

ESTTA Tracking number: **ESTTA1158005**

Filing date: **09/08/2021**

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

Proceeding	92067794
Party	Plaintiff Joshua S. Schoonover
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Attachments	Notice_Vis-Aids.pdf(637100 bytes)

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

In the Matter of Reg. Nos. 2,207,535 and 3,598,502
Mark: FORUM

Joshua S. Schoonover,)	
)	
Petitioner,)	Cancellation No.: 92067794 (parent)
)	
vs)	
)	Cancellation No. 92069499
The Burton Corporation,)	
)	
Respondent,)	

PETITIONER’S VISUAL AIDS (TBMP § 802.07)

Comes Petitioner, Joshua S. Schoonover, with a copy of its Visual Aids (attached) in accordance with TBMP § 802.07. Petitioner intends to use these visual aids during oral argument scheduled for September 8, 2021 @ 10:00am EST.

Dated: September 8, 2021

Respectfully submitted,

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By: /Joshua S. Schoonover/

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of PETITIONER'S VISUAL AIDS (TBMP § 802.07) has this 8th day of September 2021 been delivered via email only to the below-identified Attorney/Correspondent for the Respondent:

tmip@drm.com

By: Joshua S. Schoonover

Joshua S. Schoonover

Joshua Schoonover (Petitioner)
v.
The Burton Corporation (Respondent)

USPTO, TTAB

Cancellation Proceeding No.: 92067794 (parent); 92069499

Reg. Nos. 2,207,535 and 3,598,502

Mark: FORUM

October 23, 2012

1. **BUR Press Release** “Burton Realigns Its Family Of Brands For Long Term Success”
2. **Transworld Business Interview** w/ Jake Burton
3. **ESPN Article** “Burton announces brand restructuring, Forum to close, Analog out of surf and skate”

1. 27 TTABVUE 95-99
2. 27 TTABVUE 51-76
3. 27 TTABVUE 43-49

Burton Press Release

Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in order to better focus on and invest in Burton.

THE PROGRAM (Foursquare, Forum, Special Blend)

Heritage

Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.

Key Facts

- The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.
- But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.
- Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.
- Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.

Team Update

We will be working with each team rider on an individual exit plan to transition them out of these brands.

Transworld Interview w/ Jake Burton

Title: "Jake Burton On Overhauling Corporate Structure, Closing The Program Brands"

As far as The Program brands, the release says your transitioning out of them. What does that mean? Are you planning on selling them or are you putting those to bed?

We'll probably, to use your words, put them to bed. I don't see us selling them. I think we will retain the trademarks should anything ever develop in the future, but it's part and parcel of the philosophy of looking at what we do best. We have looked at opportunities to target those brands towards specific opportunities that might exist in the marketplace at different levels of distribution or price points and it seems like the message we get from people is "we want Burton." So we've got to be responsive to that.

Do you see launching a different line under Burton to better target The Program customer?

For sure. I think that the Burton brand is pretty encompassing, but this is an opportunity for us to expand our core business as we know it and seize on opportunities that exist.

ESPN Article

Title: "Burton announces brand restructuring, Forum to close, Analog out of surf and skate"

Burton Snowboards announced in a statement Tuesday it is restructuring its company by closing several notable brands and scaling back others to more focused markets.

Most notably, Burton will transition out of its Program brands -- a group Burton purchased in 2004 with the "intent to keep snowboard companies in the hands of snowboarders," according to the statement. The Program includes Forum Snowboards, Special Blend and Foursquare.

Burton spokespeople declined comment when asked by ESPN.com if the company has plans to sell the Program brands rather than shutter them. But in [an interview](#) with TransWorld Business on Tuesday shortly after the news broke, Jake Burton said, "We'll probably ... put them to bed. I don't see us selling them. I think we will retain the trademarks should anything ever develop in the future."

Burton's Mark Wakeling Confirmed This Intent

Cross Examination of Mark D. Wakeling

58 TTABVUE 34

8 Q And then it gives Jake Burton's answer where he
9 says we will probably, to use your words, put them to bed.
10 I don't see us selling them. I think we will retain the
11 trademarks should anything ever develop in the future. Did
12 I read that correctly?

13 A Correct.

14 Q And was that in fact Jake Burton's position at the
15 time?

16 A That was the position I discussed with him at the
17 time.

18 Q So you actually talked to him about this press
19 release?

20 A Yes, not this exact press release, but I believe
21 we -- I can't say for certain we had a conversation about
22 it, but I had several conversations with people in the
23 building and that was -- that was the opinion, that we
24 would keep the trademarks should anything ever develop in
25 the future.

Actions in Furtherance

1. closing the FORUM headquarters in California
2. laying off employees working the FORUM brand
3. terminating sponsor deals under the FORUM marks
4. ceasing marketing efforts under the FORUM marks on social media, including Facebook, Instagram, and Twitter
5. discontinuing the marketing of FORUM product at trade shows
6. ceasing the manufacture of FORUM product until a token revival in 2018
7. substantially discounting closeout FORUM product as high as 83% off wholesale price to wind down the FORUM brand

**See Petitioner's Trial Brief for citations: 61 TTABVue 19-20*

Abandonment

15 U.S.C. 1127

A mark shall be deemed to be “abandoned” if either of 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 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.

Discontinued

At least Testimony of Mark D. Wakeling

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3 Q So did Burton in fact transition out of all of
4 those brands, Foursquare, Forum and Special Blend, it
5 wasn't just the Forum brand; is that correct?

6 A At that point, we stopped producing and selling
7 those products for the time being, yes.

Intent not to Resume Use

- 1. BUR Press Release** “Burton Realigns Its Family Of Brands For Long Term Success”
- 2. Transworld Business Interview** w/ Jake Burton
- 3. ESPN Article** “Burton announces brand restructuring, Forum to close, Analog out of surf and skate”
- 4. Testimony of Mark Wakeling**

1. 27 TTABVUE 95-99
2. 27 TTABVUE 51-76
3. 27 TTABVUE 43-49
4. 58 TTABVUE 34

Result

Respondent, The Burton Corporation, discontinued use with intent to not resume use, as established by the evidence in the record.

Moreover, Respondent merely intended to reserve the trademark registrations subject to this proceeding “should anything ever develop in the future”