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

Proceeding	92047073
Party	Plaintiff Trinity Christian Center of Santa Ana, Inc.
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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LOUIS J. SCORPINITI,

Plaintiff,

v.

AMERICA'S COLLECTIBLES  
NETWORK, INC.,

Defendant.

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)  
) No.4:06-cv-00415  
)  
)

) ANSWER, AFFIRMATIVE DEFENSES,  
) AND COUNTERCLAIM  
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For its Answer to the Complaint, Defendant America's Collectibles Network, Inc. ("ACN"), admits, denies and avers as follows:

1. On information and belief, ACN admits the allegations of paragraph 1 of the Complaint.
2. ACN admits the allegations of paragraph 2 of the Complaint.
3. ACN admits that complete diversity of citizenship exists between the parties, that this action arises under the Trademark Laws of the United States, and that this Court has subject matter jurisdiction over this dispute. ACN denies that the damages suffered by Plaintiff, if any, exceed \$75,000. ACN denies the remaining allegations of paragraph 3.
4. ACN admits that venue is proper in this judicial district. ACN denies the remaining allegations of paragraph 4.
5. ACN admits that this Court has personal jurisdiction over it for purposes of this action. ACN denies the remaining allegations of paragraph 5.

6. In response to the allegations of paragraph 6 of the Complaint, ACN admits that Scorpiniti has obtained a federal registration for "JTV" with the U.S. Patent and Trademark Office with the registration number 2,636,547, that the registration is presently in effect, that it has not yet been cancelled (though ACN requests such relief below), and that a copy of the registration certificate is attached to the Complaint as Exhibit A. ACN denies the remaining allegations in paragraph 6.

7. In response to the allegations of paragraph 7 of the Complaint, ACN admits that Scorpiniti's registration for JTV states the covered services to be television broadcast services. ACN denies the remaining allegations of paragraph 7.

8. ACN admits the allegations in the first two sentences of paragraph 8 of the Complaint. ACN also admits that the alleged mark JESUS TELEVISION is registered on the Supplemental Register, that a copy of the registration is attached to the Complaint as Exhibit B, that the registration states the covered services are television broadcast services and that Scorpiniti has always intended the alleged mark JESUS TELEVISION and its acronym JTV to be used together. ACN denies all remaining allegations of paragraph 8.

9. In response to the allegations of paragraph 9 of the Complaint, ACN admits that Scorpiniti's registration of the alleged mark JTV is *prima facie* evidence of his ownership and the alleged mark's validity. Under the Lanham Act, this presumption is rebuttable, however. ACN denies that Scorpiniti has any valid trademark rights in this acronym or that it is a valid mark. ACN admits that marks registered on the Principal Register provide constructive notice of the owner's claim of ownership pursuant to 15 U.S.C. § 1072. ACN denies that registrations on the Supplemental Register have the

same effect or provide constructive notice of claims of ownership under applicable law.

ACN denies the remaining allegations of paragraph 9.

10. In response to the allegations in paragraph 10 of the Complaint, ACN admits Scorpiniti has stated that he intends to utilize JESUS TELEVISION and its acronym JTV in connection with religious television programming. ACN denies the remaining allegations of paragraph 10.

11. In response to the allegations of paragraph 11 of the Complaint, ACN admits that in the last several years, it has sold jewelry and gemstones on television and on the internet using the trademarks Jewelry Television by ACN ® and Jewelry Television™, and that its sales programs are broadcast by various providers throughout the United States, including those covering the cities of Ames and Des Moines, Iowa. ACN also admits that it is the largest seller of loose gemstones in the United States and that it sells significant amounts of jewelry. ACN denies having “broadcast call letters,” since call letters are assigned by regulatory authorities to television and radio stations. ACN admits that it will occasionally refer to itself on television and the internet using the acronym “JTV.” ACN has a registered trademark in JEWELRY TELEVISION BY ACN® (registration number 78349407) and has acquired trademark rights through extensive, national use of that mark and of the mark JEWELRY TELEVISION™. It has developed widespread recognition in the marketplace as a seller of jewelry and gemstones using those marks. Occasional and descriptive use of the term JTV as an acronym for its well-established business is legitimate and lawful. ACN denies all remaining allegations in Paragraph 11.

12. ACN denies the allegations in the first three sentences of paragraph 12 of the Complaint for lack of knowledge sufficient to determine the truth thereof. ACN admits that Scorpiniti had conversations with a lawyer employed as in-house counsel by ACN. ACN denies all remaining allegations of paragraph 12. Rather than object to ACN's occasional use of the acronym JTV, Scorpiniti used his contacts with ACN to attempt to sell or license the alleged mark JTV to ACN. Ultimately, Scorpiniti offered ACN a 10 year license for this alleged mark for \$1.78 million.

13. ACN admits that it knew of Scorpiniti's registration of the acronym JTV prior to his call to ACN's in-house counsel, but it believed its occasional use of JTV as a descriptive acronym for its well-recognized business was lawful and proper, and it believed in good faith that Scorpiniti did not have any legitimate rights to this alleged mark. ACN denies all remaining allegations in paragraph 13.

14. ACN repleads and incorporates paragraphs 1-13 as if fully set forth herein.

15. The allegations of paragraph 15 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 15.

16. The allegations of paragraph 16 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 16.

17. The allegations of paragraph 17 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 17.

18. ACN repleads and incorporates paragraphs 1-17 as if fully set forth herein.

19. The allegations of paragraph 19 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 19.

20. The allegations of paragraph 20 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 20.

21. The allegations of paragraph 21 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 21.

22. ACN repleads and incorporates paragraphs 1-21 as if fully set forth herein.

23. The allegations of paragraph 23 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 23.

24. The allegations of paragraph 24 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 24.

25. The allegations of paragraph 25 call for a legal conclusion, to which no response is required. To the extent a response is required, ACN denies the allegations of paragraph 25.

26. All allegations not specifically admitted herein are denied.

### AFFIRMATIVE DEFENSES

In addition to those raised above, ACN raises the following defenses:

- A. The presumption that Scorpiniti has valid trademark rights in the acronym JTV because of his registration is rebuttable.
- B. ACN is informed and believes that Scorpiniti has not used JESUS TELEVISION or its acronym JTV in commerce as defined by section 45 of the Lanham Act. 15 U.S.C. § 1127. ACN is informed and believes that if Scorpiniti used either JESUS TELEVISION or its acronym JTV, such use was only token or *de minimus*, which cannot support trademark rights.
- C. To the extent Scorpiniti made some minimal use in commerce of JESUS TELEVISION and its acronym JTV, ACN is informed and believes that Scorpiniti abandoned any trademark rights he obtained through failure to use these alleged marks in commerce since their registration in 2002. Three years of continuous non-use raises the presumption of abandonment. 15 U.S.C. § 1127.
- D. To the extent Scorpiniti did not completely abandon any trademark rights he acquired in JESUS TELEVISION or its acronym JTV, he has partially abandoned them as to retail sales conducted on television and the internet. Scorpiniti's rights apply only to areas of commerce in which he has used these alleged marks. ACN is informed and believes that any limited use Scorpiniti has made of these alleged marks has never included retail sales of jewelry, gemstones or any other item, and he has never made such an allegation.
- E. Scorpiniti's registrations for JESUS TELEVISION and its acronym JTV state that they cover television broadcasting services. They do not reference internet use.

Accordingly, these alleged marks can have no application to internet operations and any use by ACN on the internet is lawful and proper.

F. The acronym JTV is merely descriptive of JESUS TELEVISION. Scorpiniti has not established any secondary meaning in JTV. Therefore, Scorpiniti has obtained no trademark rights in the acronym JTV.

G. Even if Scorpiniti has obtained some trademark rights in JESUS TELEVISION or its acronym JTV, there is no likelihood of confusion between any use he is making of them and any use by ACN. Some of the factors indicating a lack of likely confusion are, without limitation, the weakness of JESUS TELEVISION and its acronym JTV (as allegedly used by Scorpiniti), the simultaneous use of the Jewelry Television™ mark, the completely unrelated nature of the ACN's business (retail sales of jewelry and gemstones) and Scorpiniti's alleged business (religious programming), lack of actual confusion, ACN's good faith in using JTV, its good faith purchase of www.jtv.com, the quality of ACN's services and the sophistication of ACN's buyers.

H. The registration of JESUS TELEVISION on the Supplemental Register adds nothing to Scorpiniti's substantive rights. This alleged mark is descriptive and for Scorpiniti to have any valid rights in it, he must first establish secondary meaning. ACN is informed and believes that Scorpiniti has not used JESUS TELEVISION in commerce and even if he used it in some limited sense, he has not established secondary meaning for it.

I. ACN is informed and believes that the registrations for both JESUS TELEVISION and its acronym JTV were obtained fraudulently by Scorpiniti. ACN's investigation has indicated that while his applications on the Alleged Marks were pending

before the U.S. Patent and Trademark Office (the "PTO"), Scorpiniti had not used these marks in commerce or otherwise. Yet in connection with his applications for registration, he knowingly and willfully misrepresented that he had used these alleged marks in commerce by presenting a photograph of a television screen to the PTO showing the words "JTV—JESUS TELEVISION" as proof of actual broadcasts. Accordingly, ACN is informed and believes that Scorpiniti knowingly and willfully made material misrepresentations to the PTO to obtain the registrations for JESUS TELEVISION and its acronym JTV, that he intended the PTO to rely on these material misrepresentations, and that the PTO relied on these material misrepresentations in issuing the relevant registrations. Accordingly, these registrations are void and of no force and effect.

J. Based on the facts alleged herein, ACN raises the defense of unclean hands.

K. ACN raises the defense of fair use. Any incidental use of JTV by ACN is merely as an acronym for its well-established marks, Jewelry Television by ACN ® and Jewelry Television™. Such use was in good faith and was made in a way that describes ACN's primary brand. Even if Scorpiniti has obtained legitimate trademark rights in JTV, such rights do not give him the right to control the use of descriptive terms in the commercial marketplace.

WHEREFORE, ACN respectfully requests that the Complaint be dismissed, that Scorpiniti's claim be found to be exceptional and that he be ordered to pay all fees and expenses incurred by ACN in this case pursuant to 15 U.S.C. § 1117(a).

### COUNTERCLAIM

1. Counter-plaintiff, America's Collectibles Network, Inc. ("ACN"), is a Tennessee corporation, and its headquarters are located in Knoxville, Tennessee. ACN sells jewelry and gemstones on television and on the internet. In the last several years, it has utilized the marks Jewelry Television by ACN ® and Jewelry Television™ in commerce in connection with its sales of jewelry and gemstones.

2. This Court has personal jurisdiction over Counter-defendant, Louis J. Scorpiniti ("Scorpiniti"), because he is a resident of Polk County, Iowa and a citizen of the State of Iowa.

3. This Court has subject matter jurisdiction over this counterclaim under 15 U.S.C. § 1121 since it involves a dispute under the trademark laws of the United States.

4. Venue resides in this judicial district as both parties are subject to personal jurisdiction in this district and a substantial part of the events or omissions relating to this case occurred in this district.

5. On October 15, 2002, Scorpiniti obtained a registration on the Supplemental Register from the U.S. Patent and Trademark Office (the "PTO") for JESUS TELEVISION (registration number 2,637,709) and a registration from the PTO on the Principal Register for the acronym JTV (registration number 2,636,547). These two alleged marks will be referred to collectively as the "Alleged Marks."

6. This Court has power to order cancellation, in whole or in part, of all registrations of any party to an action involving a registered mark. 15 U.S.C. § 1119. The Alleged Marks can be cancelled on any basis that would have prevented their registration in the first place.

7. The Alleged Marks should be cancelled on the following bases:

A. ACN is informed and believes that Scorpiniti has not used the Alleged Marks in commerce as defined by § 45 of the Lanham Act, 15 U.S.C. § 1127, and that if Scorpiniti used the Alleged Marks at all, such use was only token or *de minimus*, which use cannot support trademark rights.

B. Even if Scorpiniti made some minimal use in commerce of the Alleged Marks, ACN is informed and believes that Scorpiniti abandoned any trademark rights he obtained through failure to use the Alleged Marks in commerce since their registration in 2002. Three years of continuous non-use raises the presumption of abandonment. 15 U.S.C. § 1127.

C. The acronym JTV is merely descriptive of JESUS TELEVISION. Scorpiniti has not established any secondary meaning in JTV. Therefore, Scorpiniti has obtained no trademark rights in the acronym JTV, and he was not entitled to a registration for it.

D. ACN is informed and believes that the registrations for JTV and JESUS TELEVISION were obtained fraudulently by Scorpiniti. ACN's investigation has indicated that Scorpiniti has not use the Alleged Marks in commerce or otherwise. Yet in connection with his applications for registration, he submitted a picture of a television screen to the U.S. Patent and Trademark Office (the "PTO") as proof of television broadcasts using the words "JTV--Jesus Television." Accordingly, ACN is informed and believes that Scorpiniti knowingly and willfully made material misrepresentations to the PTO about his use of the Alleged Marks, that he intended for the PTO to rely on such knowing and material misrepresentations and that the PTO actually relied on such

knowing and material misrepresentations in issuing the registrations. Accordingly, Scorpiniti's registrations for the Alleged Marks should be cancelled.

8. In the alternative, the Alleged Marks should be cancelled in part on the following bases:

A. To the extent Scorpiniti did not completely abandon any trademark rights he acquired in the Alleged Marks, he has partially abandoned them as to retail sales conducted on television. Scorpiniti's rights apply only to areas of commerce in which he has used these alleged marks. In addition, Scorpiniti's registrations do not reference retail sales in any way. ACN is informed and believes that Scorpiniti has never used the Alleged Marks in connection with retail sales of jewelry, gemstones or any other item either on television or otherwise.

B. The Alleged Marks should be cancelled to the extent they can be construed to apply to retail sales of goods on the internet. Scorpiniti's registrations for the Alleged Marks state that they cover television broadcasting services. They do not reference internet use or retail sales. In addition, ACN is informed and believes that Scorpiniti has never used the Alleged Marks in connection with retail sales of goods on the internet.

WHEREFORE, Counter-plaintiff, America's Collectibles Network, Inc. respectfully requests that this Court:

1. Order that Scorpiniti's registrations for JESUS TELEVISION and its acronym JTV be cancelled;

2. In the alternative, order that Scorpiniti's registrations for JESUS TELEVISION and its acronym JTV be cancelled in part so that they do not apply to retail sales of jewelry and gemstones either on television or on the internet;
3. Find this case to be exceptional and award ACN its fees and expenses pursuant to 15 U.S.C. § 1117(a); and
4. Award ACN such other and further relief to which it may be entitled.

Dated: March 16, 2007

/s/ Brian S. McCormac

Michael A. Giudicessi, Lead Counsel

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**ATTORNEYS FOR DEFENDANT  
AMERICA'S COLLECTIBLES  
NETWORK, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2007, the foregoing Answer, Affirmative Defenses and Counterclaim was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

/s/Brian McCormac

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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LOUIS J. SCORPINITI,	)	
	)	No. _____
Plaintiff,	)	
	)	
vs.	)	
	)	COMPLAINT
AMERICA'S COLLECTIBLES	)	
NETWORK, INC.,	)	
	)	
Defendant.	)	

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The plaintiff for his causes of action states the following:

PARTIES

1. The plaintiff Louis J. Scorpiniti (Scorpiniti) is an individual who resides in Polk County, Iowa, and he is a citizen of the State of Iowa for jurisdictional purposes.
2. The defendant America's Collectibles Network, Inc. (America's Collectibles) is a Tennessee chartered corporation with its principal place of business located in Knoxville, Tennessee, and it is a citizen of the State of Tennessee for jurisdictional purposes.

JURISDICTION AND VENUE

3. The court has subject matter jurisdiction pursuant to the following statutes: (a) 28 U.S.C. § 1332, as there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs; (b) 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a), as this action arises under the Trademark Laws of the United States, 15 U.S.C. § 1051 et seq.; (c) 28 U.S.C. § 1338(b),

as the unfair competition claim set forth in this complaint is joined with a substantial and related claim set forth in this complaint arising under the federal trademark law; and (d) 28 U.S.C. § 1367, as any other claims set forth in this complaint are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

4. Venue resides in this judicial district and in the court pursuant to 28 U.S.C. §§ 1391(b)(1), (b)(2), and (c), as America's Collectibles is considered to reside in this judicial district because it is a corporation subject to personal jurisdiction here, and this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred, or a substantial part of the property that is the subject of the action is situated.

5. For the same allegations set forth in paragraph 4, the court has personal jurisdiction over America's Collectibles, as it is conducting business related to the claims in this judicial district and it also has maintained a systematic and continuous presence in this judicial district. America's Collectibles is qualified to do business and is doing business in the state of Iowa and in this judicial district.

#### GENERAL ALLEGATIONS

6. Scorpiniti is the owner of a service mark, "JTV®," which was registered on the Principal Register in the United States Patent and Trademark Office on October 15, 2002 under Registration No. 2,636,547. The registration is in full force and effect, unrevoked and uncanceled. A copy of the certificate of registration for the mark is attached to this complaint, marked as exhibit A, and incorporated by this reference.

7. The registered mark JTV®, as shown on the registration, is for use in

television broadcasting services. The mark constitutes broadcasting call letters. Scorpiniti has, since on or before May 22, 2002, used the mark in commerce to identify his broadcasting services identity and programs. By way of example, Scorpiniti has caused the broadcast call letters JTV® to be televised on a year-round, daily basis through the Mediacom broadcasting facility that services the Des Moines - Ames Designated Market Area (known as the DSM - Ames DMA). Scorpiniti has been broadcasting the registered mark in that designated market area on a 24/7 basis for the last 18 months, and he had been broadcasting his registered mark in this area since on or before the registration issued.

8. On October 15, 2002, the United States Patent and Trademark Office issued to Scorpiniti the Registration No. 2,637,709 for the service mark "Jesus Television®." This was the same date the PTO issued to Scorpiniti his registration for the service mark JTV®. The mark Jesus Television® was placed on the supplemental register, and is in the process of being transferred to the principal register. A copy of Registration No. 2,637,709 is attached to this complaint, marked as exhibit B, and incorporated by this reference. As indicated on the registration itself, Scorpiniti first used this mark on May 22, 2002, and first used it in commerce on May 22, 2002. The mark is for "broadcast television services," and Scorpiniti has been using this mark in conjunction with his mark JTV® in commerce since on or before the issuance date.

9. Scorpiniti's registrations of his service marks are prima facie evidence of their validity and substance and of his ownership of the marks. The registrations are constructive notice of Scorpiniti's ownership and his exclusive use rights to the marks.

10. Scorpiniti uses his broadcast call letters (JTV®) and broadcast name (Jesus

Television®) registered service marks to broadcast, promote and advertise his broadcasting services. These services will involve Christian religious based themes and music videos, and the promotion of the same. Scorpiniti has expended, and continues to expend, funds in securing his rights to these registered marks and in broadcasting these marks in commerce. As a result of Scorpiniti's efforts and expenditures, these marks have become identified in the minds of the public for the use to which Scorpiniti puts the registered marks. These registered marks accordingly are a valuable property right to Scorpiniti protected by federal statutory and federal and state common law through their registrations and use.

11. America's Collectibles conducts the broadcasting business by doing business as Jewelry Television™ ("Jewelry TV"). Jewelry TV broadcasts programs through broadcast network providers throughout the United States, including through DirecTV, Dish Network and Mediacom that provide broadcasting services in the DSM - Ames DMA. America's Collectibles sells jewelry and gemstones through its Jewelry TV network program and over its internet website. America's Collectibles holds itself out as the largest volume seller of loose gemstones in the United States, and as a large volume seller of jewelry and gemstone items through sales generated by its Jewelry TV programs. America's Collectibles has been using the broadcast call letters "JTV" for identification of its Jewelry TV network, and has been broadcasting those call letters throughout the United States including in the DSM - Ames DMA. America's Collectibles also is using those call letters on its internet website for Jewelry TV, including using those letters in its website and internet access addresses.

12. In the Spring of 2006, Scorpiniti learned of America's Collectibles' infringing

broadcasts of Scorpiniti's registered mark JTV®. Scorpiniti himself has viewed Jewelry TV broadcasts in the DSM - Ames DMA over Mediacom, Dish Network and DirectTV channels, and has seen America's Collectibles through its Jewelry TV broadcasts hold itself out by the broadcast call letters JTV. Scorpiniti located America's Collectibles' telephone number and address through its internet website. He contacted America's Collectibles' in-house legal department in June 2006 to notify that company of his registered rights to the broadcast call letters service mark JTV® and instruct that company to cease and desist its infringing use of the mark absent Scorpiniti's express authorization. Rather than cease and desist its infringing use, America's Collectibles' has continued its infringing use of Scorpiniti's mark JTV®.

13. Scorpiniti is informed and believes, and on such information and belief alleges, that America's Collectibles had actual knowledge of Scorpiniti's ownership of the service mark JTV® prior to the first adoption or use by America's Collectibles of such service mark.

COUNT I  
(Infringement Of Federally Registered Mark)

14. Scorpiniti repleads as if fully set forth in this paragraph each of his allegations contained in paragraphs 1 through 13, inclusive, of this complaint.

15. As a complete and independent claim for relief, Scorpiniti alleges service mark infringement by America's Collectibles at common law and under 15 U.S.C. § 1114.

16. America's Collectibles has infringed Scorpiniti's registered mark in interstate commerce by committing its various acts set forth above, including broadcasting the call

letters JTV through the television, cable and satellite network system and internet, and by selling, offering for sale and advertising its Jewelry TV programs and products through use of those call letters. America's Collectibles' use of the designation and broadcast call letters JTV is without Scorpiniti's permission or authority and is likely to cause confusion in the general public, to cause mistake, and to deceive.

17. America's Collectibles' acts of trademark infringement have been committed with the intent to cause confusion and mistake and to deceive, and the infringement has caused confusion, mistake and deception.

COUNT II  
(Unfair Competition)

18. Scorpiniti repleads as if fully set forth in this paragraph each of his allegations contained in paragraphs 1 through 13, inclusive, of this complaint.

19. As a complete and independent claim for relief, Scorpiniti alleges unfair competition by America's Collectibles at common law and under 15 U.S.C. § 1125.

20. America's Collectibles' acts of broadcasting, advertising and using the mark JTV® constitutes unfair competition with Scorpiniti and interferes with his exclusive use rights to the mark. America's Collectibles' wrongful use has resulted in public confusion, and which confusion is likely to continue so long as America's Collectibles wrongfully uses the mark in its broadcasts, internet website, and advertising and promotional campaigns.

21. America's Collectibles' use of the service mark JTV® and in the manner complained of constitutes unfair competition with Scorpiniti. America's Collectibles' use of the mark constitutes a false designation of origin or a false description or

representation of the source of origin of America's Collectibles' business and services. Such use results in unfair competition with Scorpiniti, in that persons are likely to be confused or misled into the belief, contrary to fact, that America's Collectibles' business and services are sponsored by or endorsed by or emanate from Scorpiniti or are otherwise connected with Scorpiniti.

COUNT III  
(Temporary and Permanent Injunction)

22. Scorpiniti repleads as if fully set forth in this paragraph each of his allegations contained in paragraphs 1 through 21, inclusive, of this complaint.

23. As a complete and independent claim for relief, Scorpiniti alleges that he is entitled to temporary and permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure and 15 U.S.C. §§ 1116 to 1118.

24. America's Collectibles' infringement of Scorpiniti's registered service mark and its unfair competition with Scorpiniti through its infringing use of the mark has caused and is causing irreparable damage and harm to Scorpiniti and to his good will in his service mark.

25. Scorpiniti is entitled to temporary and permanent injunctive relief, as America's Collectibles' continued infringing use of Scorpiniti's service mark despite the cease and desist demand is causing Scorpiniti to incur irreparable harm for which his legal remedy is not fully adequate to compensate.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff Louis J. Scorpiniti prays for the following relief:

A. The defendant's conduct be adjudged an infringement of Service Mark

Registration No. 2,636,547 and Registration No. 2,637,709.

B. The defendant's conduct be adjudged as unfair competition against the plaintiff.

C. A judgment be entered in favor of the plaintiff and against the defendant for the full amount of compensatory damages incurred, including but not limited to the defendant's being required to account for and to pay to the plaintiff all profits to which the plaintiff may be entitled and such other damages as the plaintiff has sustained in consequence of the defendant's wrongful acts.

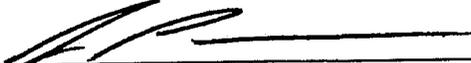
D. The defendant, its agents and employees, and all persons and firms in active concert or participation with it, be enjoined during the pendency of this action, and permanently thereafter, from using the symbol "JTV®," or any simulation of the symbol, or any name, phrase, or device in any manner colorably imitating the symbol "JTV®," and from doing any of the other acts or things complained of in this pleading in connection with the broadcast, showing, advertising or use of the symbol constituting the registered mark, and from continuing to operate the defendant's business in any manner tending to deceive the public into believing that the plaintiff is in any way connected with, or sponsors or licenses, the programs shown or broadcast, and the merchandise sold during such programs or broadcasts, by the defendant.

E. The defendant be required to pay the plaintiff treble damages as provided by the Trademark Act on the ground that the defendant's acts have been willful and wanton.

F. The plaintiff be granted the costs of this action, including reasonable attorney's fees incurred.

G. The plaintiff be granted such other and further relief as this court may deem

just and proper in the premises.



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S.P. DeVolder AT0001876

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ATTORNEY FOR THE PLAINTIFF

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.*



A handwritten signature in cursive script, appearing to read "James Profane".

Director of the United States Patent and Trademark Office

**Int. Cl.: 38**

**Prior U.S. Cls.: 100, 101, and 104**

**United States Patent and Trademark Office**

**Reg. No. 2,636,547**

**Registered Oct. 15, 2002**

**SERVICE MARK  
PRINCIPAL REGISTER**

**JTV**

**SCORPINITI, LOU (UNITED STATES INDIVI-  
DUAL)  
315 S.W. 14TH STREET  
DES MOINES, IA 50309**

**FIRST USE 5-22-2002; IN COMMERCE 5-22-2002.**

**SN 76-087,871, FILED 7-10-2000.**

**FOR: TELEVISION BROADCASTING SERVICES,  
IN CLASS 38 (U.S. CLS. 100, 101 AND 104).**

**JODI LAUTERBACH, EXAMINING ATTORNEY**

# The United States of America



## CERTIFICATE OF REGISTRATION SUPPLEMENTAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.*



*Acting Director of the United States Patent and Trademark Office*

Int. Cl.: 38

Prior U.S. Cls.: 100, 101, and 104

**United States Patent and Trademark Office**

Reg. No. 2,637,709

Registered Oct. 15, 2002

**SERVICE MARK  
SUPPLEMENTAL REGISTER**

**JESUS TELEVISION**

SCORPINI, LOU (UNITED STATES INDIVIDUAL)  
315 S.W. 14 STREET  
DES MOINES, IN 50309

FOR: TELEVISION BROADCASTING SERVICES,  
IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 5-22-2002; IN COMMERCE 5-22-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "TELEVISION", APART FROM  
THE MARK AS SHOWN.

SER. NO. 76-275,775, FILED P.R. 6-21-2001; AM. S.R.  
6-14-2002.

PAUL F. GAST, EXAMINING ATTORNEY

Cancellation No.: 92047073

Mark: JTV

CENTER OF SANTA ANA, INC., (hereinafter "Petitioner"), respectfully requests that this proceeding be suspended pending the disposition of a civil action involving the Registrant herein, LOU SCORPINITI, (hereinafter "Registrant"), and the exact same trademark registration, JTV, U.S. Trademark Registration No. 2636547, ("Registrant's Mark") which is the subject of this cancellation action. The civil action is currently pending before the United States District Court for the Southern District of Iowa, Central Division, Civil Action No. 4:06-cv-00415. A copy of the complaint, answer, affirmative defenses and counterclaims pending therein is filed herewith as Exhibit 1 and Exhibit 2, respectively.

#### FACTUAL BACKGROUND

It has been determined through Registrant's discovery responses to Petitioner's requests, that, on August 30, 2006, Registrant filed a complaint in the United States District Court for the Southern District of Iowa, Central Division, Civil Action

Cancellation No.: 92047073

Mark: JTV

No. 4:06-cv-00415, a copy of which is attached hereto as Exhibit

1. In the civil action, the party suing Registrant herein seeks cancellation of Registrant's Mark, the same mark at issue in the subject cancellation action, based upon allegations of non-use, abandonment, token or de minimus trademark use and fraud in the procurement of Registrant's registration. Specifically, Defendant alleges that Plaintiff/Registrant knowingly and wilfully made materially false representations to the United States Patent and Trademark Office in connection with its trademark application, rendering its registration void and of no force and effect.

SUSPENSION IS APPROPRIATE

Whenever it comes to the attention of the Board that a party or parties to a case pending before it are involved in a civil action which may have a bearing on the Board case, proceedings before the Board may be suspended until final determination of the civil action. 37 C.F.R. § 2.117(a); General Motors Corp. v. Cadillac Club Fashion, Inc., 22 U.S.P.Q.2d 1933 (T.T.A.B. 1992).

With respect to the merits of the instant Motion to Suspend,

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it cannot be disputed that presently no outstanding potentially dispositive motions are before the Board and the time and expense of conducting duplicative or unnecessary discovery could be avoided by the granting of this motion. Further, the salient issue in both cases is identical: whether Registrant's mark should be cancelled. The Iowa case has the real potential to prevent the duplication of time and money associated with the discovery process, particularly with regard to depositions, and may result in the same trademark cancellation relief sought by Petitioner herein.

Therefore, in accordance with long established policy of this Board and in the interests of economy to the parties, the Board cancellation proceeding herein should be suspended pending a full resolution and determination of the outcome of the civil action currently pending in the United States District Court for the Southern District of Iowa, Central Division.

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Mark: JTV

RELATED SUSPENSION

The Registrant herein is also an Opposer in Opposition No. 91177720, Scorpiniti v. Americas Collectibles Network, and therein stipulated to suspension concerning the exact same civil matter outlined to the Board in this present motion in Exhibit 1 and 2, and the exact same registration.

CONCLUSION

Petitioner respectfully requests that the above-referenced cancellation proceeding be suspending pending disposition of Civil Action No. 4:06-cv-00415, currently pending before the United States District Court for the Southern District of Iowa, Central Division.

Respectfully submitted,

/s/ JENNIFER L. WHITELOW

JENNIFER L. WHITELOW

KATHLEEN L. KOLACZ

WHITELOW LEGAL GROUP

Counsel for Petitioner

Cancellation No.: 92047073

Mark: JTV

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the  
foregoing has been provided to:

S.P. DeVolder  
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Norwalk, IA 50211-2401  
Email: [devlawfirm@aol.com](mailto:devlawfirm@aol.com)

on the date set forth in the electronic filing or the electronic  
transmission of same.

/s/ JENNIFER L. WHITELOW  
JENNIFER L. WHITELOW