

Hospitality Industry Insight - Consider Future Name Rights When Closing a Restaurant

10.11.2023 By [Maryann E. Licciardi](#)

You should keep in mind that a service mark, such as a restaurant name, may become abandoned when you close a restaurant. Continuing to advertise the restaurant in other restaurants you own or operate may not preserve your rights. The issue is (1) whether you stopped rendering services under that mark, and (2) whether you can show an intent to resume its use for those services.



In 2008, Jerry's Famous Deli, Inc. closed its two restaurants known by three registered service marks - WOLFIE COHEN'S RASCAL HOUSE, RASCAL HOUSE, and an associated logo.



Rascal House, Inc. petitioned to cancel these registrations on the ground of abandonment.

The Trademark Trial and Appeal Board (TTAB) first addressed whether Registrant's evidence constituted use in commerce for restaurant and carry-out restaurant services after the restaurants closed. Registrant had continued to use its marks on menus and signs in its remaining JERRY'S restaurants and in two EPICURE supermarkets.



The TTAB held that these continued uses constituted advertising when the restaurants were operating. But after the restaurants closed, these marks were no longer being used for restaurant and take-out services. The continued advertising constituted, at most, an attempt to take advantage of residual good will for the names of Registrant's current and former restaurants (and, in one case, for a restaurant that never even existed).

Accordingly, the TTAB decided that the marks were no longer in use for the services.

This decision was not immediately appealable because the TTAB had divided this case into two phases. The next phase is to decide whether the Registrant had an intent to resume use of these marks. If so, the Registrant would be found not to have abandoned its marks.

[**Rascal House Inc. v. Jerry's Famous Deli, Inc., Cancellation No. 92075125 \(Parent\) \(T.T.A.B. September 30, 2023\).**](#)

Author's Note:

We previously posted a blog on [How to Defeat a Claim of Abandonment for a Never-Used Registered Mark](#). The advice we gave then would equally apply to a registered mark that has ceased to be in use.

As we said, you can defeat a claim of abandonment if you undertake reasonable and documented business practices to support your continued interest in using the mark in U.S. commerce. These practices may include creating a written business plan and taking steps to implement it; negotiating public relations, distribution or licensing agreements; or just making a written record of the reasons holding you back from the U.S. market.

You should take such steps within three years after closing your restaurant because Trademark Law provides that nonuse of a mark for three consecutive years constitutes evidence of abandonment in the absence of evidence showing a contrary intent.

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Maryann's practice focuses on domestic and international trademark and copyright matters, including trademark prosecution, contested proceedings, trademark and copyright litigation, Trademark Trial and Appeal Board practice, and domain name disputes, and counseling of corporate and individual clients. She has represented clients in many industries, including the sports and entertainment, banking and financial, publishing and printing, apparel and household products industries.