

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: )  
 )  
The Topps Company, Inc. ) Trademark Law Office 104  
 )  
Serial No.: 85/660,786 )  
 )  
Filed: June 25, 2012 ) Attn: Linda M. Estrada  
 ) Trademark Examining Attorney  
 )  
Mark: CHROME )

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**Declaration Under 37 C.F.R. §2.20 in Support of  
Acquired Distinctiveness Under Section 2(f)**

I, Clay Luraschi, hereby declare as follows:

1. I am an authorized representative of the Applicant corporation and am authorized to sign this Declaration on behalf of the Applicant;
2. I have been employed by The Topps Company, Inc. (hereinafter "Topps") for over twelve (12) years and my current position with Topps is that of Director of Product Development – Sports.
3. As part of my duties, I have knowledge of and oversee the development and sales of all sports-related products for Topps, including trading cards.
4. As part of my duties, I have knowledge of the use of the trademarks and other promotional efforts used by Topps to promote its products, including use of the mark CHROME in connection with trading cards.
5. Continuously for more than sixty years, Applicant has manufactured, advertised, marketed and sold trading cards throughout the United States. During this period of time, Applicant has developed a substantial reputation among children, sports

card hobbyists, collectors and the general public as the leading source of sports trading cards.

6. Applicant has applied to register the mark CHROME, Serial No. 85/660,786, based on use of the trademark in commerce in connection with "trading cards" since at least as early as 1995, a period of seventeen (17) years.
7. Continuously, since at least as early as 1995, Applicant has manufactured, advertised, marketed and sold lines of premium baseball, football, hockey and/or basketball trading cards under the name and trademark CHROME. In addition, in the late 1990s, Applicant sold a series of licensed STAR WARS trading cards under the trademark CHROME.
8. All trading cards sold by Applicant under the trademark CHROME are coated with an aluminum particle laminate which gives them a shiny, metallic, luxurious appearance. However, neither the laminate nor the cards themselves contain the element chromium, commonly known as chrome.
9. Applicant owns a registration for TOPPS CHROME ("CHROME" disclaimed), Reg. No. 2,251,239, issued June 8, 1999 based on use of the mark in commerce since at least as early as November 29, 1995, covering "trading cards." This registration is in full force and effect and is incontestable. Attached as Exhibit A is a copy of the registration certificate for this registration.
10. Applicant owns a registration for BOWMAN CHROME, Reg. No. 2,265,679 issued July 27, 1999 based on use of the mark in commerce since at least as early as November 20, 1997, covering "trading cards." This registration is in full force and effect and is incontestable. Attached as Exhibit B is a copy of the registration certificate for this registration.
11. Notwithstanding the disclaimer of "CHROME" in its application for TOPPS CHROME years ago, Applicant has been the exclusive user of CHROME as a trademark in connection with trading cards since it began using CHROME in connection with such goods.

12. Applicant has enforced its rights in the CHROME mark. Recently, Applicant opposed a competitor's applications to register CHROMIUM and PANINI CHROMIUM for trading cards. Following the filing of the oppositions, the applicant withdrew its applications. Attached as Exhibit C is a copy of the Notice of Opposition and a copy of the applicant's withdrawal of its applications.
13. Applicant generally uses CHROME as a trademark in combination with other marks, most commonly Applicant's house mark TOPPS or the mark BOWMAN. Regardless of the mark with which CHROME is used, Applicant's use of the mark to identify special series of trading cards with a shiny, metallic, luxurious appearance has remained consistent since at least as early as 1995.
14. Applicant's general practice is to present the mark CHROME in advertising materials in a different typeface, size, and/or color from that in which the adjacent mark appears and on a separate line from the mark in combination with which the CHROME mark is used. Attached as Exhibit D are examples of such use which demonstrate that Applicant promotes CHROME per se as an indication of source of its goods.
15. Applicant's CHROME trading cards are sold in packs of 4, normally at a premium retail price of \$3.00. The wholesale price is \$1.50. Between March 2007 and the end of 2011, Applicant sold over 42,000,000 packs of CHROME-branded baseball, football and basketball trading cards, earning gross sales revenues of more than \$63,000,000.
16. Applicant's CHROME-branded trading cards are often offered and sold for prices much higher than the initial retail price in secondary markets such as eBAY and on websites directed toward sports card hobbyists and collectors. Attached as Exhibit E are website printouts from various third party websites demonstrating sales of Applicant's goods in the secondary market and the reputation of Applicant's CHROME branded products among card hobbyists and collectors.

17. Numerous third party periodicals have published articles about Applicant's CHROME branded products, offering national and international exposure for the mark and the identified goods. Many of these articles refer to the CHROME mark per se apart from any other marks. Sample articles are submitted collectively as Exhibit F:
18. As a result of the evidence set forth above, combined with Applicant's long and substantially exclusive use of the mark in commerce, Applicant's mark CHROME has become distinctive of Applicant's trading cards.
19. Consumers recognize the mark CHROME as pointing uniquely and exclusively to the Applicant as the source of the identified goods.
20. Upon information and belief, the trademark CHROME, has become distinctive through Applicant's substantially exclusive and continuous use of "CHROME" in U.S. commerce for a period of seventeen (17) years, substantially more than the statutory minimum of five (5) years immediately preceding this response.
21. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application and accompanying declaration are true; all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.

for The Topps Company, Inc.

Date: December 10, 2012

By: 

Name: Clay Luraschi

Title: Director of Product Development - Sports