

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

Baxley

Mailed: August 14, 2013

Opposition No. **91196299**

Connect Public Relations, Inc.

v.

Digitalmojo, Inc.

Cancellation No. 92054395

Cancellation No. 92054427

Digitalmojo, Inc.

v.

Connect Public Relations,  
Inc.

By the Trademark Trial and Appeal Board:

In a March 21, 2013 order, the Board, among other things, declined to consider Connect Public Relations, Inc.'s ("Connect") motion for partial summary judgment in the above-captioned opposition proceeding, determined that Digitalmojo, Inc. ("Digitalmojo") had set forth claims upon which relief can be granted in the second amended petitions to cancel in the above-captioned cancellation proceedings, and reset dates herein commencing with the due date for answers in the cancellation proceedings.

On April 18, 2013, concurrently with its answers in the cancellation proceeding, Connect timely filed motions for

partial reconsideration of the March 21, 2013 order. In particular, Connect contends that the abandonment claims in the second amended petitions to cancel are insufficiently pleaded. The request for reconsideration has been fully briefed.

The premise underlying a request for reconsideration, modification or clarification under Trademark Rule 2.127(b) is that, based on the facts before it and the prevailing authorities, the Board erred in reaching the order or decision it issued. Such request should be limited to a demonstration that based on the facts before it and the applicable law, the Board's ruling is in error and requires appropriate change. See TBMP Section 518 (3d ed. rev. 2 2013).

Under Trademark Act Section 45, 15 U.S.C. Section 1127, "[a] mark shall be deemed to be 'abandoned' ... [w]hen its use has been discontinued with intent not to resume such use. ... Nonuse for 3 consecutive years shall be prima facie evidence of abandonment." A claim of abandonment requires a pleading of at least three consecutive years of non-use or specific facts showing a period of non-use less than three years coupled with an intent not to resume use. *Otto Int'l Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861 (TTAB 2007).

In paragraphs 8-9 of the second amended petitions to cancel, Digitalmojo alleges as follows:

8. On information and belief, DigitalMojo alleges CPR has abandoned the CPR Marks, including its [involved mark], in that CPR has ceased providing, or offering to provide, the CPR Services under the CPR Marks, including the [involved mark]. More specifically, CPR has changed its name to Connect Marketing, Inc., and is offering its CPR Services under the mark CONNECT MARKETING, and not the CPR Marks. In support of this allegation, Petitioner attaches to this Petition the following specimens take from the web site of CPR at the domain name <http://www.connectmarketing.com/>

a. The "home" page at <http://www.connectmarketing.com/>, upon which appears the service mark "CONNECT MARKETING<sup>sm</sup>" (top left), the statement "Connect Public Relations<sup>®</sup> is now Connect Marketing<sup>sm</sup>" (right hand side in two places), and the legend "2011 Connect Marketing.<sup>sm</sup> All Rights Reserved. | Formerly Connect Public Relations<sup>®</sup>" (bottom of page).

b. The "about" page at <http://www.connectmarketing.com/>, upon which appears the service mark "CONNECT MARKETING<sup>sm</sup>" (top left), the registered address of CPR at "80 E 100 N, Provo, Utah 84606 USA," and the legend "2011 Connect Marketing.<sup>sm</sup> All Rights Reserved. | Formerly Connect Public Relations<sup>®</sup>" (bottom of page).

c. A third page at <http://www.connectmarketing.com/>, upon which appears the service mark "CONNECT MARKETING<sup>sm</sup>" (top left), the question "What Happened to Connect Public Relations<sup>®</sup>?", the statement "Today Connect Public Relations becomes Connect Marketing" and the legend "2011 Connect Marketing. All Rights Reserved. | Formerly Connect Public Relations<sup>®</sup>" (bottom of page).

9. These attachments show CPR is no longer using its CPR Marks for the CPR Services, including the mark CONNECTPR, registered under U.S. Registration

No. 2,366,850, and also that cessation of use of the CPR Marks was intentional. These attachments also demonstrate CPR intends not to use the CPR Marks for the CPR Services in the future, including the mark CONNECTPR for the services identified in U.S. Registration No. 2,366,850, and Petitioner so alleges CPR's intent not to use the Mark CONNECTPR for the CPR Services in the future.

In such paragraphs, Digitalmojo has pleaded legally sufficient abandonment claims by alleging specific facts which, if proven, would show discontinuation of use and/or non-use for less than three years with intent not to resume such use. In the request for reconsideration, Connect points to other portions of the website excerpts that Digitalmojo included as exhibits to the amended petitions to cancel which it contends indicate that Connect has not abandoned the involved marks. However, other than title and status copies of pleaded registrations, exhibits to pleadings are not evidence and therefore cannot be considered at this time.<sup>1</sup> See Trademark Rule 2.122(c). Moreover, in determining whether a claim is sufficiently pleaded, the Board draws all inferences and resolves any ambiguities in the plaintiff's favor. See *Dimmig v. Wahl*,

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<sup>1</sup> Whether or not Digitalmojo can prevail on its abandonment claims is a matter for resolution on the merits after the introduction of evidence at trial (or in connection with a proper motion for summary judgment). See *Flatley v. Trump*, 11 USPQ2d 1284 (TTAB 1989). Connect may file a motion for summary judgment in the cancellation proceedings once it has served its initial disclosures therein. See Trademark Rule 2.127(e)(1).

983 F.2d 86, 87 (7th Cir. 1993); *Staley v. Americorp Credit Corp.*, 164 F.Supp.2d 578 (D. Md. 2001).

Based on the foregoing, Connect has failed to persuade the Board that the March 21, 2013 order is in error. The motions for partial reconsideration is denied.

The Board deems the filing of the motions for reconsideration to have tolled the running of dates herein. Accordingly, proceedings are resumed and dates are reset as follows:

Deadline for discovery conference in the cancellation proceedings:	September 14, 2013
Discovery opens in cancellation proceedings and reopens in opposition proceeding:	September 14, 2013
Initial disclosures in cancellation proceedings due:	October 14, 2013
Expert disclosures in all proceedings due:	February 11, 2014
Discovery closes:	March 13, 2014
Connect's pretrial disclosures due:	April 27, 2014
Connect's 30-day testimony period as plaintiff in the opposition to close:	June 11, 2014
Digitalmojo's pretrial disclosures due:	June 26, 2014
Digitalmojo's 30-day testimony period as defendant in the opposition proceeding and as plaintiff in the cancellation proceedings to close:	August 10, 2014
Connect's pretrial disclosures for rebuttal in the opposition proceeding and as defendant in the cancellation	August 25, 2014

proceedings due:

Connect's 30-day testimony period as defendant in the cancellation proceedings and for rebuttal as plaintiff in the opposition proceeding to close: October 9, 2014

Digitalmojo's rebuttal disclosures as plaintiff in the cancellation proceedings due: October 24, 2014

Digitalmojo's 15-day rebuttal testimony period as plaintiff in the cancellation proceedings to close: November 23, 2014

Brief for Connect as plaintiff in the opposition proceeding due: January 22, 2015

Brief for Digitalmojo as defendant in the opposition proceeding and as plaintiff in the cancellation proceedings due: February 21, 2015

Brief for Connect as defendant in the cancellation proceedings and reply brief, if any, as plaintiff in the opposition proceeding due: March 23, 2015

Reply brief, if any, for Digitalmojo as plaintiff in the cancellation proceedings due: April 7, 2015

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.