

ESTTA Tracking number: **ESTTA183054**

Filing date: **12/25/2007**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Retirement Living TV, LLC		
Entity	Limited Liability Company	Citizenship	Maryland
Address	433 N. Camden Drive Ste. 1010 Beverly Hills, CA 90210 UNITED STATES		

Attorney information	Mark Litwak Law Offices of Mark Litwak & Associates 433 N. Camden Drive Ste. 1010 Beverly Hills, CA 90210 UNITED STATES law3@marklitwak.com Phone:310-859-9595		
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Registration Subject to Cancellation

Registration No	2642886	Registration date	10/29/2002
Registrant	FreeWheelin' Magazine Inc. 296 Richmond Street West Toronto, Ontario, M5V 1X2 CANADA		

Goods/Services Subject to Cancellation

Class 009. First Use: 2000/03/00 First Use In Commerce: 2000/03/00 All goods and services in the class are cancelled, namely: on-line electronic magazine downloadable from the Internet dealing with entertainment
Class 016. First Use: 2000/03/00 First Use In Commerce: 2000/03/00 All goods and services in the class are cancelled, namely: printed magazine dealing with entertainment
Class 041. First Use: 2000/03/00 First Use In Commerce: 2000/03/00 All goods and services in the class are cancelled, namely: Providing an Internet site offering information in the field of entertainment

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition for Cancellation -Art of Living.pdf (2 pages)(25701 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

Signature	/mlitwak/
Name	Mark Litwak
Date	12/25/2007

December 25, 2007

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

RE: "The Art of Living" / Serial No. 77204565 / Petition to Cancel U.S. Registration No. 2642886

Petitioner Retirement Living TV, LLC, a statutory institution of the State of Maryland, believes that it is being damaged by U.S. Registration No. 2642886 and hereby petitions to cancel same on the following grounds:

Upon information and belief, applicant Retirement Living TV, LLC, believes the registrant's mark "The Art of Living" was the subtitle or tag line on the magazine titled: "FreeWheelin." This magazine was published out of Toronto, Canada and is no longer in existence. A phone call to the magazine offices at (416) 591 3733 was not answered and we received the recorded message: "Your call cannot be completed as dialed, please check the number and try again." I called information phone directory for Toronto and could not locate any phone information for the applicant. We also called the phone number on the examiner's amendment (613) 834-6166 and this number is not for the applicant or its attorney. I have spoken to a creditor of the Registrant and was informed that the company was no longer in business.

The registrant appears to have been a subsidiary of FW Omnimedia Corporation, which has been delisted because it was delinquent in its Annual Financial Statements. Ontario securities law requires that Annual Financial Statements be filed within 140 days of the fiscal year end. The company ceased being traded by the Ontario Securities commission on May 9, 2005 (http://infoventure.tsx.com/TSXVenture/TSXVentureHttpController?GetPage=CompanySummary&PO_ID=1023287&HC_FLAG1=on).

Field Code Changed

One of the classes in which registrant applied for a mark was for an on-line electronic magazine downloadable from the internet. One would think that a search on Google and other search engines would find such a magazine fairly quickly, but we were not able to locate any such active publication.

It appears the registrant's mark has been abandoned, or is being used in such a sporadic and nominal fashion that it should not be protected. "Trademark rights are not created by sporadic, casual, and nominal shipments of goods bearing a mark. There must be a trade in the goods sold under the mark or at least an active and public attempt to establish such a trade" (*Clairol, Inc. v. Holland Hall Products, Inc.*, 165 U.S.P.Q. 214 (Trademark Trial & App. Bd. 1970)).

Field Code Changed

For the aforementioned reasons, we petition to cancel the registrant's mark. Petitioner has attempted to register its mark (serial number: 77204565) and was denied registration because of the likelihood of confusion with Registrant's mark.

Sincerely,

Mark Litwak
Attorney at Law