THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Oral Hearing: November 25, 2025 Mailed: March 10, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Zuffa, LLC
v.
Byron Belin

Cancellation No. 92077633

John L. Krieger and Michael N. Feder of Dickinson Wright PLLC for:
Zuffa, LLC

Jeremy T. Katz of Hall Griffin LLP for:
Byron Belin

Before Wellington, Allard, and Casagrande,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Respondent, Byron Belin, owns a registration on the Principal Register for the standard character mark BMF in connection with the following services in Class 41:

> Entertainment media production services for motion pictures, television and Internet; entertainment services in the nature of a non-fiction television programming series on topics relating to family stories told by family members to preserve their heritage; entertainment services in the nature of organizing social entertainment events; entertainment services in the nature of presenting live musical performances; entertainment services in the nature of live musical performances and musical performances featuring prerecorded vocal and instrumental performances viewed on a big screen; entertainment services in the nature of fiction and

> non-fiction television programming series on topics relating to family stories, drug empires, gangs, organizing social entertainment, multimedia content, and day to day activities of self, friends, and family; entertainment services, namely, displaying a series of films; entertainment services, namely, multimedia production services; entertainment, namely, live performances by musical bands; multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films; providing entertainment information via a website; providing a website featuring information in the field of music and entertainment.[1]

Petitioner, Zuffa, LLC, seeks cancellation of Respondent's registration, asserting claims of non-use in commerce as of the statement of use filing date, abandonment, a lack of a bona fide intent to use the mark as of the application filing date, and fraud upon the USPTO.[2]

Petitioner alleges that it "has been damaged and will continue to be damaged by the [Respondent's] continued registration" because it filed an application to register the mark BMF for "entertainment services, namely, live stage shows and performances featuring sports and mixed martial arts; entertainment services, namely, providing online computer games, video games and electronic games;

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[1] Registration No. 6002970, issued March 3, 2020 and maturing from an application originally filed base on an intent to use the mark in commerce. In order to maintain the registration, a Section 8 declaration of use and/or excusable nonuse was due on March 3, 2026; Office records currently do not reflect that such a declaration has been filed. However, and for an additional fee, the owner can file within a 6-month grace period that ends on September 3, 2026.

We further note, and relevant to this proceeding, that Respondent, as an applicant at the time, received three extensions of time to file a Statement of Use (SOU), ultimately extending the expiration date for filing an SOU to January 30, 2020. Respondent filed its SOU on January 15, 2020, asserting first use of the mark anywhere on October 24, 2017 and first use in commerce on January 10, 2017. Respondent filed an SOU on January 15, 2020, claiming first use in commerce on January 10, 2020.

[2] 1 TTABVUE (Petition for Cancellation).

providing information, news and commentary in the field of sports and mixed martial arts," in Class 41, and the application has been refused by the Office based on a likelihood of confusion with Respondent's registered mark.[3]

Respondent, in his answer, denies the salient allegations of the Petition to Cancel.[4]

The proceeding has been fully briefed. On November 25, 2025, an oral hearing was held and attending by the parties.

I. The Record and Evidentiary Issues

The record comprises the pleadings and the file of Respondent's registration under Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b). The parties submitted evidence during their assigned trial periods.

The Board has carefully reviewed all evidentiary submissions, and presumes the parties' familiarity therewith. Relevant evidence is discussed only where necessary throughout this opinion. *See QuikTrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1036 (Fed. Cir. 2021) (Board not obliged to expressly discuss every piece of evidence); *In re Miracle Tuesday LLC*, 695 F.3d 1339, 1348 (Fed. Cir. 2012) ("[T]he mere fact that the Board did not recite all of the evidence it considered does not mean the

[3] 1 TTABVUE 3 (Pet. to Cancel ¶¶ 2-3), referencing its application Serial No. 88613032, filed on September 11, 2019.

[4] 4 TTABVUE (Answer). Respondent also asserted ten "affirmative defenses," but numbers 1-7 and 10 were stricken pursuant to a Board order. 13 TTABVUE. Respondent's affirmative defense number 8 merely asserts there is no likelihood of confusion between the parties' marks and number 9 alleges Petitioner will not be damaged by Respondent's continued registration of its mark. Respondent did not pursue these putative affirmative defenses at trial and, accordingly, they are forfeited.

evidence was not, in fact, reviewed."); *see also Plant Genetic Sys., N.V. v. DeKalb Genetics Corp.*, 315 F.3d 1335, 1343 (Fed. Cir. 2003) ("We presume that a fact finder reviews all the evidence presented unless he explicitly expresses otherwise.").

Petitioner has objected to certain exhibits submitted with Respondent's testimonial declaration and to the entirety of the testimonial declaration of Laquita Dedmon.[5] Respondent, in turn, raised objections to various certain paragraphs of the testimonial declaration of Petitioner's witness, Dmetri Culkar, as well as exhibits submitted with that declaration.[6]

We take the following approach in this case to the parties' objections:

> Because a cancellation proceeding is akin to 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. As necessary and appropriate, we will point out any limitations in the evidence or otherwise note that we cannot rely on the evidence in the manner sought. We have considered all of the testimony and evidence introduced into the record. In doing so, we have kept in mind the various objections the parties have raised and we have accorded whatever probative value the subject testimony and evidence merit.

Peterson v. Awshucks SC, LLC, No. 92066957, 2020 TTAB LEXIS 520, at *11-12 (citations omitted). For example, hearsay objections like those raised by Respondent are generally unnecessary in cases before the Board because, as distinguished from jury trials, there is no risk of a juror being unduly swayed by hearsay statements. Petitioner has also raised objections based on the poor image quality of certain

[5] 53 TTABVUE 50-63 (Petitioner's objections), objecting to Belin Declaration Exs. 3-5, 7-8, 12, 19-20, 22 (48 TTABVUE) and Dedmon Declaration (49 TTABVUE).

[6] 63 TTABVUE 35-42 (Respondent's objections), objecting to Culkar Declaration ¶¶ 5 7-9, 11-14,16-20, 22-23, and 26, and Exs. 4-9, 11-12.

exhibits. We will address those objections below if, in our analysis of the case, we deem those documents potentially pertinent.

In sum, the parties' evidentiary objections are discussed only when necessary, including what weight, if any, is accorded to the objected-to evidence.

II. Petitioner Is Entitled to Bring This Cancellation

In every inter partes case, the plaintiff must establish its entitlement to have invoked the statutory proceeding it filed. In a cancellation proceeding, a party in the position of petitioner may petition to cancel the respondent's registered mark where such action is within the zone of interests protected by the statute, 15 U.S.C. § 1064, and the petitioner's reasonable belief in damage is proximately caused by continued registration of the respondent's mark. *Curtin v. United Trademark Holdings, Inc.*, 137 F.4th 1359, 1364 (Fed. Cir. 2025); *see also Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020).

Thus, to satisfy its entitlement to a cause of action, the plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute; and (ii) proximate causation. *Corcamore,* 978 F.3d 1303 (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 120-37 (2014)); *id.* at 1305 (applying *Lexmark* to inter partes TTAB cases). Demonstrating a real interest in cancelling the registration of a mark satisfies the zone-of-interests requirement, and demonstrating a reasonable belief in damage by the continued registration of a mark demonstrates damage proximately caused by registration of the mark. *Id.* at 1305-06.

Here, there is no dispute and the record confirms Petitioner's allegation that it filed an application to register the mark BMF on September 11, 2019, and that a USPTO Office Action was issued refusing registration of the mark under Section 2(d) (likelihood of confusion) based on the registration that Petitioner seeks to cancel through this proceeding.[7] Petitioner's application was suspended as a result of this proceeding. The fact that Petitioner's application is effectively blocked by the challenged registration is a sufficient basis to bring the claims presented in this proceeding. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1377 (Fed. Cir. 2012); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000).

We note that Respondent argues that "Petitioner has otherwise failed to submit any other admissible evidence demonstrating post-2019 use or intent to use the mark," since filing its application and that "any three-year period of non-use would implicate Petitioner's intent to abandon and thus a failure by Petitioner to maintain its interest throughout the proceeding."[8] This argument is not persuasive as we note that Petitioner's application has been in "suspension" status since July 24, 2021 based on the outcome of this proceeding. Thus, no further prosecution action with regard to Petitioner's application has been necessary or possible since that date.

[7] 44 TTABVUE; Culkar Dec. Exs. 1-2 (copies of Petitioner's application and USPTO Office Action refusing registration of the BMF mark).

[8] 63 TTABVUE 14.

III. Respondent's Nonuse of Mark

Under Section 1(a) of the Trademark Act, a mark may not be registered unless it is "used in commerce." 15 U.S.C. § 1051(a). Section 45 of the Trademark Act defines "use in commerce" with respect to services as follows:

> The term "use in commerce" means the bona fide use of a mark in the ordinary course of trade ... (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

15 U.S.C. § 1127. In addition, "[t]he word 'commerce' means all commerce which may lawfully be regulated by Congress." *Id.*

Thus, as a prerequisite to registration, a service mark "must be actually used in conjunction with the services described in the application for the mark," and, more specifically, "advertisement and actual use of the mark in commerce are required." *Aycock Eng'g Inc. v. Airflite Inc.*, 560 F.3d 1350, 1360 (Fed. Cir. 2009); *see also Intermed Commc'ns, Inc. v. Chaney*, 1977 TTAB LEXIS 171, at *23-24 ("The statute requires not only the display of the mark in the sale or advertising of services but also the rendition of those services in order to constitute use of the service mark in commerce.").

In order to prevail on its nonuse claim in this cancellation proceeding, Petitioner must prove by a preponderance of the evidence that Respondent made no use of his registered mark within the deadline for filing the statement of use as extended, i.e.,

no later than until January 30, 2020.[9] *See Embarcadero Techs., Inc. v. Delphix Corp.*, No. 91197762, 2016 TTAB LEXIS 11, at *23. In order to meet this burden, Petitioner may rely on indirect evidence from which reasonable and appropriate inferences can be drawn. *See Cerveceria Centroamericana v. Cerveceria India, Inc.*, 892 F.2d 1021, 1024-25 (Fed. Cir. 1989) ("Especially when a party must prove a negative, as in proving abandonment through nonuse, without resort to proper inferences the burdened party could be faced with an insurmountable task.").

A. Petitioner's Argument and Evidence

Petitioner maintains that "the evidence of record shows [Respondent] did not use the BMF Mark in commerce in connection with rendering [any of the services listed in Respondent's registration] as of the final Statement of Use deadline." In making this claim, Petitioner breaks out each the services as they are listed in the registration and separated by semicolons, as follows:[10]

1. Entertainment media production services for motion pictures, television and Internet;

2. Entertainment services in the nature of a non-fiction television programming series on topics relating to family stories told by family members to preserve their heritage;

[9] *See supra*, fn.1. We note that, in the Petition to Cancel, Petitioner "alleges [that Respondent] has never used [Respondent's mark] in interstate commerce." 1 TTABVUE; Pet. to Cancel ¶ 38. Prior to trial, the Board clarified the appropriate timing for a nonuse claim in this case was "as of the expiration of its time to file a statement of use." 37 TTABVUE 20. Accordingly, "we deem Petitioner's allegation of nonuse to pertain to [the deadline for filing the SOU," and, here, that is January 30, 2020. *Ruifei (Shenzhen) Smart Tech. Co. v. Shenzhen Chengyan Sci. & Tech. Co.*, No. 92077931, 2023 TTAB LEXIS 3, at *4 n.2.

[10] Semicolons are generally be used by the USPTO to separate distinct categories of goods or services within a single class. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") Section 1402.01(a) (Nov. 2025).

3. Entertainment services in the nature of organizing social entertainment events;

4. Entertainment services in the nature of presenting live musical performances;

5. Entertainment services in the nature of live musical performances and musical performances featuring prerecorded vocal and instrumental performances viewed on a big screen;

6. Entertainment services in the nature of fiction and non-fiction television programming series on topics relating to family stories, drug empires, gangs, organizing social entertainment, multimedia content, and day to day activities of self, friends, and family;

7. Entertainment services, namely, displaying a series of films;

8. Entertainment services, namely, multimedia production services;

9. Entertainment, namely, live performances by musical bands;

10. Multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films;

11. Providing entertainment information via a website;

12. Providing a website featuring information in the field of music and entertainment.

Petitioner contends that Respondent's "own responses to documents requests and deposition testimony reveal that: … [Respondent] had no use in commerce of the BMF Mark with all the services listed … as of the final deadline to file Statement of Use (January 30, 2020)."[11] In terms of testimony, Petitioner notes that Respondent "identified himself as the person most knowledgeable about the facts and circumstances related to his use of the BMF Mark in commerce,"[12] but in the

[11] 53 TTABVUE 15.

[12] 53 TTABVUE 18 (citing to 45 TTABVUE 14, Response to Interrog. No. 3).

discovery deposition taken of Respondent, in March of 2024, Respondent also testified had no recollection of his use of the BMF mark for the relevant time:[13]

> Q. Mr. Belin, my question to you is, were you using the BMF mark with regard to all 12 services listed in the paragraph above when you signed this declaration on January of 2020?
> A. I don't recall.

During the same deposition, when Petitioner's counsel delved into Respondent's advertising and first use of the mark in connection with each of the above twelve services listed in the registration, Respondent deflected and testified that he "could not recall" or that related materials were in the hands of his attorney. For example:[14]

> Q. Printed materials to advertise BMF services. What kinds of printed materials do you have?
> A. When you're referring to print materials, what are you referring to print materials? That's vague.
> Q. You said you had printed materials. I'm asking you what they were?
> A. My attorney has copies of everything that we printed for advertising.
> Q. So you don't recall what kinds of things they were?
> A. My attorney has a copy of all that.
> Q. Okay. So did you have any kind of flyers that you printed?
> A. My attorney has all that. And I'm pretty sure they provided you all with some of it -- all of it.

The following testimony is also indicative of Respondent's testimony regarding first use of his mark:[15]

> Q. All right. My next line of questions is going to be about when you first sold your services under the BMF mark. Do you recall when you first sold services under the BMF mark for production of motion pictures, television, and internet?
> A. I don't recall.
> Q. I'm sorry, what was your answer?

[13] 45 TTABVUE 496 (Belin Disc. Dep. 103:7-11).

[14] 45 TTABVUE 469 (Belin Disc. Dep. 76:8-24).

[15] 45 TTABVUE 471-73 (Belin Disc. Dep. 78:11-80:11).

A. I don't recall.
Q. Okay. Do you recall if any of those services -- I'm sorry, strike that. Do you recall if all of those services were rendered by you or if you hired someone else to do it?
A. Some of it was hired by me. Okay, now which services are we referring to?
Q. We're talking about production services for motion pictures, television, and internet.
A. I don't -- I can't recall.
Q. Okay. Do you recall if you provided services for nonfiction television programming series on the topics of family stories told by family members to preserve their heritage or if you hired that out?
A. My attorney has all that information.
Q. Okay. So your answer is you're relying on the documents produced in the case; is that right?
A. What was your question?
Q. Okay. My first question was, in providing the services in the nature of nonfiction television programming series related to family stories told by family members, did you provide those services under the BMF mark or did you hire it out?
A. My attorney have [sic] all that information.
Q. Okay. And if we go through each one of these services, is your answer going to be the same, that your attorney has the information?
A. I can't say what my answer is going to be until we go through them.
Q. All right. So entertainment services in the nature of organizing social entertainment events, were you providing these services or were you hiring it out?
A. The attorney has it.
Q. And do you recall when you first sold those 2 services under the BMF mark?
A. I don't recall. The attorney has it.
Q. All right. Would your answer be the same for those two questions, for the next, services for live musical performances?
A. What is your question for live musical?
Q. Okay. So my first question is, do you recall when you first sold services under the BMF mark for live musical performances?
A. I can't recall that.[16]

[16] We note that Mr. Belin continued to provide essentially the same responses to questions regarding the remaining listed services in the registration, such as "I don't recall" or "the attorney has that information there." *See* 45 TTABVUE 473-478; Belin Disc. Dep. 80:12-85:7.

Petitioner characterizes Respondent's testimony regarding use of his mark before January 30, 2020 as "unsubstantiated general statements" and "should be given no weight as it is vague and uncorroborated."[17] Specifically, Respondent's "self-serving statement that he marketed events and sold services using the BMF Mark since at least 2017 … by promoting music and live stage performances" is belied by the fact that his "only specific reference to a musical performance … occurred in December 2023 where 'BMF sponsored live events at a cigar lounge.'"[18]

Petitioner also relies on Respondent's lack of production of documents in response to its discovery requests, arguing that Respondent "has not admitted into evidence any records showing sales of these services, even though [Petitioner] specifically sought all documents sufficient to show sales information for the [services listed in the registration], because there are none."[19] Respondent also testified that he has no monthly financial reports for sales involving the BMF mark in connection with the involved services.[20] Petitioner further notes that "the sole documentary evidence of any 'invoices' produced by Belin are the 'Sales Receipt' and 'Payment Receipt' … that

[17] 53 TTABVUE 20.

[18] 53 TTABVUE 20; Petitioner refers to Respondent's testimony at 48 TTABVUE, Belin Decl. ¶¶ 2, 10, and 38 and Ex. 19).

[19] 53 TTABVUE 19-20. Petitioner refers, in particular, to its Respondent's supplemental response to a Petitioner's request for production No. 5 (at 45 TTABVUE 725-726).

[20] 45 TTABVUE 544-546 (Belin Disc. Dep. 151:18-153:7).

Belin admits were created by the buyer of the goods Belin allegedly sold."[21] The "sales receipt" and "payment receipt" appear as follows:[22]

BMF
424 Main Street
Texarkana, TX 75501

Sales Receipt

NUMBER # 67
DATE:
DUE DATE:

TO:

HETA HD Films & Visuals T. Jamison - Owner

DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
Purchase of $250,000 Television Grade Prop Money	1	$450.00	$450.00*
Purchase of 6 Prop Guns	1	$150.00	$150.00

*Indicate non-taxable item

SUBTOTAL	$600.00
TOTAL	$600.00

Thank you for your business!

PAYMENT INFO

Sale Date December 18, 2019

-and-

[21] 53 TTABVUE 19. Petitioner refers to Respondent's testimony and (objected-to) materials located at 48 TTABVUE 6, 69-70 (Belin Dec. ¶ 15 and Ex. 8). We note that the registration identifies no goods, only services.

[22] 48 TTABVUE 69-70 (Belin Dec. Ex. 8). Respondent testified that Exhibit 8 is a "true and correct copy of an invoice (Sales Receipt) dated December 18, 2019, and a Payment Receipt for same … . The buyer, HeataHD Visuals (principal, Trevon Jamison) is a videographer who rents video and recording equipment and props — including the prop money referenced in [Exhibit 8]." 48 TTABVUE 6 (Belin Dec. ¶ 15).

Payment receipt

Invoice #1

for HeataHD Visuals
Paid on Dec 18, 2019

Invoice
United States

Hi HeataHD Visuals,

Here's your payment receipt for Invoice #1, for $600.00 USD.

You can always view your receipt online, at:
https://link.waveapps.com/5qt5kw-zr8ngb

If you have any questions, please let us know.

Thanks,
HeataHD Visuals

Payment Amount: **$600.00**

FOR BMF PROP MONEY.[23]

Here, again, Petitioner points out that Respondent identified himself as the person most knowledgeable about his prior use in commerce including the facts and circumstances regarding "sales, license, or subscription of each of Respondent's Services as detailed in the federal registration in connection with" Respondent's BMF mark.[24]

[23] 48 TTABVUE 70.

[24] 45 TTABVUE 14 (Respondent's responses to Interrog. Nos. 3-4).

B. Respondent's Argument and Evidence

In contending that he used his BMF mark prior to January 30, 2020 in connection with the services listed in his registration, Respondent also points to his testimony and materials that are of record.[25] We address some of Respondent's key contentions and the relied-upon evidentiary materials.

We first address Respondent contention that "[a]s an example of early use, on or about October 24, 2017, [Respondent] hired John D. Muller to provide photographer and videographer services for filming BMF The Series."[26] Respondent cites to his own testimony claiming that an exhibit submitted is "a copy of the executed Confidentiality and Non-Disclosure Agreement I had Mr. Muller sign in connection with his retention."[27] However, here, we sustain Petitioner's objection to this document inasmuch as the exhibit contains illegible wording. Simply put, it is impossible way to read the provisions within the putative agreement. Moreover, it appears to be signed by a single party.

Respondent also argues that "[i]n late 2017 to early 2018, [Respondent] hired Laquita Dedmon to assist in writing the script for BMF The Series" and that "[i]n Summer of 2018, [Respondent] started hiring actors and other service providers, who signed nondisclosure agreements, and took part in the creation and publication" of

[25] 63 TTABVUE 19-25.

[26] 63 TTABUVE 19.

[27] 50 TTABVUE 5, 36 (Belin Dec. ¶ 11, and Ex. 5).

the same series.[28] The document Respondent attached to support his "hiring" of Ms. Dedmon merely consists of an email cover page from her followed by five pages of dialogue or script[29] As to the non-disclosure agreements and actor release forms, these only help show, at best, that Respondent was possibly preparing a production involving actors. The problem, however, is that there is no indication from this evidence that any production or project involving services listed in the registration actually materialized. There is no testimony from any of these actors that they ever participated or were engaged in any of the services listed in the registration. *See, e.g.*, *Aycock Eng'g*, 560 F.3d at 1360 ("[P]reparations to use a mark in commerce are insufficient to constitute use in commerce. Rather, the mark must be actually used in conjunction with the services described in the application for the mark.").

Respondent further claims that he "caused to be published a promotional video for the BMF The Series on December 16, 2019 on the BMF The Series YouTube Channel" and that a "first episode was published on Jan 9, 2020."[30] Respondent

[28] 63 TTABUVE 21. Respondent cites to his testimony (at 50 TTABVUE 5, Belin Dec. ¶¶ 12-13, Exs. 6-7).

[29] Respondent also submitted an **undated** testimonial declaration from "Laquita Dedom" (sic) who averred that she "was employed by [Respondent] to write a script for a project called BMF The Series from 2017 through 2018." 49 TTABVUE. It is curious that a person would execute a declaration, with the declarant's surname so obviously misspelled, including in the title of the declaration and at the signature line. In any event, because the declaration is not dated, we have not considered it. *See* 28 U.S.C. § 1746 (requiring date of execution of declaration); *see also Flovac, Inc. v. Airvac, Inc.*, 817 F.3d 849, 854 (1st Cir. 2016) ("an undated declaration … does not comport with statutory requirements") (citations omitted). Also, and in view thereof, Petitioner's objection to the declaration on the basis that "Laquita Dedmon was never disclosed as a potential witness in Belin's initial disclosures, supplemental disclosures, responses to written discovery, or during the discovery period" and was only identified as "a potential witness … for the first time in [the] notice of reliance filed on July 28, 2024" (53 TTABVUE 61) is moot.

[30] 63 TTABVUE 24; citing to Belin Dec. ¶ 14 (at 50 TTABVUE 4-5).

provided website addresses for the putative promotional video and first episode, and Petitioner acknowledges that Respondent's "activities" include "one short film video (entitled 'Bmf The Series (Part 1)'), and a 44 second promotional video for the short film (entitled 'BMF The Series (Short Film)') comprised of a montage of still images."[31] However, a copy of the actual promotional video and "first episode" were not introduced.[32]

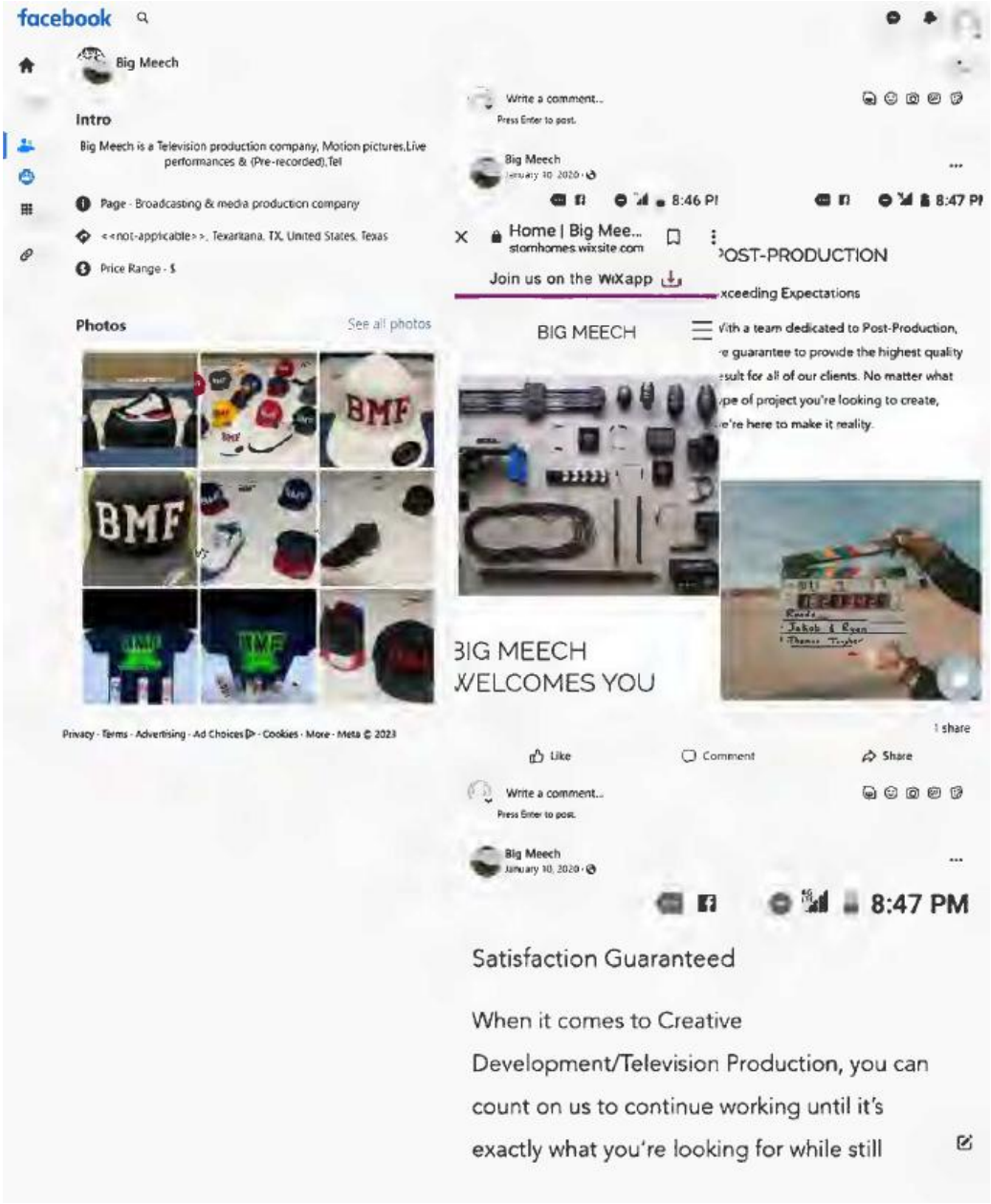
Fourth, Respondent relies on screenshots from his Facebook pages as evidence of his use of the BMF mark before January 30, 2020. Specifically, he contends that "[s]ince December 2019, [Respondent] has used the BMF Mark in commerce through the webpage https://www.facebook.com/BMFTheSeries" and submitted copies of "posts from that page from December 2019 (first promoting The BMF Series) through March 2023."[33] Respondent also asserts that he "has used the BMF Mark in commerce through the webpage https://www.facebook.com/BMFSeries … [including] posts from that page from January 10, 2019 (first promoting The BMF Series)

[31] 53 TTABVUE 26.

[32] Providing only a website address or hyperlink to video or any other Internet content is insufficient to make such content of record. Trademark Rule 2.122(e)(2), 37 C.F.R. § 2.122(e)(2). *TV Azteca, S.A.B. de C.V. v. Martin*, No. 92068042, 2018 TTAB LEXIS 417, at *11 n.15 ("The Board does not accept Internet links as a substitute for submission of a copy of the resulting page.") (citing *In re Olin Corp.*, No. 86651083, 2017 TTAB LEXIS 337, at *15 n.15 ("Because the information displayed at a link's Internet address can be changed or deleted, merely providing a link to a website is insufficient to make information from that site of record.")). Therefore, the information in the referenced videos is not of record.

[33] 63 TTABVUE 24; referencing testimony at 50 TTABVUE 60, 71-214 (Belin Dec. ¶17, and Ex. 9).

through March 2023."[34] The following is one excerpted screenshot (that appears to have a January 10, 2020 date):[35]



[34] 63 TTABVUE 24; referencing testimony at 50 TTABVUE (Belin Dec. ¶18, and Ex. 9).

[35] 50 TTABVUE 271.

Finally, Respondent points to the same "sales receipt" and "invoice" (discussed and reproduced above) for the sale of "prop money" to HeataHD Visuals. Respondent argues that these help evidence Respondent's services and that "[s]elling a product under the auspices of BMF Promotions is undeniably use of the mark in commerce."[36]

C. Nonuse Analysis and Conclusion

In our analysis as to whether Petitioner has met its burden of proving the nonuse ground for cancellation by a preponderance of the evidence, we keep in mind that we need not have direct evidence to "prove a negative," but may rely upon properly drawn inferences that are based the evidence before us. *See Cerveceria Centroamericana*, 892 F.2d 1024-25 ("Especially when a party must prove a negative, as in proving abandonment through nonuse, without resort to proper inferences the burdened party could be faced with an insurmountable task."). If an inference is drawn from the record, it must "have an adequate foundation in proven fact" and not be based on "pure speculation." *Id.*

Here, we find it reasonable and proper to drawn inferences from Respondent's evasive and vague testimony regarding his use of the BMF mark in commerce prior to January 30, 2020 in connection with any of the services listed in his registration. This proceeding was instituted in July of 2021, and Petitioner's deposition of Respondent was taken in March of 2024. As recounted above and despite this relatively short time period, when Respondent was asked if he was "using the BMF mark with regard to all 12 services listed … on January of 2020," he replied "I don't

[36] 63 TTABVUE 25.

recall." Similarly, when questioned about any advertisement or use of the mark at that time in connection with each of the twelve listed services, he deflected by either saying "I don't recall" or stating that his attorney has all of the necessary information.

When presented with testimony like that provided by Respondent regarding his prior purported use of a mark in connection with the services listed in the registration, the Board has "express[ed] our grave concerns" about the offering party's credibility. *Nationstar Mortg. LLC v. Ahmad*, No. 91177036, 2014 TTAB LEXIS 350, *28. In *Nationstar*, the Board was "particularly struck by [the party's] evasiveness and his failure to respond directly to straightforward questions by" the opposing counsel. *Id.* We, too, upon reading the transcript for the discovery deposition of Respondent, particularly the portions identified above, are left with an "extreme skepticism regarding the credibility" of Respondent because he, like the applicant in *Nationstar*, professed not to know basic information that a person in his position would normally be expected to know. *Id.* at *37. Thus, we ultimately find Respondent's testimony to be "not at all credible." *Id.* at 38; *see also, e.g.*, *Araujo v. Framboise Holdings Inc.*, 99 F.4th 1377, 1380-81 (Fed. Cir. 2024) (party's failure to offer clear and believable testimony necessary to establish a party's prior use of mark); *Kohler Co. v. Baldwin Hardware Corp.*, No. 92041434, 2007 TTAB LEXIS 3, at *23 (testimony should not be "characterized by contradictions, inconsistencies and indefiniteness," but rather should carry with it "conviction of its accuracy and applicability") (citing *B.R. Baker Co. v. Lebow Bros.*, 150 F.2d 580, 583 (CCPA 1945) (further citation omitted).

Adverse inferences may also be drawn from Respondent's responses to Petitioner's discovery requests, and the lack thereof, in connection with use of the BMF mark in commerce by Respondent prior to January 30, 2020. Again, as Petitioner points out, the only sales documents produced by Respondent that precede this date are copies of a "sales receipt" and a "payment receipt" (reproduced above) that purport to show a single sale or rental of prop money and a prop gun. These documents, however, have serious flaws and ultimately do not persuade us that Respondent was actually rendering any of the listed services on or before January 30, 2020. In particular, Respondent testified that these documents were actually prepared by the purported purchaser, HeataHD Visuals;[37] however, the "sales receipt" has "BMF" on the letterhead and says "To: Heata HD Films…" in the body of the receipt. Similarly, as to the "Payment receipt," this states at the top "for HeataHD Visuals" and begins "Hi HeataHD Visuals"; however, it is signed "Thanks, HeataHD Visuals."[38] Respondent also admitted that he handwrote the wording "For BMF Prop Money" at the bottom of the "Payment receipt".[39] Indeed these documents raise more questions than they answer and do not corroborate Respondent's contention that he was providing any of the services recited in the registration at that time.

Even if we were to accept the "sales" documents as evidence of a single sale of "prop money" from Respondent to a third-party before January of 2020, we do not

[37] 45 TTABVUE 600 (Belin Disc. Dep. 207:23-24).

[38] 48 TTABVUE 69-70 (Belin Dec. Ex. 8).

[39] 45 TTABVUE 602 (Belin Disc. Dep. 209:16-17).

agree with Respondent's contention that this shows use in commerce of the BMF mark in connection with "entertainment media production services for motion pictures, television and internet; entertainment services, namely, multimedia production services."[40] Put simply, we are not convinced that the single sale of "prop money" is tantamount to multimedia production services.

With respect to Respondent's testimony that he hired Laquita Dedmon to assist in writing a script and that he also began hiring actors before January 2020,[41] there is no testimony from any of the actors. Again, we do not see in the record before us evidence that convinces us that an actual production materialized or that these actors actually ever performed on Respondent's behalf in connection with any of the services listed in the registration. Simply hiring others does not mean any of the services listed in the registration were actually being offered or provided at that time. *See, e.g.*, *Aycock Eng'g*, 560 F.3d at 1360 ("[P]reparations to use a mark in commerce are insufficient to constitute use in commerce. Rather, the mark must be actually used in conjunction with the services described in the application for the mark.").

Ultimately, based on the evidentiary record, and drawing all reasonable and proper inferences therefrom, we find that Respondent had not used the BMF mark in commerce as of January 30, 2020, in connection with any of the twelve separately-listed services set forth in his registration. This finding is based in significant part on the fact that Respondent chose to avoid or deflect when directly questioned in a

[40] 63 TTABVUE 25.

[41] Testimony at 50 TTABVUE 5, Belin Dec. ¶¶ 12-13.

deposition about any prior use of the mark for a time period that should not have been too difficult for him to recall. His testimony lacks the necessary credibility such that we are not persuaded by his general statements of prior use of his mark in connection with the services listed in the registration. *See, e.g.*, *Kohler Co.*, 2007 TTAB LEXIS 3, at *23 (testimony should not be "characterized by contradictions, inconsistencies and indefiniteness," but rather should carry with it "conviction of its accuracy and applicability"). Respondent was also directly requested to provide documents and information that could evidence any prior use of the mark and he had ample opportunity to furnish such information. "[W]hen it is within a party's power to produce a certain kind of persuasive testimony or documentary evidence on an urged factual finding, and it fails to do so, a tribunal is at least permitted—perhaps even compelled—to draw the inference that that fact is unsupported and/or untrue." *In re US Warriors Ice Hockey Program, Inc.*, No. 86489116, 2017 TTAB LEXIS 143, at *14, *quoted in Stawski v. Lawson*, No. 94002621, 2018 TTAB LEXIS 438, at *31; *see also Tao Licensing, LLC v. Bender Consulting Ltd.*, No. 92057132, 2017 TTAB LEXIS 437, at *30 ("The presence of business records would strengthen the case that these transactions occurred in the ordinary course of trade, and the absence of such records does the opposite."). In this case, we are left with no credible evidence in the record that Respondent, prior to January 30, 2020, used BMF as a mark in connection with the services listed in his registration. We find the nonuse claim has been established by a preponderance of the evidence.

Accordingly, the petition to cancel Respondent's registration for BMF for all of the listed services is granted on the ground of nonuse. Because that alone means that Respondent's registration must be cancelled, we do not reach any of Petitioner's other claims. *See, e.g.*, *CBC Mortg. Agency v. TMRR, LLC*, No. 92076723, 2022 TTAB LEXIS 295, at *40 n.22; *Kohler Co. v. Honda Giken Kogyo K.K.*, No. 91200146, 2017 TTAB LEXIS 450, at *4 n.4.

Decision: The Petition to Cancel is granted on the ground of nonuse.