Mailed: September 14, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Reef Residences Resort Management Ltd.

v.

The Proprietors, Strata Plan No. 36

Cancellation No. 92059352
Registration No. 3546491

Marc H. Trachtenberg and Cameron Nelson of Greenberg Traurig LLP,
for Petitioner, Reef Residences Resort Management Ltd.

Shawn M. Dellegar of Crowe & Dunlevy PC,
for Respondent, The Proprietors, Strata Plan No. 36.

Before Cataldo, Kuczma and Greenbaum,
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

The Proprietors, Strata Plan No. 36 ("Respondent" or "Strata"), a corporation organized under the laws of Turks and Caicos with its principal place of business in Providenciales, Turk and Caicos Islands, British West Indies, registered the mark CORAL GARDENS (in standard characters) for:

> Real estate management of condominium complexes, in International Class 36; and
>
> Providing temporary lodging services in the nature of a condominium hotel complex, in International Class 43.[1]

Reef Residences Resort Management Ltd. ("Petitioner") petitions to cancel registration of Respondent's mark on the grounds of fraud and abandonment under Section 14 of the Trademark Act, 15 U.S.C. § 1064(3).

Respondent denies the salient allegations of the Petition to Cancel and asserts affirmative defenses, including that Petitioner's claims are barred by the doctrines of laches and/or estoppel, which were not pursued at trial. Accordingly, the affirmative defenses are waived. *Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1753 (TTAB 2013), *aff'd*, 565 Fed. App'x 900 (Fed. Cir. 2014) (mem.); Trademark Board Manual of Procedure ("TBMP") § 801.01 (June 2018).

I. Evidentiary Objections

Both parties have objected to testimony and exhibits filed by the other party. We do not specifically address the objections set forth in their motions and objections. We have considered all of the evidence of record, noting the objections and responses, and have accorded whatever probative value the subject testimony and exhibits merit, including any inconsistencies, in reaching our decision. *See U.S. Playing Card Co. v. Harbro LLC*, 81 USPQ 1537, 1540 (TTAB 2006) ("[B]ecause an opposition is akin to

[1] Application No. 77458755 issuing as Registration No. 3546491 was filed on April 25, 2008, under Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), based on Turks/Caicos Islands Registration No. 13,879 dated August 14, 2007, and issued under Section 44(e) on December 16, 2008; Combined Declaration of Use and Incontestability under Sections 8 & 15 affidavit accepted and acknowledged.

a bench trial, the Board is capable of assessing the proper evidentiary weight to be accorded the testimony and evidence, taking into account the imperfections surrounding the admissibility of such testimony and evidence.").

II. The Record

The record includes the registration file for Respondent's Registration No. 3546491, and the pleadings. Trademark Rule § 2.122 (b), 37 CFR § 2.122 (b).

Pursuant to the Stipulation Regarding Use of Depositions approved by the Board[2], the parties stipulated to the admission of the following depositions taken in connection with *The Proprietors of Strata Plan No. 36 v. <coralgardens.com>*, No. 13 CV 8669 (N.D. Ill.),[3] subject to the right of any adverse party to recall or demand the recall for examination or cross-examination of any witness whose prior testimony has been offered and to rebut the testimony:

- 7/16/2014 30(b)(6) Deposition of Reef Residences Resort Management (Leanne Karnehm as corporate designee);
- 10/13/2015 Deposition of Brian Rayment;
- 10/14/2015 Deposition of Rahul Lakhani;
- 10/14/2015 Deposition of Charlotte Athy;

[2] *See* 46, 47 TTABVUE.

[3] Prior to the institution of this proceeding, Respondent filed an *in rem* suit in the U.S. District Court for the Northern District of Illinois (Eastern Division), Civil Action No. 13 CV 8669, against the domain name <coralgardens.com> owned by Petitioner. The *in rem* action, *The Proprietors of Strata Plan No. 36 v. coralgardens.com*, Civil Action No. 13-cv-8669 (RWG), is based on Respondent's ownership of U.S. Registration No. 3546491 for the mark CORAL GARDENS that is the subject of this later-filed cancellation proceeding. The substantive issues in the *in rem* suit have been stayed pending the outcome of this cancellation proceeding. *See* 7 TTABVUE.

- 10/15/2015 Deposition of Ronald Karnehm;
- 10/15/2015 Deposition of Beverly Karnehm; and
- 10/15/2015 Deposition of Sandra Karnehm.

Additionally, the following is also in evidence.

A. Petitioner's evidence

- Declaration of Jay Goldstein (48 TTABVUE);
- Declaration of Rahul Lakhani with Exhibits 1-4 (49 TTABVUE);
- Declaration of Brian Trowbridge with Exhibits 1-8 (50 TTABVUE);
- Petitioner's First Notice of Reliance filed pursuant to Stipulation (51 TTABVUE) on:

  -excerpts of the discovery depositions of:
  Brian Rayment on 10/13/2015 (Trial Ex. No. 1 with Exs. 5, 9),
  Charlotte Athy on 10/14/2015 (Trial Ex. No. 2 with Exs. 27, 29), and
  -UK Government Guidelines on Extension of Treaties to Overseas Territories (Trial Ex. No. 3),
  -Search Results for TCI Treaties (Trial Ex. No. 4).

- Petitioner's Second Notice of Reliance filed pursuant to Stipulation (58 TTABVUE):
  -excerpts of the discovery depositions of:
  Brian Rayment on 10/13/2015 (Trial Ex. No. 5),
  Charlotte Athy on 10/14/2015 (Trial Ex. No. 6),
  Rahul Lakhani on 10/14/2015 (Trial Ex. No. 7 redacted), and
  -Copies of Turks and Caicos Certificate of Trademark Registration Nos. 14849-14854, 17633-17634 (Trial Ex. No. 8).

- Confidential portion of Rahul Lakhani deposition (Trial Ex. No. 7) pgs. 78-93, 118-121, 142-149 (59 TTABVUE).
- Declaration of Gary Hunt (60 TTABVUE).
- Declaration of Leanne Karnehm (Ex. A referenced but not submitted with Declaration) (61 TTABVUE).

B. Respondent's evidence

- Respondent's Notice of Reliance (filed pursuant to Stipulation) (52 TTABVUE):

  Exhibit A: Excerpts of Discovery Deposition of Brian J. Rayment, and Exhibit B: Excerpts of Discovery Deposition of Rahul Lakhani (with Rayment Exs. 7 and 12).

- Declaration of Brian J. Rayment and Accompanying Exhibits (53 TTABVUE, 54 TTABVUE (Confidential)[4]):

  Exhibit A: Strata's By-laws dated 5/17/2010 (53 TTABVUE 14-33),
  Exhibit B: Turks and Caicos Islands Certificate of Registration No. 13,879 (53 TTABVUE 34-36),
  Exhibit C: Court of Appeals Order and Opinion dated 8/14/2007 (53 TTABVUE 37-39),
  Exhibits D-E: Executive Committee Minutes 1/31/2008 and 3/15/2009 (53 TTABVUE 195-198, 199-203) (54 TTABVUE 2-5, 6-10),
  Exhibit F: Executive Committee Minutes 3/26/2015 (53 TTABVUE 40-42),
  Exhibit G: U.S. Trademark Application No. 77458755 (53 TTABVUE 43-51),
  Exhibit H: Management Agreement between Strata and Seagate Management Co. (53 TTABVUE 52-65),
  Exhibit I: Turks and Caicos Islands Trade Marks Ordinance Chapter 17.04 §§ 56, 59 and 60 (53 TTABVUE 66-113),
  Exhibit J: Advertising mediums (53 TTABVUE 114-132),
  Exhibit K: Termination of Management Agreement 6/30/2016 (53 TTABVUE 133-149),
  Exhibit L: 8 & 15 Declaration of Use and Incontestability (53 TTABUE 150-162),
  Exhibit M: 8/17/2008 Office Action Response (53 TTABVUE 162-171),
  Exhibit N: Strata's By-Laws 9/5/2005 (53 TTABVUE 172-180), and
  Exhibit O: Strata's By-Laws 6/27/2003 (53 TTABVUE 181-194).

- Declaration of Joe Wheeler (55 TTABVUE).

[4] Citations referring to the record cite to the prosecution history for the Registration found in the TSDR (Trademark Status and Document Retrieval) database, and, as applicable, to the TTABVUE entry and page number. Where documents have been filed both as a public redacted version and as a confidential version, citations are to the public version in TTABVUE. *See* TBMP § 1203.01 (June 2018).

- Declaration of Mike Revell (56 TTABVUE).
- Declaration of Kenneth E. Jones (57 TTABVUE).

In addition to the foregoing, Petitioner and Respondent submitted trial briefs and Petitioner submitted a Reply brief.

III. Background

This proceeding is part of a larger dispute between Petitioner, the developer of the Coral Gardens condominium resort in the Turks and Caicos Islands, and Respondent, the homeowners' association for the resort. Petitioner's predecessor-in-interest was the builder of the condominium property located in Grace Bay in the Turks and Caicos Islands named the Coral Gardens resort.[5]

In the 1990s, Ron and Beverly Karnehm were nearing retirement and decided to build a condominium resort property on Grace Bay Beach, adjacent to a reef known as the "coral gardens" in the Turks and Caicos Islands.[6] The Karnehms did this through a wholly-owned corporation, White House Management Ltd., which is now known as Reef Residences Resort Management Co. Ltd., the Petitioner in this case.[7] They purchased real estate, developed a plan for the property and built the "Coral

[5] Petitioner, Reef Residence Resort Management Co. Ltd., a Turks and Caicos Islands limited liability company, has changed its name over time, formerly it was known as White House Condominium Management Ltd. L. Karnehm Decl. ¶ No. 6 (61 TTABVUE 3-4).

[6] L. Karnehm Decl. ¶ 3 (61 TTABVUE 2).

[7] L. Karnehm Decl. ¶ 5 (61 TTABVUE 3). Respondent introduced evidence showing that Petitioner was previously known as Coral Gardens' Resort Management, Ltd., and before that was known as White House Condominium Management Ltd. B. Rayment Decl. and Accompanying Exhibits ¶ No. 11 (53 TTABVUE 5).

Gardens" resort.[8] Over time, the Karnehms sold some, but not all of the individual condominium units on the property. New unit owners became voting members of the homeowners' association and were free to rent out their units as they wished. Many of them initially hired White House, Petitioner's predecessor-in-interest, to facilitate the rental of their individual units. The unit owners have never been obligated to use Petitioner as a rental management company; indeed, some owners hire other third-parties or handle their own rentals.[9]

In June 1998, Petitioner obtained the domain name <coralgardens.com> and developed a website to assist in promoting the availability of the units at the Coral Gardens resort for short-term rental vacation purposes. Petitioner provides "rental management services" to individual unit owners using its domain name <coralgardens.com>.[10] Petitioner continues to use the <coralgardens.com> website to advertise the rental of the units it owns and manages at the "Coral Gardens" resort.[11]

Respondent is the homeowners' association, incorporated in the Turks and Caicos Islands, that was founded by the Karnehms for the Coral Gardens property. Respondent has no control over how a unit owner rents its property.[12] However,

---

[8] L. Karnehm Decl. ¶ 4 (61 TTABVUE 2); B. Trowbridge Decl. ¶ 2 (50 TTABVUE 2).

[9] L. Karnehm Decl. ¶¶ 5-6, 10-12 (61 TTABVUE 3-4); Trial Ex. 1, B. Rayment Disc. Dep. pp. 130:1-9, 134:15-135:10 (51 TTABVUE 14-15); R. Lakhani Decl. ¶ 8 (49 TTABVUE 4).

[10] L. Karnehm Decl. ¶ 11 (61 TTABVUE 4); R. Lakhani Decl. ¶ 9 (49 TTABVUE 4).

[11] L. Karnehm Decl. ¶¶ 6-8 (61 TTABVUE 3-4); R. Lakhani Decl. ¶ 7 (49 TTABVUE 3-4).

[12] L. Karnehm Decl. ¶¶ 5, 10 (61 TTABVUE 3-4); Trial Ex. 1, B. Rayment Disc. Dep. p. 243:11-24 (51 TTABVUE 30); J. Goldstein Decl. ¶ 7 (48 TTABVUE 3) ("… I was aware that individual unit owners were free to retain any company of their choosing to provide rental management services.").

Respondent manages the Coral Gardens resort's common areas and has typically hired a company to handle the daily management of the common property including "management of the swimming pools, landscaping, hallways, and common rooms – any area outside the individually owned condo[s]."[13] At one time, Respondent engaged Petitioner's predecessor to manage the common property at Coral Gardens.[14] In October 2011, Respondent entered into a management agreement with Seagate Management Company ("Seagate") to manage the common property.[15]

On August 14, 2007, Respondent registered CORAL GARDENS as a trademark for "Condominium complex" in the Turks and Caicos Islands, receiving Certificate of Registration No. 13,879.[16] It subsequently obtained U.S. Service Mark Registration No. 3546491, which is the subject of this cancellation proceeding. As noted above, Registration No. 3546491 issued December 16, 2008, for the mark CORAL GARDENS for real estate management of condominium complexes in International Class 36 and providing temporary lodging services in the nature of a condominium hotel complex in International Class 43, under § 44(e) of the Trademark Act,[17] based on its ownership of the Turks and Caicos registration.[18] Respondent contends that it uses

[13] L. Karnehm Decl. ¶5-6 (61 TTABVUE 3-4).

[14] In 2006, Petitioner's predecessor, White House Condominium Management Ltd., provided the property management services.

[15] B. Rayment Decl. ¶ 26, Exhibit H (53 TTABVUE 9, 52-65).

[16] B. Rayment Decl. ¶ 10, Exhibit B (53 TTABVUE 5, 34-36).

[17] B. Rayment Decl. ¶¶ 16, 20, Exhibit G (53 TTABVUE 6-7, 43-51); Trial Exhibit 1 B. Rayment Disc. Dep. pp. 284, 304-05, Exhibit 9 (51 TTABVUE 37, 42, 56-64); B. Rayment Disc. Dep. pp. 247-48 (52 TTABVUE 16-17).

[18] Respondent's U.S. application was filed for "real estate marketing services in the field of condominiums" and "real estate management services" under § 44(e) based on its ownership

its registered CORAL GARDENS mark in U.S. and foreign commerce in connection with marketing the CORAL GARDENS property to U.S. citizens for rental, providing temporary lodging services in the nature of a condo hotel complex to U.S. citizens, and providing real estate management services in connection with condominium property in Turks and Caicos that is leased to U.S. residents.[19] Additionally, Respondent contends that a majority of the owners are U.S. citizens who use Respondent's services from the United States to manage and rent their Coral Gardens condominium.[20]

---

of Turks and Caicos Islands Registration No. 13,879 for "Condominium complex" issued on August 14, 2007. In the August 13, 2008 Office Action, the Examining Attorney found the identification as filed to be unacceptable because it exceeded the scope of the services identified in the Turks and Caicos registration. Respondent subsequently amended the services to "real estate management of condominium complexes" in International Class 36 and "providing temporary lodging services in the nature of a condominium hotel complexes" in International Class 43. August 22, 2008 Examiner's Amendment. If the description of goods in a foreign registration is overly broad or vague by U.S. standards, the USPTO may demand that one seeking registration under § 44 provide a more specific identification than the one in the foreign registration. There is nothing in the Paris Convention or the Lanham Act that prohibits the USPTO from requiring a "more particularized identification of the goods [or services] in order to comply with our laws." *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 1 USPQ2d 1296, 1299 (TTAB 1986), *rev'd on other grounds*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); J. Thomas McCarthy, 5 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 29:12 (5th ed. Sept. 2018).

[19] Respondent notes the decision of the Court of Appeals of the Turks and Caicos Islands which apparently held that the CORAL GARDENS mark belonged to Respondent rejecting Petitioner's argument that Respondent could not own the mark. 53 TTABVUE 5, 37-39; 63 TTABVUE 8-9, 23, 48. The August 2007 decision of the Turks and Caicos court is irrelevant to the issue before us in this proceeding which is governed strictly by the trademark laws and decisions of the tribunals of the United States. Since the decision of the Court of Appeals of the Turks and Caicos Islands is of no probative value, it is not considered in our evaluation of the CORAL GARDENS mark in this case. *See Binney & Smith Inc. v. Magic Marker Industries, Inc.*, 222 USPQ 1003, 1010 n.18 (TTAB 1984); *Puma-Sportschuhfabriken Rudolf Dassler, K.G. v. Superga S.p.A.*, 204 USPQ 688 n.3 (TTAB 1979); *Faberge, Inc. v. Madison Shirt Corp.*, 192 USPQ 223, 226 n.3 TTAB 1976).

[20] Trial Exhibit 1 B. Rayment Disc. Dep. pp. 264:5-14, 287:22-289:2, 292:15-293:1 (51 TTABVUE 34, 38, 39).

Petitioner seeks cancellation of Respondent's Registration on the grounds of abandonment and/or fraud alleging that: Respondent has not used nor had the requisite *bona fide* intent to use the CORAL GARDENS mark in commerce in connection with the services listed in the U.S. Registration; Respondent's signatory for the application resulting in the U.S. Registration never had the authority or proper basis to file the application; and Respondent never used the CORAL GARDENS mark in connection with the services recited in the Registration in order to maintain the Registration.[21]

IV. Standing

Standing is a threshold issue that must be proved in every *inter partes* case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). To establish standing in a cancellation, a petitioner must show both "a real interest in the proceedings as well as a 'reasonable basis' for his belief of damage." *Empresa Cubana Del Tabaco*, 111 USPQ2d at 1062; *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

Petitioner must prove its standing in order to be heard on its substantive claims. *Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d at 1760. The evidence establishes Petitioner's interest in the mark CORAL GARDENS based on its ownership and use of the <coralgardens.com> domain name and the use of the

[21] Petitioner's Trial Brief p. 1 (62 TTABVUE 7).

CORAL GARDENS name on the website hosted on that domain name to help drive vacation rentals by U.S. residents at the CORAL GARDENS resort in Turks and Caicos.[22] Moreover, Respondent admits that the parties are direct competitors in connection with the "rental management functions" provided by each.[23] Accordingly, Petitioner has a real interest in this proceeding and a reasonable basis for its belief that it will be damaged by the continued registration of Respondent's mark CORAL GARDENS in the United States. *Wonderbread 5 v. Gilles*, 115 USPQ2d 1296, 1301 (TTAB 2015). Petitioner is therefore not an intermeddler and has established its standing in this cancellation proceeding. *Ritchie v. Simpson*, 50 USPQ2d at 1025; *Lipton Indus., Inc. v. Ralston Purina Co.*, 213 USPQ at 189; *Swiss Grill Ltd. v. Wolf Steel Ltd.*, 115 USPQ2d 2001, 2008 (TTAB 2015).

V. Grounds of Cancellation

There are two identified issues in this proceeding: whether Respondent abandoned the mark CORAL GARDENS by failing to use the mark in the United States in connection with the services listed in the Registration, and whether Respondent committed fraud in obtaining and maintaining the Registration for CORAL GARDENS when it assertedly knew that:

[22] L. Karnehm Decl. ¶¶ 7-8, 12 (61 TTABVUE 4-5); Goldstein Decl. ¶ 3 (48 TTABVUE 2).

[23] Complaint ¶ No. 25 (1 TTABVUE 8) ("Seagate is a direct competitor of Petitioner."); Answer to ¶ No. 25 ("… The Strata admits the allegations contained therein as to rental management functions …") (5 TTABVUE 5). Seagate Management Co. provided common-area property management services to Respondent and rental management services to individual unit owners. R. Lakhani Decl. ¶ 8-10 (49 TTABVUE 4).

i. the signatory on its Application for CORAL GARDENS was not authorized to pursue a U.S. trademark registration on behalf of Respondent;

ii. Petitioner had been using the CORAL GARDENS mark continuously for decades prior in connection with renting condominium units in the Resort located on the Turks and Caicos Islands;

iii. the § 44(e) filing basis for the CORAL GARDENS trademark application in the U.S. was an improper filing basis[24];

iv. it did not have the requisite *bona fide* intent to use the CORAL GARDENS mark, nor did it ever actually use the CORAL GARDENS mark in connection with the services listed in the Application in the United States; and

v. the specimen it submitted in connection with its Section 8 filing did not support evidence of use by Respondent, but rather, consisted of an advertisement by an unrelated third party, and it did not have actual use when it filed its Section 8 Declaration.

We look first to the issue of abandonment. If Respondent has not abandoned its rights in the CORAL GARDENS mark set forth in Registration No. 3546491 we will

[24] Under § 44(e), a foreign applicant whose country of origin is a party to a trademark convention or treaty to which the United States is a party, or extends reciprocal rights to United States nationals, is entitled to obtain a U.S. registration for a mark based on ownership of a registration in its home country without any use of the mark in the United States. A foreign applicant can establish its eligibility for the benefits under § 44 by providing evidence of statutes or agreements establishing reciprocity between the United States and the relevant country. 15 U.S.C. § 1126(b); 5 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 29:10 (5th ed. Sept. 2018).

In its application, Respondent knowingly submitted a copy of its Turks and Caicos registration that was inscribed "This certificate is not for use in legal proceedings or for obtaining registration abroad." *See* B. Rayment Decl. ¶ 32 (53 TTABVUE 11-12); Turks and Caicos Islands Registration No. 13,879, Ex. B to B. Rayment Decl. (53 TTABVUE 34-36); Petitioner's Brief pp. 33-34 (62 TTABVUE 39-40). The Turks and Caicos Islands is not a member of the Paris Convention, *see* list of contracting parties to the Paris Convention at <http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/paris.pdf>, nor does it appear to be a member of any of the other treaties or international agreements to which the

move on to consider the next issue – whether Respondent committed fraud in obtaining the CORAL GARDENS registration.

A. Abandonment

Because the Petition for Cancellation of Respondent's Registration was filed more than five years after the date the Registration issued, the Trademark Act provides limited grounds for cancellation. *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 14 USPQ2d 1390, 1392 (Fed. Cir. 1990); *Wallpaper Mfrs., Ltd. v. Crown Wallcovering Corp.,* 680 F.2d 755, 214 USPQ 327, 332 (CCPA 1982). One basis that continues after the five-year period is abandonment of the registered mark. As provided in § 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), abandonment is a basis for cancellation "at any time." Thus, a § 44(e) registration, like any other registration, may be cancelled on the ground of abandonment of the mark at any time. *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 14 USPQ2d at 1392.

Under § 45 of the Trademark Act, 15 U.S.C. § 1127, a mark is considered "abandoned" if the following occurs:

> (1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall

---

U.S. is a member, that entitle reciprocal treatment. *See* § 1002.03 of the Trademark Manual of Examining Procedure and Appendix B referred to therein. Inasmuch as Respondent's U.S. registration was issued more than 5 years ago, it is only subject to cancellation on limited grounds: if the registered mark becomes the generic name for the goods or services for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 . . . or of subsection (a), (b), or (c) of section 1052 . . . or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used." 15 U.S.C. § 1064(3).

> be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

15 U.S.C. § 1127. A § 44(e) registrant is merely granted a dispensation from actual use prior to registration, but after registration, there is no dispensation of use requirements. If the registrant fails to make use of the registered mark for three years, the presumption of abandonment may be invoked against that registrant, as against any other. *City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1668, 1678 (TTAB 2013); *see also Imperial Tobacco Ltd. v. Philip Morris Inc.*, 14 USPQ2d at 1395.[25]

Because registrations are presumed valid under the law, Petitioner bears the burden of proving a *prima facie* case of abandonment by a preponderance of the evidence. *See On-Line Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000); *Cerveceria Centroamericana S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 13 USPQ2d 1307, 1309 (Fed. Cir. 1989); *Exec. Coach Builders, Inc. v. SPV Coach Co.*, 123 USPQ2d 1175, 1180-81 (TTAB 2016). Introduction of evidence of nonuse of a mark for three consecutive years constitutes a *prima facie* showing of abandonment and triggers a rebuttable presumption that a mark was abandoned without intent to resume use. *Rivard v. Linville*, 133 F.3d 1446, 45 USPQ2d 1374, 1376 (Fed. Cir. 1998); 15 U.S.C. § 1127. If Petitioner presents a *prima facie* case of

[25] Section 45 of the Trademark Act, 15 U.S.C. § 1127, was amended, effective January 1, 1996, to extend the minimum period of nonuse to three consecutive years to establish a prima facie case. *See* Uruguay Round Agreements Act, Pub. L. No. 103-465, Section 521, 108 Stat. 4809, 4981-82 (1994).

abandonment, the burden of production, *i.e.*, going forward, then shifts to Respondent, the party contesting the abandonment, to produce evidence of either (1) use of the mark during the statutory period, or (2) an intent to resume use. *Cerveceria Centroamericana S.A. v. Cerveceria India Inc.,* 13 USPQ2d at 1312. The burden of persuasion, however, always remains with Petitioner, the party asserting abandonment, to prove it by a preponderance of evidence. *Id.* at 1309; *Exec. Coach Builders, Inc. v. SPV Coach Co.*, 123 USPQ2d at 1180.

Respondent's mark CORAL GARDENS is registered for "real estate management of condominium complexes" in Class 36 and for "providing temporary lodging services in the nature of a condominium hotel complex"[26] in Class 43. Petitioner contends that Respondent has never provided those services noting that under Respondent's Bylaws it does not have the authority to provide such services.[27] Respondent counters that to the contrary it "has continuously and extensively used the CORAL GARDENS mark in interstate and/or foreign commerce in connection with both 'real estate management of condominium complexes' and 'temporary lodging services in the nature of a condominium hotel complex.'"[28]

---

[26] While the identification of Respondent's services was amended in the August 22, 2008 Examiner's Amendment to "Real estate management of condominium complexes" in Class 36 and "Providing temporary lodging services in the nature of a [sic] condominium hotel complexes" in Class 43, the services identified in the Registration for Class 43 are "Providing temporary lodging services in the nature of a condominium hotel complex."

[27] Petitioner's Trial Brief p. 18-20 (62 TTABVUE 24-26).

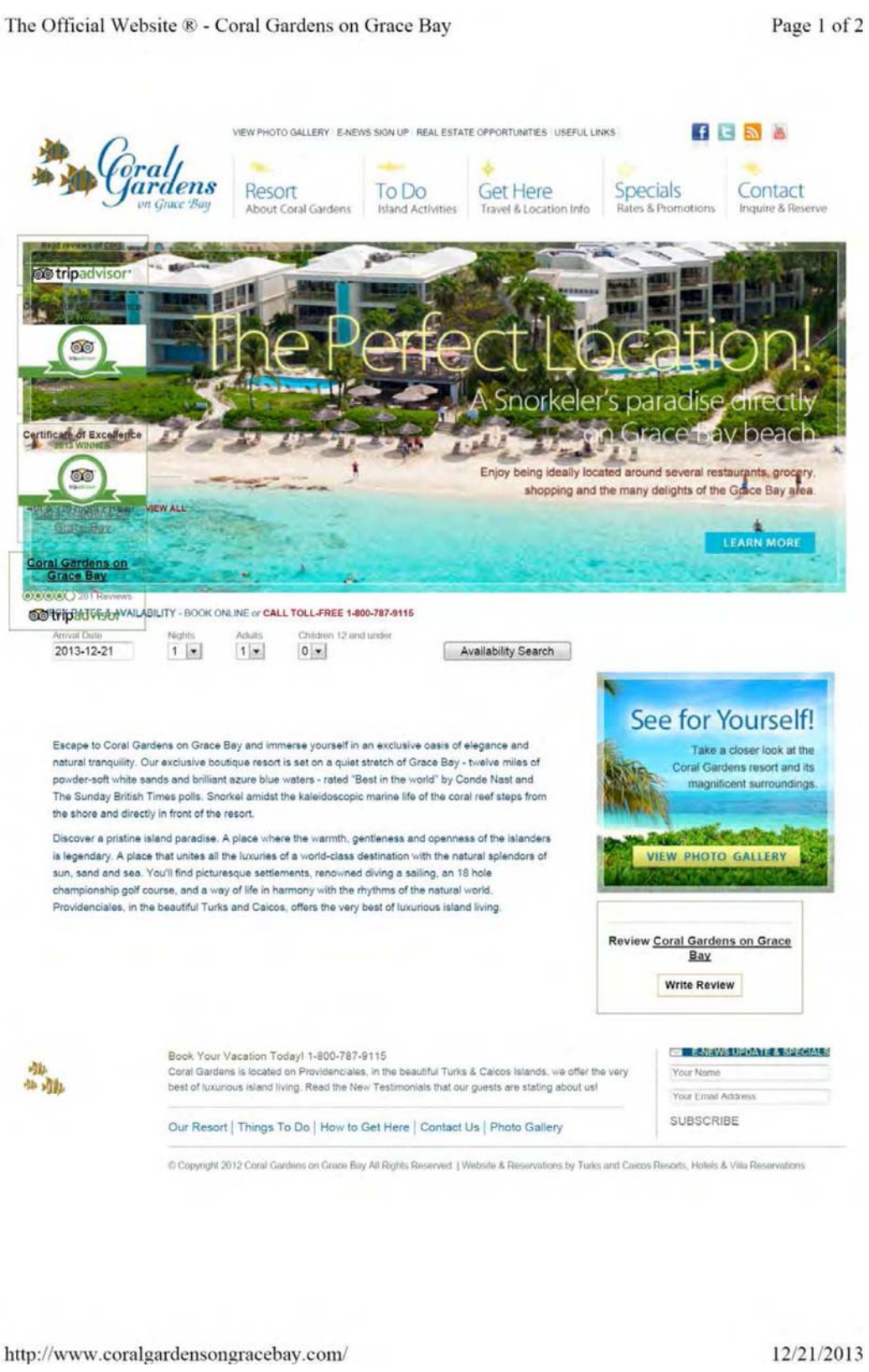
[28] Respondent's Trial Brief p. 25 (63 TTABVUE 32) citing to: B. Rayment Decl. at ¶¶ 9, 24, 26, 28, 29, 31, Ex. J, L (53 TTABVUE 4-5, 8-11, 114-132, 150-161); Respondent's Notice of Reliance, Ex. B, R. Lakhani Disc. Dep. pp. 67:11-71:19, 99:14-19, 106:9-22, 108:5-19; 115:15-119:18 (52 TTABVUE 69-73, 78-80, 82-86); Petitioner's Second Notice of Reliance, Ex. 7, R. Lakhani Disc. Dep. pp. 78:6-81:19 (58 TTABVUE 16).

Apart from the conclusory testimony of Respondent's witness, Brian Rayment, that Respondent has used the CORAL GARDENS mark since the mark was registered in the USPTO,[29] the earliest documentary evidence Respondent submitted to show its use of the CORAL GARDENS mark was the specimen filed in support of its 8 & 15 Declaration of Use filed with the USPTO on December 21, 2013, just over 5 years after the registration date.[30] The specimen (shown below) consists of a screenshot from the website located at <coralgardensongracebay.com>:[31]

[29] B. Rayment Decl. ¶ 21 (53 TTABVUE 7) ("21. Since that time, the Stata [sic] has used and continues to use its CORAL GARDENS mark in commerce in connection with real estate management of condominium complexes and with providing temporary lodging services in the nature of a condominium hotel complex.").

[30] "The acceptance of affidavits under Section 8, however, is an ex parte matter lying solely within the discretion of the Commissioner of [Trademarks] and the exercise of such discretion is manifestly not subject to review of this Board. Apart therefrom, however, the acceptance of a Section 8 affidavit by the USPTO cannot serve to deprive a person who believes he is damaged by the registration in question from exercising his right under Section 14 of the Statute to attempt to cancel the registration in question on any of the grounds specified therein, including, abandonment; and it is, moreover, not controlling on the Board in determining the merits of such a petition on the facts adduced by the parties." *Sinclair v. DEB Chemical Proprietaries Limited*, 137 USPQ 161, 165 (TTAB 1963).

[31] B. Rayment Decl. Exhibit L: December 21, 2013 Specimen (53 TTABVUE 150-161); R. Lakhani Decl. Ex. 3 (49 TTABVUE 45-48). The specimens of use submitted for Classes 36 and 43 in connection with the §§ 8 & 15 Declaration of Use filed by Respondent are identical.



Respondent identified its submission to the USPTO as the "[w]ebsite maintained by

the registrant using the mark for the relevant goods and services."[32] However, on December 21, 2013, the date appearing on the specimen (which is also the date it was submitted to the USPTO), that website was neither owned nor controlled by Respondent, but by Seagate (as discussed more fully below).

According to its Bylaws, Respondent's duties are to "control, manage and administer the Common Property for the benefit of all Proprietors . . . ."[33] Mr. Rayment, Respondent's counsel and main witness, admits that the definition of "Common Property" in the Bylaws does not include trademarks.[34] He further admits that nothing in the Bylaws refers to "trademarks specifically, but [refers to] personal property, which would include trademarks."[35] Thus, Respondent argues that its Bylaws authorize it to do all things reasonable and necessary to control, manage and administer the Coral Gardens Resort, which necessarily includes providing resort

[32] Rayment's Decl. Exhibit L (53 TTABVUE 152-154); Lakhani Decl. Exhibit 3 (49 TTABVUE 45-48)

[33] By-Laws of Respondent (and its predecessor): Proprietors of Strata Plan No. 36 Amended By-Laws dated May 17, 2010 section 3.1.1 (unsigned) attached as Ex. A to B. Rayment Decl. (53 TTABVUE 14-33, 22); White House Ltd. By-Laws dated September 11, 2005 section 2(a) attached as Ex. N (53 TTABVUE 172-180, 173); Strata Plan No. 36 By-Laws dated June 27, 2003 section 3(a) attached as Ex. O (53 TTABVUE 181-194, 186).

[34] B. Rayment Disc. Dep. p. 136:9-12 (51 TTABVUE 15).

[35] Reading sections 3.1.1, 3.1.6 and 3.2.1 of its Bylaws together, Respondent contends they provide for the use of other personal property in connection with the enjoyment of the common property, "[w]hich taken together, gives" Respondent the right of ownership of the trademark CORAL GARDENS. B. Rayment Disc. Dep. pp. 135:11-137:9 (51 TTABVUE 15); *see* sections 3.1.1 ("Control, manage and administer the Common Property for the benefit of all Proprietors;"), 3.1.6 ("Do all things reasonable and necessary for the enforcement of the By-laws and the control, management and administration of the Common Property;") and 3.2.1 ("Purchase, hire or otherwise acquire personal or other property for use by Proprietors in connection with their enjoyment of Common Property;").

management[36] and temporary lodging services for the condominium complex in connection with its CORAL GARDENS mark.[37]

Although section 3.2.1 of the Bylaws provides that Respondent "Purchase, hire or otherwise acquire personal or other property for use by Proprietors in connection with their enjoyment of Common Property," the intent and scope of this language is not clear. Even if Respondent's Bylaws extend to real estate management of a condominium complex and providing temporary lodging services in the nature of a condominium hotel complex, the question that must be decided is whether Respondent provided such services in commerce, including U.S. commerce or commerce between the U.S. and a foreign country.

Beginning in 2011, Seagate began to perform two different roles with respect to the Coral Gardens condominium complex for which it used the CORAL GARDENS name. It provided common-area property management services for Respondent, the condominium's homeowners' association, and separate rental management services to some of the individual unit owners.[38]

Respondent approached Seagate about providing property management services for the common areas of the Coral Gardens resort and on October 1, 2011, entered into a management agreement entitled "Coral Gardens Strata #36 Management

[36] Respondent's Trial Brief pp. 1, 20, 24-25, 32, 41 (63 TTABVUE 8, 27, 31-32, 39, 48). Although Respondent describes part of the services it renders as "providing resort management" services, the services listed in its registration are "real estate management of condominium complexes."

[37] Respondent's Trial Brief pp. 24-25 (63 TTABVUE 31-32).

[38] R. Lakhani Decl. ¶¶ 1, 2 (49 TTABVUE 2).

Agreement" with Seagate for Seagate to provide services for the common property including "maintaining and repairing the common areas of the Condominium, making arrangements for providing utilities for the common areas, and providing staff to manage and maintain the common areas, collect homeowners' association dues, obtain insurance for the common areas, and providing a budget and monthly financial statements for these services."[39] Seagate received compensation directly from Respondent for these services.[40] Notably, that Agreement makes no mention of "temporary lodging services" or "real estate management services" stating that it relates to managing the "Common Property":

> WHEREAS:
>
> (i) The Corporation owns and is responsible for the operation and management of the Common Property on behalf of the Members of the Corporation, and
>
> (ii) The Corporation desires to employ the Management Company to Manage the Common Property[41]. . . .

Additionally, section 3.16 of the Management Contract provides that:

> [Respondent] has approved the Management Company to also serve as the primary Rental Management Company representing various individual owners and has encouraged owners to participate in the Management Company's Rental Operation.[42]

---

[39] R. Lakhani Decl. Ex. 2 (49 TTABVUE 23-36). According to the testimony, Respondent and Seagate entered into Management Agreements for Coral Gardens from 2011 through June 30, 2016. *See* unexecuted copy of Management Agreement dated July 1, 2014 (53 TTABVUE 140-148).

[40] B. Rayment Decl. Ex. H (53 TTABVUE 9, 52-65); R. Lakhani Decl. ¶ 10 (49 TTABVUE 4-5).

[41] R. Lakhani Decl. Ex. 2 (49 TTABVUE 24).

[42] *Id*. at 26.

Notably, nothing in the Management Agreement establishes that Respondent has control over or involvement with the rental or management of the condo units or providing temporary lodging. Neither does the Management Agreement set forth any requirements, obligations or activities for Seagate in connection with the rental or management of the condo units or temporary lodging. Despite that, Respondent contends that it licensed Seagate in the Management Agreement to use the CORAL GARDENS mark in connection with the rental and management services.[43] Contrary to Mr. Rayment's unsupported testimony[44] though, there is no evidence of a written or oral license of the CORAL GARDENS mark to Seagate. Moreover, the Management Agreement is completely silent about the use of the CORAL GARDENS mark in the United States or in commerce between the United States and a foreign country.

Respondent also points to the language in section 12 of the Management Agreement entitled "Intellectual Property Rights" which states that Seagate, *i.e.*, the "Management Company," "understands and agrees that the Corporation owns the 'Coral Gardens' trademark and all rights pertinent thereto, ...":

> The Management Company shall not use the name, trade name, trade mark, service mark, or other identifying logo

[43] Respondent's Trial Brief p. 27 (63 TTABVUE 34).

[44] B. Rayment Decl. ¶ 26 (53 TTABVUE 9): ". . . The <www.coralgardensongracebay.com> website was registered and was maintained by Seagate Management in accordance with the Agreement with the Stata [sic]. . . . Seagate Management was a licensee of Stata's [sic] CORAL GARDENS mark and operated and managed the Coral Gardens condominiums in the Turks and Caicos Islands under the Stata's [sic] direction and control in connection with its real estate management and temporary lodging services of the condominiums. Seagate Management Company's status as manager was extended through July 2016, with the same applicable covenants concerning protection of the Strata's intellectual property."

> or intellectual property right of the Corporation in any manner or for any purpose without the Corporation's prior written approval which shall be in the sole and absolute discretion of the Corporation and/or Committee.
>
> The Management Company understands and agrees that the Corporation owns the "Coral Gardens" trademark and all rights pertinent thereto, including the names "Coral Gardens on Grace Bay" and "Coral Gardens Resort" and the domain names "coralgardens.com" and "coral gargdensongracebay.com". Management Company shall cease use of such trademarks upon the request of the Corporation.[45]

However, the Management Agreement does not define the trademark rights mentioned in the Agreement and does not address Seagate's use of the mark other than to mention Seagate "shall cease use of such trademarks upon the request of the Corporation." Further, Seagate's acknowledgment in a management agreement of Respondent's purported intellectual property rights does not serve to confer such rights upon Respondent or otherwise create rights to which Respondent is not entitled.

More importantly, the work to be provided by Seagate under the Management Agreement was to manage the Common Property in the Turks and Caicos Islands. Section 17 of the Management Agreement entitled Governing Law and Jurisdiction states that the "laws of the Turks and Caicos Islands shall be the governing law of this Agreement . . . ." Therefore, to the extent that any trademark rights are covered under that Agreement they must necessarily be limited to rights provided under the laws of the Turks and Caicos Islands.

[45] B. Rayment Decl. Ex. H (53 TTABVUE 9, 59).

Also in 2011, Seagate entered into contracts with some of the unit owners at Coral Gardens to provide rental management services for their units.[46] Additionally, it purchased all right, title and interest to the website hosted at <coralgardensongracebay.com> used by the prior rental management company to rent out units on behalf of the unit owners. Seagate used the CORAL GARDENS name and the <coralgardensongracebay.com> domain name on behalf of unit owners between 2011 and 2016. Seagate did not operate and manage the Coral Gardens condos under Respondent's direction and control in connection with real estate management and temporary lodging services of the condos. Seagate never requested permission from Respondent to use CORAL GARDENS in connection with the separate rental management services it provided to the unit owners; and Respondent never objected to Seagate's use of CORAL GARDENS nor provided any written approval for such use of CORAL GARDENS by Seagate.[47]

"Though the [management] agreement between Seagate and [Respondent] claims that [Respondent] owns the 'coralgardensongracebay.com' domain name, Seagate used this domain name exclusively for hosting its website promoting its rental management services provided to individual unit owners, and never used it in connection with property management services, or any other services, provided to, or

[46] R. Lakhani Decl. ¶ 8 (49 TTABVUE 4).

[47] R. Lakhani Decl. ¶¶ 13, 14 (49 TTABVUE 5-6).

on behalf of, [Respondent]."[48] Tellingly, Respondent subsequently offered to purchase the website from Seagate, but ultimately rejected Seagate's asking price.[49]

Respondent admits that it had no say in how the unit owners rented their units. The unit owners were free to rent out their condominium units as they wished, whether on their own or by contracting with Seagate, or Petitioner, or any other third party of the unit owner's own choosing.[50] Respondent also admits that the individual unit owners were free to describe their unit in advertisements as "being at Coral Gardens."[51] Mr. Lakhani, an owner and officer of Seagate,[52] confirms that all rental management services that Seagate provided were on behalf of the individual unit owners.[53] Despite the foregoing, Respondent relies on Seagate's use of CORAL GARDENS, maintaining that Seagate was the only third-party it "licensed" to use

[48] R. Lakhani Decl. ¶ 14, 15 (49 TTABVUE 5-6).

[49] R. Lakhani Decl. ¶¶ 15-16, 19 (49 TTABVUE 6-8) ("this website [<coralgardensongrace-bay.com>] was controlled and operated exclusively by Seagate, not Strata 36, and was used solely in connection with the rental management services that Seagate, located in Turks and Caicos, provided to unit owners, which were typically Turks and Caicos corporations, regarding condominium units located in Turks and Caicos."). As Mr. Lahkani observed, the current website [that Respondent now asserts ownership of] hosted at <coralgardensongracebay.com> appears to be a single-page placeholder.

[50] Trial Ex. 1, B. Rayment Disc. Dep. p. 119:6-10, 128:14-16, 129:19-130:4, 135:7-10, 243:19-24 (51 TTABVUE 12-15, 30).

[51] Trial Ex. 1, B. Rayment Disc. Dep. p. 244:22-24. (51 TSDR 30).

[52] Lakhani Decl. ¶ 1 (49 TTABVUE 2); Trial Ex. 1, B. Rayment Disc. Dep. pp. 238:23-239:3 (51 TTABVUE 29).

[53] Lakhani Decl. ¶¶ 8, 13, 21 (49 TTABVUE 4-5, 8) ("At no time did Seagate provide rental management services to Strata 36. Seagate always provided rental management services to individual unit owners.").

the CORAL GARDENS mark in connection with unit rentals and real estate management services.[54]

Respondent contends that it and its "authorized users" advertise and take reservations for "its lodging and resort management services from U.S. customers" citing to the testimony of Messrs. Rayment and Lakhani in support.[55] However, Mr. Rayment's vague testimony fails to identify Respondent's "authorized users" or how they advertised and took reservations for its lodging and resort management services and is not supported by any documentary evidence. Mr. Lakhani's testimony denies that his company was an "authorized user" or "licensee" of Respondent for lodging and resort management services. Indeed, the Management Agreement between Respondent and Seagate does not support that Seagate was a licensee.[56]

Mr. Lakhani testified that his company, Seagate, provided maintenance, upkeep and day-to-day operational services to Respondent pursuant to the Management Agreement. Seagate also provided separate services to the individual unit owners to assist them in renting out their units,[57] including placing ads for Coral Gardens at

---

[54] According to Petitioner, this so-called license "is a fiction that exists only in Rayment's mind." Petitioner's Reply Brf. (64 TTABVUE 8).

[55] Respondent's Trial Brief p. 25 (63 TTABVUE 32).

[56] The Management Agreements between Respondent and Seagate (*see* Ex. H October 1, 2011 Coral Gardens Strata #36 Management Agreement (53 TTABVUE 53-65), Ex. K (53 TTABVUE 140-148); R. Lakhani Decl. Ex. 2 (49 TTABVUE 23-36)) contains language in section 3.16 which says Strata "approve[s] the Management Company [Seagate] to also serve as the primary Rental Management Company representing various individual owners and has encouraged owners to participate in the Management Company's Rental Operation[s]." This language falls short of making Seagate an "authorized user" or "licensee" of the CORAL GARDENS mark.

[57] Ex. B R. Lakhani Disc. Dep. pp. 50:13-16, 60:2-15, Ex. No. 7 (52 TTABVUE 66-67, 114-126).

Grace Bay units on TripAdvisor and Expedia, VRBO[58] and other wholesalers.[59] Respondent could not dictate to unit owners that they use a rental management company nor could it say which rental management company they could use.[60] There is sufficient evidence of record that contradicts Respondent's conclusory and unsupported testimony. Thus, we are unable to conclude that Respondent used the mark CORAL GARDENS based on the unduly vague testimony of its primary witness which is insufficient to establish its use of the mark in commerce for the five years since it was registered in the U.S.

Respondent has not identified "a single document showing a reservation taken by it or its purported authorized users – no email confirmation, receipt, invoice, bank statement, or contract – and does not show a single dollar of rental revenue passing through Respondent's accounts;"[61] nor has Respondent produced evidence showing that any of the rental listings, or the accounts used to post them, were owned or operated by or on behalf of Respondent during the first five years after the issuance of its U.S. registration. Respondent has not produced any evidence showing its management of unit rentals on behalf of the unit owners or that it provided temporary lodging services during the five year time period beginning from its registration date.

[58] As described by Mr. Rayment, VRBO stands for "vacation rental by owner," a homeowners website that can be used to rent condos or homes. Trial Ex. 1, 10/14/15 B. Rayment Disc. Dep. pp. 114:10-117:13, 134:23-135:2 (51 TTABVUE 11, 15).

[59] Ex. R. Lakhani Disc. Dep. pp. 64:7-23, 67:14-68:24, 70:5-71:23, 78:6-21, (52 TTBVUE 68-70, 72-74).

[60] Trial Ex. 1, 10/14/15 B. Rayment Disc. Dep. pp. 129:19-130:4, 135:7-10 (51 TTABVUE 13-15); R. Lakhani Decl. ¶8 (49 TTABVUE 4).

[61] Petitioner's Reply Brf. (64 TTABVUE 7).

Moreover, inasmuch as the condo units are not part of the Coral Gardens "Common Property," Respondent's Bylaws do not authorize Respondent to engage in such activities.[62]

Here, not only is the testimony of Respondent's witness, Mr. Rayment, regarding Respondent's use of the CORAL GARDENS mark in the five years after it was registered conclusory and unsupported by any meaningful documentary evidence, it is contradicted by the testimony of another key trial witness. The testimony "should not be characterized by contradictions, inconsistencies, and indefiniteness but should carry with it conviction of its accuracy and applicability." *B.R. Baker Co. v. Lebow Bros.*, 150 F.2d 580, 66 USPQ 232, 236 (CCPA 1945); *Exec. Coach Builders, Inc. v. SPV Coach Co.*, 123 USPQ2d at 1184; *Nationstar Mortg. LLC v. Ahmad*, 112 USPQ2d 1361, 1372 (TTAB 2014). Other than the vague conclusory testimony of Mr. Rayment lacking in factual detail, there is no evidence of Respondent's use of the mark for the first five years after it received its U.S. Registration.

Proof of non-use of a mark for three consecutive years constitutes *prima facie* evidence of abandonment. 15 U.S.C. § 1127. *See also On-line Careline Inc. v. Am. Online Inc.,* 56 USPQ2d at 1476 ("The party seeking cancellation establishes a prima

[62] Respondent's Trial Brief pp. 24-25 (63 TTABVUE 31-32). Respondent provides no support for its contention that its Bylaws authorize it to "provid[e] resort management and temporary lodging services." Respondent's Trial Brief p. 24 (63 TTABVUE 31-32) citing Rayment Decl. at ¶ 6 (53 TTABVUE 3) (¶ 6 of the Rayment Decl. does not support that Respondent is authorized to provide such services). Respondent is only authorized to purchase or otherwise acquire personal or other property for use by the proprietors. *See* Rayment Decl. Exhibit A May 17, 2010 By-Laws (53 TTABVUE 25) ("3.2 The Corporation may, unless expressly precluded by a vote of a majority of owners: 3.2.1 Purchase, hire or otherwise acquire personal or other property for use by Proprietors in connection with their enjoyment of Common Property . . . .").

facie case of abandonment by showing proof of nonuse for three consecutive years."); *Yazhong Investing Ltd. v. Multi-Media Tech. Ventures, Ltd.*, 126 USPQ2d 1526, 1532 (TTAB 2018). A presumption of abandonment based on three years nonuse may be invoked against a § 44(e) registrant who never begins use of the mark or who discontinues using the mark. *City Nat'l Bank v. OPGI Management GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1668, 1678 (TTAB 2013); *Saddlesprings, Inc. v. Mad Croc Brands, Inc.*, 104 USPQ2d 1948 (TTAB 2012); *see also Imperial Tobacco Ltd. v. Philip Morris Inc.*, 14 USPQ2d at 1395.

B. Conclusion

The vague and indefinite testimony of Mr. Rayment that since the time the CORAL GARDENS mark was registered Respondent "has used and continues to use its CORAL GARDENS mark in commerce"[63] falls short of showing that it used the mark for the services identified in the Registration during the five year period from the December 16, 2008 registration date through the December 21, 2013 filing date of the §§ 8 & 15 Declaration. Respondent's reliance on Seagate's use of the CORAL GARDENS mark to satisfy the use requirement is misplaced. Although nonuse of Respondent's mark for 3 consecutive years is prima facie evidence of abandonment, there is no proof of Respondent's use of the mark in connection with the services recited in the Registration during the first five years from its registration date. Nor

[63] Rayment Decl. ¶ 21 (53 TTABVUE 7). Moreover, the evidence offered by Mr. Rayment from Facebook, Trip Advisor and Expedia provided in Exhibit J (53 TTABVUE 114-132), is dated July 10, 2017 which is outside of the five year period from the date of its CORAL GARDENS registration.

has Respondent established specific activities undertaken during this period of nonuse or special circumstances which negate an intent not to resume use or excuse nonuse as to the services identified in its Registration. Thus, Respondent has abandoned the CORAL GARDENS mark. In view thereof, we need not reach the other grounds for cancellation.[64]

Decision: The Petition for Cancellation is granted, and Registration No. 3546491 will be cancelled in its entirety. Petitioner's remaining claims are dismissed as moot.

[64] "Like the federal courts, the Board has generally used its discretion to decide only those claims necessary to enter judgment and dispose of the case. . . . More specifically, the Board's determination of registrability does not require, in every instance, decision on every pleaded claim." *Multisorb Tech., Inc. v. Pactiv Corp.*, 109 USPQ2d 1170, 1171 (TTAB 2013); *Yazhong Investing Ltd. v. Multi-Media Tech Ventures, Ltd.*, 126 USPQ2d at 1540.