registration of the mark.”); *Honda Motor Co. v. Winkelmann*, 2009 TTAB LEXIS *6 (“We find applicant’s statements [‘Honda uses CIVIC only on subcompact automobiles’ and ‘applicant’s vehicles may compete with Honda vehicles.’] sufficient to establish that opposer has a real interest in the outcome of this proceeding; that is, opposer has a direct and personal stake in the outcome of the opposition.”).

In addition, Petitioner properly made of record its numerous pleaded GARANIMAL registrations for marks for clothing⁸ which raises plausible likelihood of confusion issues with Respondent’s mark for clothing. Although any likelihood of confusion claim against this registration is time-barred under Trademark Act Section 14, 15 U.S.C. § 1064, this does not foreclose Petitioner’s reliance on plausible likely confusion of the marks as the basis for its reasonable belief in damage and interest in cancelling the subject registration based on abandonment. *See Herbko Int’l v. Kappa Books*, 308 F.3d 1156, 1161 (Fed. Cir. 2002) (“In most settings, a direct commercial interest satisfies the ‘real interest’ test.”).

Accordingly, Petitioner has demonstrated its entitlement to the abandonment claim.

⁸ 39 TTABVUE.

III. Abandonment

Under Section 45 of the Trademark Act, a mark shall be deemed to be abandoned:

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.

15 U.S.C. § 1127. Since a mark registered on the Principal Register is presumed to be valid, 15 U.S.C. § 1057(b), “the burden of persuasion in a cancellation proceeding rests on the party seeking to cancel the registration. ... A party seeking to cancel a registration must overcome the registration’s presumption of validity by a preponderance of the evidence.” *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 1356 (Fed. Cir. 2009) (citation omitted).

Under the statute, there are two elements to a nonuse abandonment claim: (1) use of the mark has been discontinued, (2) with intent not to resume use. *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1360 (Fed. Cir. 2022). “If a petitioner can show three consecutive years of nonuse, it establishes a prima facie showing of abandonment, creating a rebuttable presumption that use of the mark was discontinued with intent not to resume use.” *Adamson Sys. Eng’g, Inc. v. Peavey Elecs. Corp.*, 2023 TTAB LEXIS 454, *22. The burden of production (i.e., going forward) then shifts to the respondent to produce evidence that it either used the mark or that it intended to resume use. *Id.* Intent to resume use in abandonment cases has been equated with a showing of special circumstances which excuse a registrant’s nonuse. *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 1581 (Fed. Cir. 1990). If a respondent’s nonuse is excusable, the respondent has overcome the presumption that

its nonuse was coupled with an “intent not to resume use,” but if the activities are insufficient to excuse nonuse, the presumption is not overcome. *Id.*

a. Nonuse

Trademark Act Section 45 defines “use in commerce” as “the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.” 15 U.S.C. 1127. Trademark Act Section 45 also provides that “a mark shall be deemed to be in use in commerce -(1) on goods when-- (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce.” *Id.*

Here, Petitioner submits proof of Respondent’s nonuse of the HALFANIMAL mark on “Beanies; Hats; Pants; Shorts; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; T-shirts; Wind resistant jackets” from 2012 to at least 2019, a period of seven years. Petitioner contends that Respondent possesses no documentary evidence of any sale of any HALFANIMAL apparel items listed in the registration at any time; and that any sales that may have taken place ceased by 2012.⁹

In support Petitioner offers excerpts of testimony from the discovery deposition of Respondent,¹⁰ including his statements that he sold HALFANIMAL hats and t-shirts

⁹ 81 TTABVUE 17-18.

¹⁰ Respondent submitted additional excerpts of this testimony (51 TTABVUE) pursuant to Trademark Rule 2.120 (k)(4), 37 C.F.R. 2.120 (k)(4), which allows this supplementation of the record “so as to make not misleading what was offered by the submitting party.” We overrule Petitioner’s objection (81 TTABVUE 60) because we agree with Respondent (78 TTABVUE 35-36) that the supplementation is not new testimony but provides context for Petitioner’s submission. During rebuttal, Petitioner submitted more excerpts from Respondent’s discovery

on consignment in the two Las Vegas stores Vegas Royalty and Fashion 101 from 2005 or 2006 to 2010, when the stores closed;¹¹ that he confirmed that the archived page from his website dated in 2012 omitted any link to products, or the merchant account;¹² that Respondent removed the product page from his webpage before he was incapacitated in 2013;¹³ and that he last sold HALFANIMAL apparel from his website prior to getting hurt [in 2013], after which “all that went on pause.”¹⁴ Respondent also avers that in 2019 he planned a “relaunch” of his “HALFANIMAL website and online store,” ordered sample hats, t-shirt, sweatshirt, and sweat pants with the HALFANIMAL mark, and, between his discovery deposition in November 2021 and his cross-examination in June 2022, reactivated the merchant account on his website.¹⁵

Respondent submitted no documentary evidence of sales or distribution of HALFANIMAL apparel at any time, including the alleged nonuse period of 2012 to 2019. Respondent submitted a declaration averring that in 2003 he acquired the nickname HALFANIMAL as a Cirque De Soleil performer; that in 2005 he bought the domain halfanimal.com; that in 2006 he filed the intent to use application for HALFANIMAL which later issued as the subject registration; that in 2007 he began selling HALFANIMAL apparel and over the years the sales have totaled “tens of

deposition. 68 TTABVUE.

For reasons not clear to the Board, Respondent’s deposition and cross-examination were designated confidential and our description of the contents is general or describes information corroborated by Respondent’s declaration, which was not designated confidential.

¹¹ 42 TTABVUE 9-10, 50 TTABVUE 8.

¹² 63 TTABVUE 44-45

¹³ 42 TTABVUE 17, 18; 63 TTABVUE 39-42; 68 TTABVUE 8, 13-16.

¹⁴ 42 TTABVUE 11-12.

¹⁵ 42 TTABVUE 16; 50 TTABVUE 10; 63 TTABVUE 50-51, 152-161, 405.

thousands of dollars”; that HALFANIMAL apparel was sold at stores in Las Vegas from approximately 2006 to 2010; that since 2007 HALFANIMAL apparel has been promoted at his website, by athletes and breakdancers to whom Respondent distributed the HALFANIMAL apparel, and by word of mouth and personal appearances; and that “over the years” he sold or distributed HALFANIMAL apparel online via his websites halfanimal.com and teamhalfanimal.com, and at personal appearances, including speaking engagements, charity events, and personal appearances.¹⁶

However, with respect to specific dates of activities (other than the 2013 injury) occurring during the nonuse period of 2012 to 2019, the details are scant. Respondent testifies “My appearances at schools have included Charlie Ferris Elementary School in 2015, 2016, 2017, 2018, and 2022, to promote the HALFANIMAL brand.”¹⁷ Respondent testified that during his personal appearances at the Charlie Ferris Elementary School in Las Vegas he distributed HALFANIMAL hats, wristbands, and water bottles.¹⁸ .

According to Respondent’s testimony, over the several years that the HALFANIMAL goods were unavailable either in stores or from his website, Respondent made only a handful of personal appearances. In addition, it is far from clear that each occasional personal appearance by Respondent featured distribution of HALFANIMAL apparel. As stated above, Respondent’s testimony shows that Respondent sometimes distributed apparel under the different mark TEAM HALF ANIMAL, or distributed HALFANIMAL goods not covered by the registration such as wrist bands and water bottles. The record

¹⁶ 50 TTABVUE 3, 8, 9, 10. Also 63 TTABVUE 35.

¹⁷ 50 TTABVUE 8.

¹⁸ 63 TTABVUE 70-72, 77-87. Respondent also testified as to distribution of TEAM HALF ANIMAL shirts during school appearances, but we do not regard this as equivalent to distributing HALFANIMAL apparel.

includes no corroboration of the vague and general testimony that HALFANIMAL apparel was distributed during the personal appearances. Respondent did not submit any emails or tax receipts acknowledging his purported multiple donations of HALFANIMAL apparel at the Charlie Ferris Elementary School over multiple years.

With respect to the lack of any business records, Respondent avers that “due to the accident and memory loss, I lost access to my email accounts and business accounts, including credit card and payment merchants, from prior to the accident”; and that “most or all of the businesses that I did business in connection with HALFANIMAL prior to my accident have gone out of business and I have been unable to obtain any records from them.”¹⁹ Respondent also avers that HALFANIMAL has always been “a small and personal business, owned by me,” with no employees, and with respect to business records following the accident, “[d]ue to my extended hospitalizations and recovery, having to move several times, and my challenges with memory, I have very few records related to the HALFANIMAL business from prior to 2019.”²⁰

Respondent also testified that during the seven-year period of nonuse (2012-2019), he filed declarations of continued use in 2013 and 2018 to maintain his trademark registration.²¹ Petitioner submitted Respondent’s testimony from his discovery deposition stating that he had the same Gmail address for a very long time, used it to conduct business, and could search it for invoices.²² In view of Respondent making required filings averring continued use of the mark, and having the ability to search his

¹⁹ 50 TTABVUE 10-11.

²⁰ 50 TTABVUE 11.

²¹ 50 TTABVUE 7-8.

²² 63 TTABVUE 184, 68 TTABVUE 10.

email for confirmation of his activities surrounding distribution of HALFANIMAL apparel, we find it hard to credit Respondent's claim that he could not locate any corroborating documents.

The lack of corroboration would not weigh as heavily if Respondent's testimony was more convincing. When asked during cross-examination about the testimony given during his discovery deposition or in his trial declaration, Respondent frequently stated that he did not recall the testimony. For example, Respondent did not recall testifying that his goods were sold only in two retail stores and from his website;²³ did not recall any of the circumstances surrounding his photographing of HALFANIMAL goods bearing tags for the two stores;²⁴ did not recall testifying that the goods only were sold through stores from 2006 to 2010;²⁵ did not recall whether his website ceased offering goods for sale because he was running out of inventory in 2011 or because he was injured in 2013;²⁶ did not recall how his website appeared in the past;²⁷ did not recall if he furnished Petitioner with any evidence that the HALFANIMAL website offered HALFANIMAL apparel after June 2011;²⁸ did not recall on what date subsequent to his discovery deposition he restored the merchant functionality to his website so HALFANIMAL apparel could be sold;²⁹ did not recall if he sold any HALFANIMAL

²³ 63 TTABVUE 12.

²⁴ 63 TTABVUE 29.

²⁵ 63 TTABVUE 13.

²⁶ 63 TTABVUE 41-43.

²⁷ 63 TTABVUE 41, 45.

²⁸ 63 TTABVUE 46-49.

²⁹ 63 TTABVUE 52.

apparel during personal appearances;³⁰ and did not recall whether he produced any documents showing tens of thousands of dollars in sales from 2007 to 2011, or where he got the figure “tens of thousands of dollars” as a summary of his sales.

During cross-examination, Respondent was asked about inconsistencies between his discovery deposition and his trial declaration. For example, he testified during discovery that his HALFANIMAL apparel was sold only through the Vegas Royalty and Fashion 101 stores and his website, but in his declaration he added that sales were not limited to those stores, and he also stated the goods were sold during personal appearances.³¹ Respondent testified that “there could have been” other retail stores in which his goods were sold, but he could not recall, and he sold HALFANIMAL apparel onsite at his world record events in 2010 and 2012.³² Respondent testified during cross-examination that following the 2010 closing of the Las Vegas stores carrying his HALFANIMAL apparel, Respondent sold all remaining HALFANIMAL hats during his world record attempts in 2010 and 2012, with proceeds going to charity.³³ Respondent also testified that he had a table at these world record events where his assistant sold HALFANIMAL hats and shirts, but he had no photographs of the table at the events or receipts from the purported sales at the events.³⁴ Respondent avoided answering direct questions, had to be frequently re-directed to the question, and plainly was frustrated with his inability

³⁰ 63 TTABVUE 68.

³¹ 63 TTABVUE 11-14, 18.

³² 63 TTABVUE 11, 18.

³³ 63 TTABVUE 23-24.

³⁴ 63 TTABVUE 56-57, 63-65.

to explain his testimony.³⁵ See *B. R. Baker Co. v. Lebow Bros.*, 150 F.2d 580, 583 (CCPA 1945) (“While the oral testimony of a single interested witness must necessarily have its weaknesses, we know of nothing in trade-mark law which justifies the rejection of such proof if it is sufficiently probative. However, such testimony is obviously strengthened by corroborative documentary evidence, and it should not be characterized by contradictions, inconsistencies, and indefiniteness but should carry with it conviction of its accuracy and applicability.”); *Adamson Sys. Eng’g, Inc.*, 2023 TTAB LEXIS 454, at *53 (“Without credible documentation, Respondent has chosen to rely on ... the testimony of a single witness, and this witness’s testimony is both vague on critical points and riddled with inconsistencies.”) (citation omitted); *Mars Generation, Inc. v. Carson*, 2021 TTAB LEXIS 386, *23 (“The probative value of Mr. Carson’s testimony also is significantly undermined by his utter lack of detail such as the failure to identify any subject matter (examples of slogans or characters) for licensing, any licensee customers, any information on revenue from licensing, or indeed any specifics other than the bald assertion that he used the marks for the service.”).

None of the meager documentary evidence submitted by Respondent gives any indication of his use of the mark HALFANIMAL on apparel. Respondent submitted Internet materials, namely two third-party articles, excerpts from his Instagram page, YouTube channel, and website, and a page from the Wayback Machine, but these materials show use of HALF ANIMAL (two words) as a nickname for Respondent as a performer and not as a trademark for apparel.³⁶ The December 18, 2013 Daily Mail

³⁵ 63 TTABVUE 22, 28, 30-32, 37.

³⁶ 52 TTABVUE. We have examined each photo appearing in this evidence carefully and while some show Respondent wearing t-shirts which could say “HALFANIMAL,” none of the photos

article reported Respondent's accident and injury, referring to "Half Animal" as his nickname. The three sentence article did not refer to any use of the term HALFANIMAL as a mark or as appearing on clothing.³⁷ The July 10, 2014 Courthouse News Service article reported on Respondent's lawsuit against those alleged to be responsible for his accident and injury. The article does not include the term HALFANIMAL or any reference to apparel sold or distributed by Respondent.³⁸

With respect to Respondent's social media, there is no reference to HALFANIMAL clothing for sale or distribution, or posts describing Respondent's sale or distribution of HALFANIMAL apparel. Respondent's YouTube channel is identified by "halfanimal," has video summaries which refer to HALFANIMAL as Respondent's nickname, and one page refers to TEAM HALF ANIMAL (not shown as one word as in the registered mark),³⁹ in connection with promotion of Respondent, but none of the excerpts include either promotion of HALFANIMAL apparel or any link to HALFANIMAL merchandise which could include apparel.⁴⁰ Respondent's Instagram page is identified as "halfanimal.official," uses the federal registration symbol following HALFANIMAL, and lists Respondent's website (halfanimal.com), but does not include photos of

show the mark clearly.

³⁷ 52 TTABVUE 8.

³⁸ 52 TTABVUE 18.

³⁹ We do not regard the terms HALFANIMAL and TEAM HALF ANIMAL as interchangeable. We note that the subject registration was selected for the USPTO post-registration audit program (May 11, 2018 Office Action), and the supplemental specimens bearing TEAM HALF ANIMAL that Respondent submitted (November 8, 2018 Response) were found deficient as showing "a materially different mark." (November 21, 2018 Office Action). Respondent's subsequent supplemental specimens showing HALFANIMAL on the goods were accepted.

⁴⁰ 52 TTABVUE 20-24.

HALFANIMAL apparel, or refer in any way to HALFANIMAL apparel.⁴¹

Respondent's website refers to HALF ANIMAL (two words) and TEAM HALF ANIMAL and has webpage tabs referring to Respondent: World Records, Stunts/Choreography, News, Performances, Speaking/Charities, and Training, and article summaries that also refer to the activities of Respondent as HALF ANIMAL, but does not have a link to a store or merchandise, or mention that any HALFANIMAL apparel is available.⁴² A larger version of the webpage includes webpage tabs for Home, About, Testimonials, and Contact, with no mention of HALFANIMAL apparel.⁴³ Respondent's "Motivational Speaking/Charities" webpage lists Respondent's appearances at two 2010 events using the nickname Half Animal, but does not mention the sale or distribution of any HALFANIMAL apparel.⁴⁴ Respondent's Testimonials page on his website includes references to him as Half Animal and to Team Half Animal, but does not refer to HALFANIMAL apparel.⁴⁵

The record shows sales of HALFANIMAL apparel in stores ceased in 2010, all references to HALFANIMAL apparel disappeared from Respondent's website sometime in 2011 and did not reappear until 2021, and the presence of HALFANIMAL apparel at Respondent's world record events ceased in 2012. While we credit the testimony that Respondent made sporadic personal appearances during the seven year period of nonuse (2012-2019), we cannot credit the vague and varying testimony that during these

⁴¹ 52 TTABVUE 12.

⁴² 52 TTABVUE 6.

⁴³ 52 TTABVUE 10.

⁴⁴ 52 TTABVUE 32.

⁴⁵ 52 TTABVUE 26.

appearances HALFANIMAL apparel was distributed. *See Adamson Sys. Eng'g*, 2023 TTAB LEXIS 454, at *33-34, 50 (“[S]poradic, casual, and nominal use” of mark for five year period did not meet “standard of bona fide use made in the ordinary course of trade,” and “The presence of business records documenting these activities would strengthen the registrant’s case, and the absence of such records does the opposite.”).

After reviewing all the evidence and arguments, we find that Petitioner has established a period of at least seven years nonuse, and a prima facie case of abandonment.

b. Respondent’s proof that nonuse was excusable

“To prove excusable nonuse the registrant must produce evidence showing that, under his particular circumstances, his activities are those that a reasonable businessman, who had a bona fide intent to use the mark in United States commerce, would have undertaken.” *Rivard v. Linville*, 133 F3d 1446, 1449 (Fed. Cir. 1998). We turn to Respondent’s contention that “the claim of abandonment fails because even if there was a period of nonuse greater than three years, such a period was excused given Villa’s extraordinary circumstances.”⁴⁶

Respondent errs in his contention that he has effectively rebutted Petitioner’s prima face case of abandonment because “Considering all the efforts put forth by Villa to build the brand, as a one-man small business, both before and after the period surrounding his 2013 nearly-fatal accident, it strains credulity to claim that he ever purposely intended to cease using his HALFANIMAL mark without resumption.”⁴⁷ “A registrant’s

⁴⁶ 78 TTABVUE 31.

⁴⁷ 78 TTABVUE 23.

proclamations of his intent to resume or commence use in United States commerce during the period of nonuse are awarded little, if any, weight.” *Rivard v. Linville*, 133 F.3d 1446, 1449 (Fed. Cir. 1998). “In every contested abandonment case, the respondent denies an intention to abandon its mark; otherwise there would be no contest.” *Imperial Tobacco Ltd. v. Philip Morris, Inc.*, 899 F.2d 1575, 1581 (Fed. Cir. 1990). “The registrant must put forth evidence with respect to what activities it engaged in during the nonuse period or what outside events occurred from which an intent to resume use during the nonuse period may reasonably be inferred.” *Id.*

Here, Respondent contends that his extraordinary circumstances are the medical issues surrounding his 2013 injury.⁴⁸ In lieu of evidence of his activities during the seven years of nonuse, Respondent contends “those years are a blur with little memories” and Respondent “has never ceased activities related to the HALFANIMAL brand and mark other than when he was essentially incapacitated by a severe injury and lengthy rehabilitation.”⁴⁹ Respondent avers that he experienced a serious accident and spinal injury in 2013 that resulted in multiple surgeries, years of rehabilitation, physical ailments, and cognitive difficulties, including severe memory loss.⁵⁰ While there appears to be no question that Respondent suffered a grievous injury in 2013, Respondent chose not to submit any medical records or statements from healthcare providers regarding his injuries.⁵¹ As explained above, the absence of such records is significant here because of the internal inconsistencies in Respondent’s testimony. *See B. R. Baker v. Lebow Bros.*,

⁴⁸ 78 TTABVUE

⁴⁹ 78 TTABVUE 20, 23.

⁵⁰ 50 TTABVUE 5-6, 11.

⁵¹ Such evidence could be filed under seal.

150 F.2d at 583; *Adamson Sys. Eng'g*, 2023 TTAB LEXIS 454, at *53; *Mars Generation*, 2021 TTAB LEXIS 386, at *23.

Moreover, starting in 2015, Respondent testified that he was able to make appearances at Charlie Ferris Elementary School “to promote the HALFANIMAL brand.”⁵² Even if we were to excuse Respondent’s nonuse between 2013 and 2015 due to his accident, the record, at best, shows that Respondent didn’t take any action to resume use of HALFANIMAL for apparel until four years later in 2019.⁵³ Based on the record as a whole, we find Respondent has failed to rebut Petitioner’s prima facie case of abandonment through a showing of excusable nonuse.

Respondent’s memory issues arising from his injury plainly are responsible for his inconsistent and unreliable testimony, and that is unfortunate. However, we have no choice but to make our determination on the record before us.

Decision

Petitioner has proven by a preponderance of the evidence that Respondent discontinued use of the registered HALFANIMAL mark on Beanies; Hats; Pants; Shorts; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; T-shirts; Wind resistant jackets with intent not to resume such use. 15 U.S.C. § 1127. The petition to cancel is granted on the ground of abandonment, and Registration No. 3424615 will be cancelled in due course.

⁵² 63 TTABVUE 70-72, 77-87.

⁵³ Respondent produced receipts for the purchase of embroidered apparel by Team Half Animal, dated May 4, 2019. 63 TTABVUE 152-161, 405. The receipt does not indicate what was embroidered on the apparel.