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

11/16/03 09:00:00

TOMAS, L.L.C.,


Petitioner,

v.

HCTV, INC.,

Registrant.

:
: Cancellation No. 92040968
:
: Registration No. 2222067
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:


08-20-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #11

**REGISTRANT HCTV, INC.'S MOTION FOR
JUDGMENT FOR PETITIONER'S FAILURE TO PROVE CASE**

Registrant, HCTV, Inc., by and through its attorneys, Blank Rome LLP, hereby moves for dismissal of the above-referenced cancellation proceeding for all of the reasons set forth below.

The Trademark Trial and Appeal Board Manual of Procedure states that, when a plaintiff's testimony period expires and that party has not taken testimony or offered any other evidence, defendant may move for dismissal on the ground of the failure of the plaintiff to prove its case. T.B.M.P. §535.01; 37 C.F.R. §2.132(a). Section 2.132(a) is designed to prevent the defendant the expense and delay of continuing with the trial where plaintiff has failed to offer any evidence during its testimony period. Section C.F.R. § 2.132(c) allows the Board, in its discretion, to grant such a motion when it is filed during the testimony period of the moving party. T.B.M.P. §535.01; 37 C.F.R. § 2.132(c).

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TRADEMARK TRIAL AND APPEAL BOARD



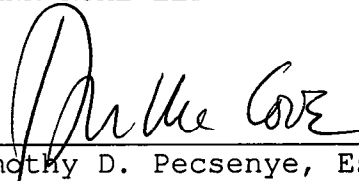
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Here, Petitioner Tomas, L.L.C., filed its petition to cancel U.S. Trademark Registration No. 2,222,067 on August 19, 2002. In a scheduling order dated September 4, 2003, the Board set the relevant discovery and testimony periods as follows: 30-day testimony period for party in position of plaintiff to close on June 21, 2003; and the 30-day testimony period for party in position of defendant to close on August 20, 2003. Petitioner Tomas, L.L.C. is in the position of Plaintiff and its testimony period has now closed. Petitioner-Plaintiff has not taken testimony or offered any other evidence to prove its case, and, accordingly, this proceeding must be dismissed pursuant to 37 C.F.R. §2.132(a). See, e.g., Hewlett-Packard Co. v. Olympus Corp., 931 F.2d 1551 (Fed. Cir. 1991).

Registrant, HCTV, respectfully requests that the Board exercise its discretion and dismiss Petitioner's Petition for Cancellation.

Respectfully submitted,

BLANK ROME LLP



Dated: August 18, 2003

Timothy D. Pecsénye, Esquire
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Philadelphia, PA 19103


Attorneys for Registrant
HCTV, Inc.

00/08/2003TAD

CERTIFICATE OF SERVICE

The undersigned, counsel for HCTV, Inc., hereby certifies under penalty of perjury that I caused a true and correct copy of the attached REGISTRANT HCTV, INC.'S MOTION FOR JUDGMENT FOR PETITIONER'S FAILURE TO PROVE CASE to be sent by "U.S. Mail" on August 18, 2003 to:

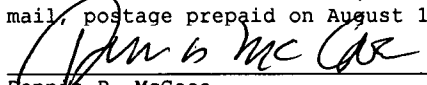
Joseph P. Titterington, Esquire,
DUNLAP, CODDING & ROGERS, P.C.,
9400 North Broadway, Suite 420,
Oklahoma City, OK 73114.



Dennis P. McCooe

CERTIFICATE OF MAILING

I hereby certify that the attached Registrant HCTV, Inc.'s Motion for Judgment for Petitioner's Failure to Prove Case is being deposited in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, via first class mail, postage prepaid on August 18, 2003.



Dennis P. McCooe