

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

TTAB

In the Matter of Application Serial No. 76/026,184  
Mark: FARM LIVING  
Published in the Official Gazette on January 2, 2001

REIMAN PUBLICATIONS, LLC,

Opposer,

v.

Opposition No. 91/150,075

FARM LIVING, INC.,

Applicant.



**OPPOSER'S TRIAL BRIEF**

09-29-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**TABLE OF AUTHORITIES**

**Cases**

Interstate Brands Corp. v. McKee Foods Corp.,  
53 U.S.P.Q.2d 1910, 1912 (TTAB 2000).....6

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Specialty Brands, Inc. v. Coffee Bean Distrib., Inc., 748 F.2d 669, 676 (Fed. Cir. 1984).....6

**DESCRIPTION OF RECORD**

- A. Opposer, Reiman Media Group, Inc.'s Witnesses
  - 1. Jeffrey Anderson, August 22, 2002, Opposer's Exhibits 1-17
  - 2. Judith A. Wolf, January 20, 2003 and March 14, 2003, Opposer's Exhibits 18-22.
- B. Applicant, Farm Living, Inc.'s Witnesses
  - 1. Jack Thomason, May 28, 2003, Applicant's Exhibits 1-2.

- C. Documents identified in and attached to Applicant's Notice of Reliance as Exhibits 1-188, filed on June 13, 2003.
- D. Documents identified in and attached to Applicant's Supplement to Notice of Reliance as Exhibit 1, filed on June 13, 2003.

### STATEMENT OF THE CASE

The Applicant, Farm Living, Inc. has filed an application to register the mark FARM LIVING for use in connection with magazines. The application, Serial No. 76/026,184, was filed as an intent-to-use application on April 13, 2000.

The application was published for opposition on January 2, 2001. The Opposer, Reiman Media Group, Inc. (formerly Reiman Publications LLC)<sup>1</sup> filed a Notice Of Opposition on July 18, 2001, within the extended period for taking such action. In its Notice Of Opposition, the Opposer explained that it will be damaged by the grant of the registration of FARM LIVING because of its prior registrations for the similar mark FARM & RANCH LIVING used on a variety of goods and services, including magazines, books, calendars, and other merchandise. Concurrent use of this mark with FARM LIVING will inevitably lead to confusion among purchasers of magazines as to the source of origin of Applicant's goods, all to the detriment of the Opposer.

Specifically, the Opposer contends that the trademark proposed for registration, FARM LIVING, is substantially similar to Opposer's FARM & RANCH LIVING mark, and the application lists goods identical to those sold by the Opposer. As a result, Applicant's use of FARM LIVING for a magazine is likely to cause confusion and mistake due to Opposer's senior use of a very similar mark for its magazine and related goods. In fact, the Applicant has specifically admitted that FARM LIVING is similar to Opposer's FARM & RANCH LIVING

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<sup>1</sup> Reiman Publications LLC was purchased by The Reader's Digest Association, Inc. in May 2002 and is now known as Reiman Media Group, Inc. (Anderson, pp. 3-4.) U.S. Trademark Registration 1,198,664 has been assigned to Reiman Media Group, Inc. (Anderson, pp. 8-9; Opposer's Exh. 3.) The Opposer has filed a Motion to Substitute Party and Re-Caption Proceedings in the name of Reiman Media Group, Inc. This motion was not opposed by the Applicant.

mark, and that there would likely be confusion if the two marks were used on similar publications. (Thomasson, p. 31, 47-48.)

During the testimony period, the Opposer made of record, during the trial deposition of Jeffrey Anderson, a copy of U.S. Trademark Registration No. 1,198,664 (issued June 22, 1982) for FARM & RANCH LIVING used in connection with “periodically published magazines” in International Class 16. (Opposer’s Exhibit 2.)

There is no dispute about priority. Applicant’s FARM LIVING registration was filed as an Intent To Use Registration on April 13, 2000. (Answer to Notice of Opposition at ¶ 1.) The Opposer first used its FARM & RANCH LIVING mark on magazines in 1978, and Opposer has been using it continuously and extensively ever since. (Anderson, p. 13).

Further, there is no genuine dispute that the goods sold by the Opposer under the FARM & RANCH LIVING mark are identical to the goods recited in the application. Opposer’s registration is for use of the FARM & RANCH LIVING mark in connection with “periodically published magazines” in International Class 16. (Opposer’s Exhibit 2.) The application at issue is for the use of FARM LIVING in connection with “Publications, namely a magazine featuring homes, barns, land fences, furnishings, gardening, food, entertaining, decorating, arts antiques, architecture, real estate, travel, events, construction, and general lifestyle; catalogs in the field of products for the home and farm” in International Class 16.

In addition, the testimony of Jeffrey Anderson, the Chief Financial Officer of Reiman, makes clear that the FARM & RANCH LIVING mark is presently used extensively in connection with the sale of magazines, books and calendars. (Anderson, pp. 33-34, Question 10; Opposer’s Exhs. 6, 9, 13-15.) In 2001, the average circulation of “Farm & Ranch Living” magazine was almost 430,000 issues. (Opposer’s Exhibit 16.) Reiman also engages in substantial cross-promotion of the FARM & RANCH LIVING mark with its other magazine

titles. For example, Reiman Media Group, Inc. also publishes a magazine entitled "Taste Of Home," which is the seventh largest publication in the country by circulation, with 4.5 million subscribers. (Anderson, p. 29.) Each issue of "Taste of Home" magazine contains "blow-in" and "bind-in" cards promoting "Farm & Ranch Living" magazine. (Anderson, p. 30.) In addition to cross-marketing within other Reiman magazines, Reiman also sends direct mail promotions to solicit new customers for its "Farm & Ranch Living" magazine. (Anderson, p. 32; Opposer's Exh. 11.) In 2001 alone, Reiman Media Group, Inc. spent \$1.2 million promoting the "Farm & Ranch Living" magazine. (Opposer's Exh. 17.)

Opposer's "Farm & Ranch Living" magazine contains articles and features about farms and ranches, travel, barns, homes, fences, furnishings, gardening, food, entertaining, decorating, arts, antiques, architecture, events, construction and general lifestyle. (Anderson, pp. 17-20.) In conjunction with its "Farm & Ranch Living" magazine, Reiman also distributes its Country Store catalogue, which features general purpose products and products for the home, to subscribers of "Farm & Ranch Living" magazine. (Anderson, p. 20; Opposer's Exh. 8.) These features of Opposer's "Farm & Ranch Living" magazine are nearly identical to the publication described in the application at issue.

The Applicant's trial witness, Jack Thomasson, admitted that Applicant has never published a single edition of "Farm Living" magazine. (Depos. of Jack Thomasson, p. 44.) The Applicant's response to this opposition is based entirely on the misguided contention that there would not be confusion between Opposer's "Farm & Ranch Living" magazine and its proposed "Farm Living" magazine, because Opposer's "Farm & Ranch Living" magazine does not carry advertisements, whereas Applicant's proposed magazine would have advertisements, and because Applicant's proposed "Farm Living" magazine would supposedly be bigger and of

higher quality than Opposer's "Farm & Ranch Living" magazine. (Thomasson, pp. 19-21.) The application for registration does not, however, contain any mention of these aspects that allegedly distinguish Applicant's proposed "Farm Living" magazine from Opposer's "Farm & Ranch Living" magazine.

The Applicant also attempted to show that consumers would not be confused by its registration of the FARM LIVING mark because a number of other existing magazines have the word "farm" or "living" in their titles. (Thomasson, pp. 24-27; Applicant's Exh. 1.) But Mr. Thomasson admitted that he spent several hours going through the SRDS consumer magazine advertising source – a publication that contains circulation data and descriptions of publications – as well as several hours searching the Internet for magazines with a similar title to FARM & RANCH LIVING, and he was unable to find any magazines, other than the Opposer's "Farm & Ranch Living" magazine, that contain both the word "farm" and "living" in the title. (Thomasson, pp. 30-34.)

### ISSUE

The following issue is presented in this case: Is there a likelihood of confusion as to the source among purchasers of magazines bearing the trademarks FARM LIVING and FARM & RANCH LIVING.

### ARGUMENT

I. **OPPOSER'S MARK "FARM & RANCH LIVING" IS WELL KNOWN AND HAS BEEN MADE HIGHLY VISIBLE TO THE PURCHASING PUBLIC BY EXTENSIVE USE AND ADVERTISEMENT.**

There is unrefuted testimony that Opposer's mark has been used extensively on magazines since 1978, and that it is also used on other goods such as books and calendars. In 2001, sales of Opposer's "Farm & Ranch Living" magazine totaled \$4.5 million. Promotional expenditures related to the mark in 2001 amounted to approximately \$1.2 million. It follows that

Opposer's FARM & RANCH LIVING mark is well known and commands a high degree of recognition among purchasers of magazines. The FARM & RANCH LIVING mark is therefore entitled to a broad scope of protection. See Recot, Inc. v. M.C. Becton, 214 F.3d 1322, 1327 (Fed. Cir. 2000).

**II. OPPOSER'S FARM & RANCH LIVING MARK IS CONFUSINGLY SIMILAR TO APPLICANT'S FARM LIVING MARK, AND BOTH MARKS ARE USED ON IDENTICAL GOODS.**

Reiman has been using FARM & RANCH LIVING on magazines and related goods continuously since 1978. All doubt about whether confusion, mistake or deception is likely is to be resolved against the junior user, especially when, as here, the senior user's mark is well-known among consumers. See Specialty Brands, Inc. v. Coffee Bean Distrib., Inc., 748 F.2d 669, 676 (Fed. Cir. 1984).

Opposer uses its FARM & RANCH LIVING mark on the very same kind of goods listed in Applicant's registration. Applicant's registration does not have any restriction as to the channels of trade in which the "Farm Living" magazine will be sold, nor does it contain any restriction regarding the size or quality of the magazine or whether the magazine contains any advertising.

Applicant's testimony regarding the planned content, design, and advertising content of its "Farm Living" magazine is irrelevant. When determining likelihood of confusion between an existing mark and a mark in an application being opposed, the only thing that is relevant is the description of goods in the application, not the supposed features of any future product sold in connection with the mark. See Interstate Brands Corp. v. McKee Foods Corp., 53 U.S.P.Q.2d 1910, 1912 (TTAB 2000). Applicant's application for the FARM LIVING mark is for "Publications, namely a magazine featuring homes, barns, land fences, furnishings, gardening, food, entertaining, decorating, arts antiques, architecture, real estate, travel, events, construction,

and general lifestyle; catalogs in the field of products for the home and farm.” Opposer’s “Farm & Ranch Living” magazine contains each of these elements. (Anderson, pp. 17-20.)

There is no legitimate dispute that the two marks are very similar -- so much so that, if used on similar publications, Applicant’s witness admitted there would likely be confusion:

Q: But [a magazine] could be made very similar [to “Farm & Ranch Living” magazine] if this new hypothetical company or owner of Farm Living Magazine decided to do so, correct?

A: They could do that, yes.

Q: And if they were to do that, and if they were to call their magazine Farm and Ranch – excuse me, Farm Living, would you agree there would be a strong likelihood that customers would be confused?

MR. NELLES: Objection.

MR. CROSS: Your answer, sir?

A: If they were to mirror Farm & Ranch Living, then of course there is the potential for confusion.

(Thomasson pp. 47-48.)

It follows that there is a likelihood of confusion between the mark FARM & RANCH LIVING as used by the Opposer and the FARM LIVING mark that the Applicant is attempting to register. Registration should be refused.

**III. THE WEBSITES DEPICTING OTHER MAGAZINES WITH THE WORDS “FARM” OR “LIVING” IN THE TITLE ARE OF NO SIGNIFICANCE.**

That there are existing magazines that use the word “farm” or “living” in their names is no defense. None of the magazines cited by the Applicant contain both the words “farm” and “living” in their title, as does Applicant’s mark. Applicant testified that despite hours of searching for similar magazines, he was never able to find any magazines with both “farm” and “living” in the title, other than the two marks involved here. (Thomasson, pp. 30-34.)

Applicant's FARM LIVING mark is much closer to Opposer's FARM & RANCH LIVING mark than any of the third-party magazine marks cited by the Applicant. It follows that these other magazines have no bearing on whether registration of the FARM LIVING mark will cause confusion.

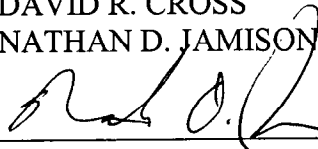
**CONCLUSION**

The FARM LIVING mark that Applicant is attempting to register is, as Applicant has admitted, confusingly similar to Opposer's well known and widely recognized FARM & RANCH LIVING mark. Goods sold and promoted by the Opposer in connection with the FARM & RANCH LIVING mark are identical to those described in the application for FARM LIVING. There is nothing in the application that distinguishes the goods intended to be sold in connection with the FARM LIVING mark from Opposer's "Farm & Ranch Living" magazine. It follows that confusion among purchasers is likely.

For these reasons, it is respectfully submitted that the opposition to registration of FARM LIVING be sustained.

Dated this 25<sup>th</sup> day of September, 2003.

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**CERTIFICATE OF SERVICE AND MAILING**

I hereby certify that the original and two copies of this Opposer's Trial Brief are being deposited (with sufficient postage ) with the United States Postal Service as first class mail in an envelope addressed to: BOX TTAB, NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, and a copy of this document is being deposited (with sufficient postage) with the United States Postal Service as first class mail in an envelope addressed to: Robert M. Schwartz, Esq., Ruden, McClosky, Smith, Schuster & Russell, P.A., 200 East Broward Boulevard, Fort Lauderdale, Florida 33301, all on the date stated below:

Date of signature and deposit: September 25, 2003

  
Nathan D. Jamison