EXHIBIT 1

AFFIDAVIT OF DANIEL R. CASTRO

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Mr. Daniel R. Castro, who being by me first duly sworn upon his oath deposed and stated as follows:

My name is Daniel R. Castro. I am over the age of 21 and am of sound mind and am capable of making this affidavit. I have personal knowledge of the facts stated below, and every statement is true and correct.

Exhibits 1 through 6 attached hereto are exact duplicates of the originals that can be found in the public record of the U.S. Patent & Trademark Office. I personally went to the website of the U.S. Patent & Trademark Office and downloaded and printed the files.

A request for certified copies of these documents has been made to the U.S. Patent & Trademark Office, but the documents have not yet arrived. When they arrive, the undersigned will file a motion to substitute exhibits.

FURTHER AFFIANT SAYETH NOT:

Daniel R. Castro

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this 15th day of December 2010.

Notary Public, State of Texas

LISA C. GANT
lic, State of Texas
ssion Expires
5, 2014

LISA C. GANT
Notary Public, State of Texas
My Commission Expires
March 25, 2014

Int. Cls.: 9 and 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,453,968

Registered Aug. 25, 1987

TRADEMARK
PRINCIPAL REGISTER

ENTREPRENEUR

ENTREPRENEUR, INC. (CALIFORNIA CORPORATION)
2311 PONTIUS AVENUE
LOS ANGELES, CA 90064

FOR: COMPUTER PROGRAMS AND PROGRAMS USER MANUALS ALL SOLD AS A UNIT, IN CLASS 9 (U.S. CL. 38).

FIRST USE 5-19-1983; IN COMMERCE 5-19-1983.

FOR: PAPER GOODS AND PRINTED MATTER; NAMELY MAGAZINES, BOOKS AND PUBLISHED REPORTS PERTAINING TO BUSINESS OPPORTUNITIES, IN CLASS 16 (U.S. CL. 38).

FIRST USE 5-2-1978; IN COMMERCE 5-2-1978.

OWNER OF U.S. REG. NOS. 1,130,838, 1,223,364 AND OTHERS.

SEC. 2(F) ONLY AS TO CLASS 16 GOODS.

SER. NO. 537,579, FILED 5-14-1985.

G. T. GLYNN, EXAMINING ATTORNEY

EXHIBIT 2

U.S. DEPARTMENT OF COMMERCE - Patent and Trademark Office

IN REPLY REFER TO THE FOLLOWING AND THE FILING DATE:

SERIAL NO.	APPLICANT		Paper No.
73/537579	ENTREPRENEUR, INC.		ADDRESS: Commissioner of Patents and Trademarks Washington, DC 20231
MARK			
ENTREPRENEUR			
ADDRESS		ACTION NO.	
HENRY BISSELL 6820 LA TIJERA BOULEVARD LOS ANGELES, CALIFORNIA 90045		01	
		MAILING DATE	The address of all correspondence not containing fee payments should include the word "Box 5."
		07/09/85	
FORM PTO-1525 (2-84)	U.S. DEPT. OF COMM. PAT. & TM OFFICE		

Also furnish: (1) Serial number of application, (2) The mark, (3) Examining Attorney's name and Law Office number, (4) Mailing date of this action, and (5) Applicant's name (or applicant's attorney), telephone number and zip code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.

So that I can consider the registrability of the mark (37 CFR Section 2.61(b); TMEP sections 1103.04 and 1105.02), please submit advertisement.

Two applications are pending for the registration of marks which so resemble the mark in this application as to be likely, as used in connection with the goods (and/or services), to cause confusion, or to cause mistake, or to deceive. Since the filing date of this application is subsequent to the filing dates of the other pending applications, the latter, if and when they mature into registrations, will be cited against this application. (37 CFR Section 2.83.) Photocopies of the drawings from the pending applications, Serial Nos. 532159; 507960, are attached. 1/31/86 complete opp 72057

Computer 1/31/86 Company

Condense the International Class 9 merchandise clause to reflect "Computer Programs for use in business applications" Class 9.

As respect Class 16, amend to reflect the similar description in your Reg. 1,187,239, i.e., "Magazines, books and published reports pertaining to business opportunities."

Per Rule 2.36, claim ownership also of Regs. 1,223,364; 1,130,838, 1,167,253, all formerly owned by Chase Revel, Inc.

Registration is refused on the Principal Register because the mark, when

applied to the goods, is considered to be merely descriptive thereof. (Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1); TMEP section 1207.)

Any mark is evaluated in association or context with the identified merchandise. 3, R. Callman, Unfair Competition, Trademarks & Monopolies, 112 Sec. 71.1 (3rd Ed., 1969). In the absence of any Sec. 2(f) prima facie claim of secondary meaning or acquired distinctiveness pursuant to Rule of Practice 2.41, see Sec. 23 of Act (15 U.S.C. 1091); Rule of Practice 2.47 as a possible remedy.

N.E. - legal status and express admission of mere descriptiveness VIS-A-VIS Entrepreneur and Reg. 1,187,239, in conjunction with the prominent disclaimer of Entrepreneur in Reg. 1,223,364. See, Quaker State Oil Refining Corporation v. Quaker Oil Corporation, 172 USPQ 361 (CCPA, 1972); Glamorene Products Corporation v. Boyle-Midway, Inc., 188 USPQ 145 (DC, SD, NY, 1975); In re Texas Instruments, Inc., 193 USPQ 678, 679 (TTAB, 1976); In re Amtel, Inc., 189 USPQ 58, 60 (TTAB 1975). Applicant's computer programs and publication products highlight and pertain directly to the activities and aspirations of the individual business entrepreneur.

[Other than as indicated above] According to my search of the Office registration records, there is no registered mark which so resembles the applicant's mark, when applied to the goods (or services), as to be likely to cause confusion, or to cause mistake, or to deceive. (15 U.S.C. 1052(d); TMEP section 1105.01.)

GTG:cmc3

G. T. Glynn
Trademark Attorney
Law Office III
(703) 557-9560
Ser. No. 537579

NOV 9 1984

507969

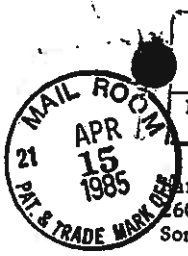
Applicant: Strategic Management Group, Inc.
3624 Market Street
University City
Philadelphia, PA 19104

Goods: COMPUTER SOFTWARE

First Use: July, 1984

ENTREPRENEUR

4
3



INT. CL.
9
U.S. CL.
38

532159

Harvard Associates, Incorporated
260 Beacon Street
Somerville, MA 02143

First use anywhere: March 28, 1985
First use in commerce: March 28, 1985

Goods: Computer software and documentation-

ENTREPRENEUR

Int. Cl.: 16

Prior U.S. Cl.: 38

Reg. No. 1,187,239

Registered Jan. 19, 1982

United States Patent and Trademark Office

TRADEMARK
Supplemental Register

ENTREPRENEUR

Chase Revel, Inc. (California corporation)
631 Wilshire Blvd.
Santa Monica, Calif. 90401

For: MAGAZINES, BOOKS AND REPORTS PERTAINING TO BUSINESS OPPORTUNITIES, in CLASS 16 (U.S. Cl. 38).
First use May 2, 1978; in commerce May 2, 1978.

Ser. No. 223,003, filed P.R. Jul. 12, 1979; Am. S.R. Nov. 20, 1981.

BRIAN ANDERSON, Primary Examiner

Int. Cl.: 16

Prior U.S. Cl.: 38

Reg. No. 1,223,364

Registered Jan. 11, 1983

United States Patent and Trademark Office

TRADEMARK
Principal Register

ENTREPRENEUR INSIDERS NEWSLETTER

Chase Revel, Inc. (California corporation)
631 Wilshire Blvd.
Santa Monica, Calif. 90401

For: PRINTED PUBLICATIONS—NAMELY, NEWSLETTERS, BOOKS, REPORTS AND BROCHURES PERTAINING TO BUSINESS OPPORTUNITIES, in CLASS 16 (U.S. Cl. 38).

First use Aug. 23, 1979; in commerce Aug. 23, 1979.

Owner of U.S. Reg. Nos. 1,130,838 and 1,187,239.

No claim is made to exclusive use of the words "Entrepreneur" and "Newsletter" apart from the mark as shown in the drawing. Applicant does not waive any of its common law rights with respect thereto.

Ser. No. 231,127, filed Sep. 13, 1979.

J. H. WEBB, Examining Attorney

Int. Cl.: 16

U.S. Cl.: 38

Reg. No. 1,130,838

U.S. Patent and Trademark Office

Reg. Feb. 12, 1980

TRADEMARK

Principal Register

INTERNATIONAL ENTREPRENEURS' ASSOCIATION

Chase Revel, Inc. (California corporation) d.b.a. International Entrepreneurs' Association
1445 5th St.
Santa Monica, Calif. 90401

For: Publications and Periodical Reports—Namely, Newsletters, Brochures, Catalogs, Business Reports and Magazines —in Class 16. (U.S. Cl. 38).

First use Aug. 10, 1976; in commerce Aug. 10, 1976.

The word "Association" is disclaimed apart from the mark as shown.

Ser. No. 123,688. Filed Apr. 21, 1977.

RICHARD STRASER, Examiner

JOHN C. DEMOS., Primary Examiner

Cl.: 16

r U.S. Cl.: 38

ited States Patent and Trademark Office

Reg. No. 1,167,253
Registered Sep. 1, 1981

TRADEMARK
Principal Register

AMERICAN ENTREPRENEURS ASSOCIATION

Chase Revel, Inc. (California corporation)
631 Wilshire Blvd.
Santa Monica, Calif. 90401

For: PUBLICATIONS AND PERIODICAL REPORTS—NAMELY, NEWSLETTERS, BROCHURES, CATALOGS, BUSINESS REPORTS AND MAGAZINES, in CLASS 16 (U.S. Cl. 38).

First use Jul. 1, 1979; in commerce Jul. 1, 1979.

Owner of U.S. Reg. No. 1,130,838.

The word "Association" is disclaimed apart from the mark as shown.

Ser. No. 230,893, filed Sep. 11, 1979.

HENRY S. ZAK, Primary Examiner

U.S. DEPARTMENT OF COMMERCE - Patent and Trademark Office

IN REPLY REFER TO THE FOLLOWING AND THE FILING DATE:

SERIAL NO.	APPLICANT	Paper No.
73/537579	ENTREPRENEUR, INC.	
MARK		ADDRESS: Commissioner of Patents and Trademarks Washington, DC 20231
ENTREPRENEUR		
ADDRESS	ACTION NO. 02	
HENRY BISSELL 6820 LA TIJERA BOULEVARD LOS ANGELES, CALIFORNIA 90045	MAILING DATE 02/07/86	The address of all correspondence not containing fee payments should include the word "Box 5."

FORM PTO-1525 (2-84) U.S. DEPT. OF COMM. PAT. & TM OFFICE

Also furnish: (1) Serial number of application, (2) The mark, (3) Examining Attorney's name and Law Office number, (4) Mailing date of this action, and (5) Applicant's name (or applicant's attorney), telephone number and zip code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.

Responsive to the communication received January 13, 1986.

With respect to the statutory response and the earlier filed Ser. 532159 and Ser. 507969, a January 31, 1986 computerized check reflects suspended status for 532159, and current opposition proceeding status #72057 for 507969.

N.B. - Section 2(e)(1) issue was inserted against both classes, 9 and 16, as was further communicated to applicant's attorney via telecon immediately after the issuance of the July 9, 1985 Office action. Applicant has the requisite, prima facie Sec. 2(f) claim only for the Cl. 16 goods based upon usage of five years and more at the time of filing Ser. 537579. Applicant has not presented a prima facie Section 2(f) claim for the Cl. 9 goods due to the mere two years use at the time of filing Ser. 537579. Thus, Section 2(e)(1) issue is continued within the record for Cl. 9 goods, and the Section 2(f) claim has been accepted for Cl. 16 goods.

Properly amend the Cl. 9 and 16 product clauses. Specifically, as respect Cl. 16, delete "text documentation for computer software". "Computer Program Manuals", when sold separately, fall into Int. Cl. 16. The usual commercial product item names must be substituted, in lieu of documentation. Delete Cl. 9 description and substitute one or more of the belowmentioned, acceptable product descriptions: "Computer Programs for use in business applications", Cl. 9; "Computer Programs and Program Manuals for use in business applications all sold as a unit", Cl. 9.

Upon receipt of a further appropriate amendment, Ser. 537579 will be reviewed in due course. All other previous requirements, except for those specifically cited, have been satisfied.

GTG:hrs

G. T. Glynn
Trademark Attorney
Law Office III
(703) 557-9560
Ser. No. 537579

U.S. DEPARTMENT OF COMMERCE - Patent and Trademark Office

IN REPLY REFER TO THE FOLLOWING AND THE FILING DATE:

SERIAL NO.	APPLICANT	
73/537579	ENTREPRENEUR, INC.	
MARK		
ENTREPRENEUR		
ADDRESS		ACTION NO.
HENRY BISSELL 6820 LA TIJERA BOULEVARD LOS ANGELES, CALIFORNIA 90045		03
		MAILING DATE
		09/08/86

FORM PTO-1525 (2-84) U.S. DEPT. OF COMM. PAT. & TM OFFICE

Paper No.

ADDRESS:
Commissioner of Patents and Trademarks
Washington, DC
20231

The address of all correspondence not containing fee payments should include the word "Box 5."

Also furnish: (1) Serial number of application, (2) The mark, (3) Examining Attorney's name and Law Office number, (4) Mailing date of this action, and (5) Applicant's name (or applicant's attorney), telephone number and zip code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.

Responsive to communication received August 12, 1986. W/D Opp sustained ag 6/32/5 gon 1/29/87 per 3/6/87 Examiner
Serial No. 532,159 is still a pending case per a 9/4/86 computerized check.
Serial No. 507,969 has been abandoned per a 9/4/86 computerized check.

Applicant's Class 9 product clause is erroneous. As was expressed to * applicant in the 2/7/86 action and subsequent 3/3/86 telcon, the preferred proper description should reflect, "Computer Programs and Program User Manuals All Sold As A Unit." The specific objection to documentation in our law office rests with the distinct possibility of advertising being subsumed under a broad, indefinite term, such as, documentation. The Class 16 description is acceptable. Amendatory action is required.

Applicant's comments relative to the Section 2(e)(1) issue appear to be paradox. Specifically applicant owns a "Supplemental Register" mark, i.e., 1,187,239 for the identical mark, which is an evidentiary admission of its merely descriptive nature. Quaker State Oil Refining Corporation v. Quaker Oil Corporation, 172 USPQ 361 (CCPA 1962); Ajax Hardware Corporation v. Packaging Techniques, Inc., 182 USPQ 559 (DC, Calif. 1974)). Applicant's prima facie, Section 2(f) claim in this case for the identical mark in Class 16 is an evidentiary admission of mere descriptiveness. Applicant then argues suddenly that for Class 9 software program merchandise specifically tailored for the individual business entrepreneur's usage that Entrepreneur is inherently distinctive. The undersigned, examining attorney does not accept this proposition. Enclosed is Exhibit (A-1),

W/d per review

which readily displays the enormous notoriety of entrepreneur and entrepreneurship in the current business marketplace scene. Applicant's Class 9 software program merchandise quickly and materially assists the business entrepreneur to achieve entrepreneurial success in their chosen market or field by quickly providing critical information in the accepted procedures to become an entrepreneur via proper market intelligence, budgetary and planning, and operational cost-cutting techniques. Section 2(e)(1) issue is continued in the record.

Upon receipt of a further appropriate amendment, this case will be reviewed vis-a-vis Serial No. 532,159 and applicant's forthcoming secondary meaning claim for the mark in Class 9 by virtue of separate evidentiary criteria well outlined in Rule 2.41.

GTG/lr

G. T. Glynn
Trademark Attorney
Law Office III
(703) 557-9560
Serial No. 537579

EXHIBIT 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-12-13 21:29:07 ET

Serial Number: 73223003 Assignment Information Trademark Document Retrieval

Registration Number: 1187239

Mark (words only): ENTREPRENEUR

Standard Character claim: No

Current Status: Registration canceled under Section 8.

Date of Status: 1988-09-10

Filing Date: 1979-07-12

Transformed into a National Application: No

Registration Date: 1982-01-19

Register: Supplemental

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 001 -File Destroyed

Date In Location: 1994-05-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Chase Revel, Inc.

Address:
Chase Revel, Inc.
631 Wilshire Blvd.
Santa Monica, CA 90401
United States
Legal Entity Type: Corporation
State or Country of Incorporation: California

GOODS AND/OR SERVICES

International Class: 016
Class Status: Section 8 - Cancelled
Magazines, Books and Reports Pertaining to Business Opportunities
Basis: 1(a)
First Use Date: 1978-05-02
First Use in Commerce Date: 1978-05-02

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

1988-09-10 - Canceled Section 8 (6-year)

1982-01-19 - Registered - Supplemental Register

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
Henry M. Bissell

Correspondent
Henry M. Bissell
Suite 106
6820 Latijera Blvd.
Los Angeles CA 90045

EXHIBIT 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Entrepreneur, Inc.
Serial No. : 537,579
Filed : May 14, 1985
For : Trademark: ENTREPRENEUR

Law Office : III
TM Attorney : G.T. Glynn

DECLARATION OF WELLINGTON A. EWEN

I, WELLINGTON A. EWEN, do hereby declare as follows:

I am the President of Entrepreneur, Inc., a California corporation (hereinafter "my company"), the applicant in application Serial No. 537,579, more particularly identified above, to register the mark ENTREPRENEUR for the following goods:

Class 9: Electrical and Scientific Apparatus, Namely Magnetic Media Bearing Recorded Computer Programs; and

Class 16: Paper Goods And Printed Matter, Namely Magazines, Books And Published Reports.

My company is engaged in the business of publishing various magazines and reports, principally related to the subject matter of starting and operating small businesses, and of producing computer programs and related documentation for sale to the public, specifically including the subject matter of the goods recited in the above-identified application.

Prior to adopting its present name, my company's name was Chase Revel, Inc.; it has also conducted business under the name: "American Entrepreneur's Association".

Said mark has been registered on the Supplemental Register under Registration No. 1,187,239 on January 19, 1982. The application for said registration was converted from an application for registration on the Principal Register Serial No. 223,003, filed July 12, 1979. Applicant is the owner of said registration.

Applicant believes that the mark has become distinctive, as

applied to applicant's goods, by reason of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years next preceding May 14, 1985, the filing date of the subject application.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration issuing thereon.

Dated: January 8, 1986

Wellington A. Ewen

EXHIBIT 5

Int. Cls.: 9 and 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,453,968
Registered Aug. 25, 1987

TRADEMARK
PRINCIPAL REGISTER

ENTREPRENEUR

ENTREPRENEUR, INC. (CALIFORNIA CORPORATION)
2311 PONTIUS AVENUE
LOS ANGELES, CA 90064

FOR: COMPUTER PROGRAMS AND PROGRAMS USER MANUALS ALL SOLD AS A UNIT, IN CLASS 9 (U.S. CL. 38).

FIRST USE 5-19-1983; IN COMMERCE 5-19-1983.

FOR: PAPER GOODS AND PRINTED MATTER; NAMELY MAGAZINES, BOOKS AND PUBLISHED REPORTS PERTAINING TO BUSINESS OPPORTUNITIES, IN CLASS 16 (U.S. CL. 38).

FIRST USE 5-2-1978; IN COMMERCE 5-2-1978.

OWNER OF U.S. REG. NOS. 1,130,838, 1,223,364 AND OTHERS.

SEC. 2(F) ONLY AS TO CLASS 16 GOODS.

SER. NO. 537,579, FILED 5-14-1985.

G. T. GLYNN, EXAMINING ATTORNEY

EXHIBIT 6

400-374-JM

#8

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MARK	:	ENTREPRENEUR
REGISTRATION NO.:		1,453,968
CLASSES	:	INT'L. CLASSES 9 and 16
REGISTERED	:	August 25, 1987
REGISTRANT	:	Entrepreneur, Inc.

SECTION 8 & 15 DECLARATION

JAMES L. FITZPATRICK hereby declares that he is the Executive Vice-President of Entrepreneur, Inc., Registrant of the above-identified Registration, and is authorized to make this declaration on behalf of the Registrant.

That Entrepreneur, Inc., a California corporation, owns Registration No. 1,453,968, issued August 25, 1987, as shown by records in the Patent and Trademark Office; that the mark shown therein has been in continuous use in Interstate Commerce for five consecutive years from the date of registration to the present for the following services recited in the Registration:

FOR: COMPUTER PROGRAMS AND PROGRAMS USER MANUALS ALL SOLD AS A UNIT, IN CLASS 9 (U.S. CL. 38)

and

FOR: PAPER GOODS AND PRINTED MATTER; NAMELY MAGAZINES, BOOKS AND PUBLISHED REPORTS PERTAINING TO BUSINESS OPPORTUNITIES, IN CLASS 16 (U.S. CL. 38).

That said mark is still in use in said Interstate Commerce as evidenced by the attached specimens, one for each of the classes involved, showing the mark as currently used; that there has been no final decision adverse to Registrant's claim of ownership of said mark, to its right to register the same or

040 FT 10/05/92 1453968 0 374 400.00 CK

maintain it on the Register, and that there is no proceeding involving any of said rights pending and not disposed of either in the Patent and Trademark Office or in the Courts.

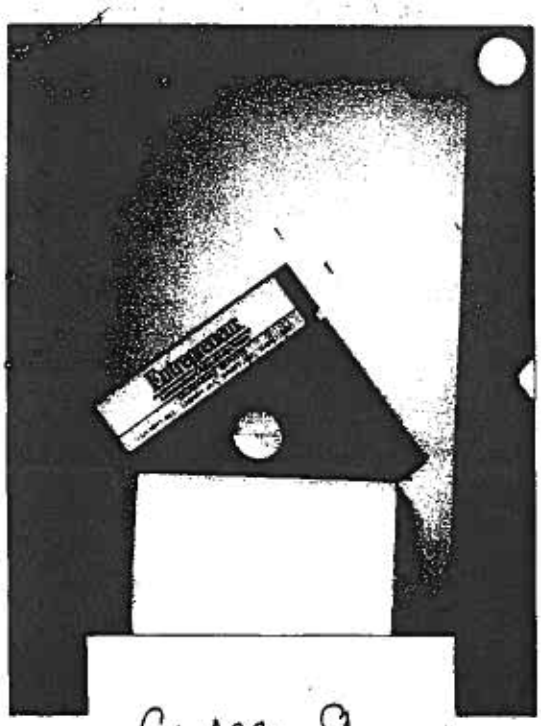
I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Dated: September 11, 1992

James L. Fitzpatrick

JAMES L. FITZPATRICK

CLASS 16



CLASS 9

POLARO
MAIL ROOM
SEP 17 1992
PAT. & TRADEMARK OFF.
MAIL ROOM
SEP 17 1992
PAT. & TRADEMARK OFF.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

REGISTRATION NO. 1453968 SERIAL NO. 73/537579 PAPER NO.
MAILING DATE: 12/28/92

MARK: ENTREPRENEUR

REGISTRANT: ENTREPRENEUR, INC.

CORRESPONDENCE ADDRESS:
HENRY BISSELL
6820 LA TIJERA BOULEVARD
SUITE 106
LOS ANGELES, CA 90045-1991

Please furnish the following in all correspondence:

1. Your phone number and zip code.
2. Mailing date of this action.
3. Affidavit-Renewal Examiner's name.
4. The address of all correspondence not containing fees should include the words "Box 5".
5. Registration No.

RECEIPT IS ACKNOWLEDGED OF THE SUBMITTED REQUEST UNDER:

SECTION 8 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.161-2.166.

SECTION 15 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.167-2.168.

YOUR REQUEST FULFILLS THE STATUTORY REQUIREMENTS AND HAS BEEN ACCEPTED.

WYE JEAN SMITH
AFFIDAVIT-RENEWAL EXAMINER
TRADEMARK EXAMINING OPERATION
(703) 308-9500 EXT. 38

AFFIDAVIT OF DANIEL R. CASTRO

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Mr. Daniel R. Castro, who being by me first duly sworn upon his oath deposed and stated as follows:

My name is Daniel R. Castro. I am over the age of 21 and am of sound mind and am capable of making this affidavit. I have personal knowledge of the facts stated below, and every statement is true and correct.

The copy of the Order Granting Summary Judgment attached hereto is an exact duplicate of the original that can be found in the public record of the Federal District Court for the Central District of California.

FURTHER AFFIANT SAYETH NOT:

Daniel R. Castro

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this 15th day of December 2010.

Notary Public, State of Texas

LISA C. GANT
Notary Public, State of Texas
My Commission Expires
March 25, 2014

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

Order granting in part & denying in part S.J.

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ENTREPRENEUR MEDIA, INC.,	)	CV 98-3607 FMC (BQRx)
	)	
Plaintiff,	)	**ORDER GRANTING IN PART AND**
	)	**DENYING IN PART PLAINTIFF'S**
vs.	)	**MOTION FOR SUMMARY**
	)	**JUDGMENT; DENYING**
	)	**DEFENDANT'S MOTION**
SCOTT SMITH, dba	)	**FOR SUMMARY JUDGMENT**
ENTREPRENEURPR	)	
	)	
Defendants.	)	

I. Introduction

Plaintiff filed a complaint for trademark infringement under 15 U.S.C. § 1125 of the Lanham Act and unfair competition under California Business and Professions Code § 17200, alleging that defendant's marks, including ENTREPRENEURPR and ENTREPRENEUR ILLUSTRATED are confusingly similar to plaintiff's marks. Plaintiff also alleges that defendant's unauthorized use of its mark, ENTREPRENEUR'S SMALL BUSINESS SQUARE, constitutes counterfeiting under 15 U.S.C. § 1114.

117.

Both parties have filed motions for summary judgment contending that no genuine issues of material fact remain and each is entitled to judgment as a matter of law. Plaintiff also seeks damages and attorney fees.

II. Standard

Summary judgment or summary adjudication is only proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. Rule Civ. Proc. 56(c); *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). If the moving party meets its initial burden, the "adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. Proc. 56(e). Summary judgment is appropriate where the nonmoving party fails to make a sufficient showing on an essential element of the case on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

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III. Uncontroverted Facts

1. Since 1978, plaintiff has continuously used the mark ENTREPRENEUR in connection with its magazine. Lesonsky Dec. ¶ 3.

2. Plaintiff registered the mark ENTREPRENEUR for printed publications in 1987. Finkelstein Dec. ¶ 4, Ex. E.

3. Plaintiff's mark appears in red letters on the cover of its publication ENTREPRENEUR. Kravitz Dec., Ex. 2.

4. Plaintiff's website is found at ENTREPRENEUR.COM and ENTREPRENEURMAG.COM. Fuller Dec. ¶ 6, Ex. M.

5. Plaintiff uses and has registered several other variations of the word "entrepreneur" to identify publications or services including: ENTREPRENEUR EXPO, ENTREPRENEUR INTERNATIONAL, ENTREPRENEURIAL WOMAN, ENTREPRENEURMAG.COM, ENTREPRENEUR'S HOME OFFICE, ENTREPRENEUR'S INSIDER NEWSLETTER, ENTREPRENEUR MAGAZINE'S GUIDE TO FRANCHISE AND BUSINESS OPPORTUNITIES, ENTREPRENEUR MAGAZINE'S ONLINE. Finkelstein Dec., Ex. E.

6. Plaintiff's goods and services include: "software, business guides, video and audio tapes, . . . web sites and online services, . . . creat[ing] and participat[ing] in trade shows, seminars, educational programs, and business services, all in connection with small businesses." Lesonsky Dec. ¶ 3.

7. In December 1996, plaintiff listed defendant's company ICON publications on its "Small Business Links" page and gave defendant permission to use plaintiff's logo, Small

Business Square, on his website. Fuller Dec. ¶ 3.

8. In 1997, defendant changed the name of his business from ICON publications to ENTREPRENEURPR and the name of his publication from Yearbook of Small Business Icons to ENTREPRENEUR ILLUSTRATED. Smith Dep. 124:20-125:6; Finkelstein Dec., Ex. F.

9. Defendant's website is found at ENTREPRENEURPR.COM. Finkelsteing Dec., Ex. F.

10. Defendant's mark appears on the cover of his publication in yellow. Kravitz Dec., Ex. 3.

11. Defendant's goods and services include: preparing and publishing press releases that profile small businesses and providing information on the Internet. Smith Dec. ¶ 2.

12. Four of defendant's clients or potential clients state that they believed that defendant was "affiliated" with plaintiff; "part of Entrepreneur magazine" or otherwise associated with plaintiff. Demarest Dec. ¶ 8; Cesare-Taie Dec. ¶ 8; Chippi Dec. ¶ 5; Breshahan Dep. 20:16-21:5.

13. Defendant's former employees state that potential clients asked them if defendant was affiliated with plaintiff. Kufarsimes Dep. 38:22-39:23; Gurely Dep. 41:7-24.

IV. Trademark Infringement

"The core element of trademark infringement is the likelihood of confusion, i.e., whether the similarity of the marks is likely to confuse customers about the source of the products." *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1290 (9th Cir. 1992).

The Court's concern for confusion among "consumers" as opposed to the general public is grounded in the very purpose of trademark law.

> [T]rademark law, by preventing others from copying a source-identifying mark, "reduce[s] the customer's costs of shopping and making purchasing decisions," for it quickly and easily assures a potential customer that this item — the item with this mark — is made by the same producer as other similarly marked items that he or she liked (or disliked) in the past. At the same time, the law helps assure a producer that it (and not an imitating competitor) will reap the financial, reputation-related rewards associated with a desirable product.

Qualitex Co. v. Jacobson Products Co. Inc., 514 U.S. 159, 163-64, 115 S. Ct. 1300, 131 L. Ed. 2d 248 (1995) (citation omitted).

Plaintiff's consumers in this case are small business owners who read plaintiff's publications and utilize plaintiff's resources via the Internet and Entrepreneur Expo. Defendant's consumers are small business owners who purchase his public relations services and those who receive his publication. Accordingly, the likelihood of confusion inquiry in this case is limited to whether a reasonably prudent small business owner or other individual seeking either publications or services targeted to small businesses might confuse defendant's services with plaintiff's. *See Dreamwerks Prod. Group, Inc., v. SKG Studio*, 142 F.3d 1127, 1130 (9th Cir. 1998); *see also Murray v. Cable Nat'l. Broadcasting Co.*, 86 F.3d 858, 861 (9th Cir. 1996) ("A likelihood of confusion exists when a consumer viewing a service mark is likely to purchase the services under a mistaken belief that the services are, or [are] associated with, the services of another provider.").

The Court looks to the eight factors set forth in *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979), to determine the likelihood of consumer confusion: (1) strength of

the mark; (2) proximity or relatedness of the goods; (3) similarity of the sight, sound and meaning of the marks; (4) evidence of actual confusion; (5) degree to which the marketing channels converge; (6) types of goods and degree of care consumers are likely to exercise when purchasing; (7) intent of defendants in selecting the infringing mark; and (8) likelihood that the parties will expand their product lines. *Id.* at 348-50; *see also Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1391 (9th Cir. 1993); *Gallo*, 967 F.2d at 1290.

This list of factors is neither exhaustive nor exclusive and is intended to guide the Court in assessing the basic question of likelihood of consumer confusion. *See Gallo*, 967 F.2d at 1290. Because these factors are not to be applied in a mechanical manner, the Court considers the *Sleekcraft* factors in order of their importance to the pending case. *See Brookfield Communications Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1054 n.16 (9th Cir. 1999); *Dreamwerks*, 142 F.3d at 1129.

Similarity of the Marks

Similarity of the marks is "a critical question in the likelihood of confusion analysis." *GoTo.Com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1205 (9th Cir. 2000). The greater the similarity between the two marks, the greater the likelihood of confusion. *See id.* at 1206. Similarity is determined by the appearance, sound and meaning of the marks when considered in their entirety and as they appear in the marketplace. *See GoTo.Com*, 202 F.3d at 1206; *Dreamwerks*, 142 F.3d at 1131; *Sleekcraft*, 599 F.2d at 351. The similarities of the marks are weighed more heavily than differences. *See GoTo.Com*, 202 F.3d at 1206; *Brookfield*, 174 F.3d at 1054.

Plaintiff has used the mark ENTREPRENEUR since 1978. Uncontroverted Fact ("UF") 1. It registered the mark for publications and computer services in 1987. UF 2. Plaintiff's mark appears in red letters on the cover of its publication ENTREPRENEUR. UF 3. Plaintiff also uses and has registered several other variations of the word to identify other publications or services including: ENTREPRENEUR EXPO, ENTREPRENEUR INTERNATIONAL, ENTREPRENEURIAL WOMAN, ENTREPRENEURMAG.COM, ENTREPRENEUR'S HOME OFFICE, ENTREPRENEUR'S INSIDER NEWSLETTER, ENTREPRENEUR MAGAZINE'S GUIDE TO FRANCHISE AND BUSINESS OPPORTUNITIES, ENTREPRENEUR MAGAZINE'S ONLINE. UF 5.

In 1997, defendant changed the name of his business from ICON publications to ENTREPRENEURPR and the name of his publication from Yearbook of Small Business Icons to ENTREPRENEUR ILLUSTRATED. UF 8. Defendant also uses ENTREPRENEURPR.COM as his website's address. UF. 9. On the cover of its publication, defendant's mark, ENTREPRENEUR ILLUSTRATED, appears in yellow. UF 10.

The sound of the marks is overwhelmingly similar, although ENTREPRENEURPR contains additional letters that would be pronounced "P""R." ENTREPRENEUR ILLUSTRATED also sounds similar to plaintiff's mark.

The marks looks similar. Although PR is found at the end of defendant's mark, it does not change the fact that plaintiff's entire mark is contained within it. The fact that defendant's publication title, ENTREPRENEUR ILLUSTRATED, contains an additional

word does not diminish the fact that entrepreneur is contained in the title making the appearance of the marks similar. Moreover, the word entrepreneur is clearly the dominant of the two words on the cover of the publication. Defendant places a great deal of emphasis on the fact that plaintiff's mark appears in red on its publications and defendant's is in yellow. However, the color difference does not diminish the fact that the word ENTREPRENEUR is the most prominent visual feature of both publications' covers.

Finally, although defendant's mark contains the additional meaning of PR or public relations, the meaning of ENTREPRENEUR — small, independent business owners — is suggested by both.

Because plaintiff's entire registered mark ENTREPRENEUR makes up the primary portion of each defendant's marks, the marks are similar based on sight sound and meaning. Because the Court weighs similarities of the marks more heavily than differences, *Brookfield,* 174 F.3d at 1054, this factor weighs in favor of finding a likelihood of confusion.

Relatedness of the Goods

"Related goods are more likely than non-related goods to confuse the public as to the producers of goods." *Official Airline Guides, Inc.*, 6 F.3d at 1392. "[P]roducts which would be reasonably thought by the buying public to come from the same source if sold under the same mark" are considered related. *Sleekcraft*, 599 F.2d at 348 n.10. Moreover, when goods are complementary, sold to the same class of purchasers, or similar in use and function, less similarity between the marks is needed when analyzing this factor. *See Sleekcraft*, 599 F.2d at 350.

Plaintiff's goods and services include: "software, business guides, video and audio tapes, . . . web sites and online services, . . . creat[ing] and participat[ing] in trade shows, seminars, educational programs, and business services, all in connection with small businesses." UF 6.

Defendant's goods and services include: preparing and publishing press releases that profile small businesses and providing information on the Internet. UF 11.

In sum, both parties print publications that feature small businesses. They each provide information about their own services and publications on the Internet. These goods and services are sufficiently similar to support a finding that the goods and services are related. *See, e.g., Brookfield*, 174 F.3d at 1057 (where both companies offered products related to "the entertainment industry generally," the products were related). This factor weighs in favor finding a likelihood of confusion.

Actual Confusion

Evidence of actual confusion is "persuasive proof that future confusion is likely." *Kendall-Jackson Winery, Ltd. v. E.&J. Gallo Winery*, 150 F. 3d 1042, 1048 (9th Cir. 1998) (citation omitted). Plaintiff offers the following evidence to support a finding of actual confusion: declarations from four of defendant's clients or potential clients stating that they believed that defendant was "affiliated" with plaintiff or was "part of Entrepreneur magazine" or otherwise associated with plaintiff. UF 12. Plaintiff also points to the statements of defendant's former employees that potential clients asked them if defendant was affiliated with plaintiff. UF 13.

Defendant argues that his clients' statements are open to impeachment because (1) they were not subject to cross examination, (2) they contain hearsay and (3) each client had payment disputes with defendant that call into question his or her credibility. Defendant points to no evidence to support its allegations that the witnesses are not credible and provides no basis to exclude the evidence. Moreover, sworn declarations are clearly appropriate evidence on a motion for summary judgment. *See* Fed. R. Civ. Proc. 56(e). Defendant also contends that the statements of his employees should be disregarded because they contain hearsay. Plaintiff argues that the statements are not hearsay because they are not offered for their truth (that the entities are associated), but only to demonstrate the state of mind of the caller (confusion as to whether the parties were associated). The Court concludes that these statements are not hearsay.

Although not overwhelming, evidence that four customers stated that they believed defendant's services were affiliated with plaintiff and questions from potential clients about whether defendant was affiliated with plaintiff is sufficient for the Court to find actual confusion exists. This factor weighs in favor of finding a likelihood of confusion.

Intent in Adopting Mark

"When an alleged infringer knowingly adopts a mark similar to another's, courts will presume an intent to deceive the public." *See Official Airline Guides*, 6 F.3d at 1394; *see also Sleekcraft*, 599 F.2d at 354. Evidence before the Court demonstrates that defendant was well aware of plaintiff's mark when it decided to change its name and adopt new marks. Defendant's business had been featured in plaintiff's publication; a fact defendant publicized

to his clients. The marks are clearly similar, supporting the Court's presumption that defendant intended to confuse the public by adopting the mark.

Defendant's argument that he believed that he could properly use the mark because he did not compete with plaintiff is unavailing. The inquiry is whether he knew the marks were similar. Moreover, likelihood of confusion does not require competition between the parties' goods and services. As noted above, goods that are merely complementary will support a finding of a likelihood of confusion. *See Sleekcraft*, 599 F.2d at 350.

Plaintiff also points to defendant's statement to an employee that "it's great" that potential customers think defendant and plaintiff are affiliated. *See* Gurley Dep. 42:24-43:2. This statement was made after the marks were adopted. Only defendant's intent at the time he adopted the mark is relevant to this factor. However inculpatory, defendant's statement to Gurley is irrelevant to this factor.

The Court finds that defendant knowingly adopted a mark that was similar to plaintiff's mark. This factor weighs in favor of finding a likelihood of confusion.

Strength of the Mark

Because plaintiff has registered its mark, ENTREPRENEUR, and used it in commerce for over five years, plaintiff's mark is incontestable. *See* 15 U.S.C. § 1065 ("the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable").

Defendant contends that plaintiff's mark is generic or descriptive and entitled to no protection. However, because plaintiff's mark is incontestable, defendant may not challenge it as "merely descriptive." *See Park 'N Fly, Inc., v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 196, 105 S. Ct. 658, 83 L. Ed. 2d 582 (1985).

Defendant also argues that plaintiff's mark is weak because the word "entrepreneur" is a common word in the English language that cannot be removed from general use by plaintiff's registration. He points to the Second Circuit's decision in *Gruner + Jahr USA Publishing, v. Meredith Corp.*, 991 F.2d 1072 (2nd Cir. 1993), in support of this contention. The *Gruner* court affirmed a trial court's determination that the "parents" portion of the plaintiff's mark was extremely weak because it was a common word in the language. *See id.* at 1078. The court analyzed the strength of the word without reference to what product or service it was used to identify. *See id.* Because the Ninth Circuit does not follow the same approach as the Second Circuit in determining the strength of the mark, *Gruner* is neither controlling nor persuasive authority on this Court.

For purposes of determining the likelihood of confusion in this Circuit, the strength of the mark is determined by its relationship to the products or services the mark identifies. *See Brookfield*, 174 F.3d 1036, ("Brookfield's trademark is not descriptive because is does not describe either the software product or its purpose."). Accordingly, the fact that plaintiff's mark is a common noun does not affect its strength. Plaintiff's registered mark is incontestable and is entitled to protection as a strong mark. This factor weighs in favor of finding a likelihood of confusion.

Marketing Channels

Plaintiff contends that parties' marketing channels overlap because both send their publications to media entities, target small business owners and use the Internet to market their services and provide information. Defendant contends that the only overlap between the parties' marketing channels is the use of the Internet because defendant does not sell his publication on newsstands or to subscribers.

There is no evidence as to how defendant markets his services to new clients or how plaintiff markets its products and services to new customers. The evidence before the Court demonstrates that both parties use the Internet as a marketing channel to promote their goods and services. This evidence, albeit nominal, demonstrates that the parties' marketing channels overlap, supporting a finding of a likelihood of confusion.

Degree of Consumer Care

"Likelihood of confusion is determined on the basis of a 'reasonably prudent consumer.' . . . What is expected of this reasonably prudent consumer depends on the circumstances." *Brookfield*, 174 F.3d at 1060 (citations omitted). Generally, when purchasing expensive items, the buyer is expected to be more discerning and less easily confused. *See id.* ; *see also Gallo*, 967 F.2d at 1293.

As noted above, plaintiff's consumers in this case are small business owners and others who read its publications, use the Internet, and purchase or participate in the educational resources provided by plaintiff. Defendant's consumers are small business owners who purchase his public relations services, potential clients, Internet users and the

media entities who receive his publication. Plaintiff argues that because defendant's publication is provided to media entities at no charge, consumers will exercise little care. Defendant argues that consumers are sophisticated media entities, business owners and advertisers who will exercise a great deal of care. The price of defendant's publication is not the only consideration relevant to this factor. The Court finds that small business owners seeking public relations services, advertisers and media entities will exercise a moderate degree of care. This factor weighs against finding a likelihood of confusion.

Likelihood of Expansion

Plaintiff contends that this factor weighs in favor of finding a likelihood of confusion because the parties' goods and services currently overlap. Defendant argues that because plaintiff does not plan to provide public relations services, there is no likelihood of expansion. Although there is no evidence that parties intend to expand their services to create additional overlap, it is clear that some overlap exists already. Accordingly, this factor weighs neither in favor nor against finding a likelihood of confusion.

Balancing

The Court finds that all but one factor weigh in favor of finding a likelihood of confusion in this case. Only the degree of consumer care weighs against finding a likelihood of confusion. Based on the above analysis, the Court concludes that defendant's mark is confusingly similar to plaintiff's mark. Plaintiff is entitled to summary adjudication of its claim for trademark infringement.

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V. Unfair Competition under California Code § 17200

Plaintiff correctly contends that the same facts supporting the Court's conclusion that defendant has violated the Lanham Act are sufficient to demonstrate a violation of California Business & Professions Code § 17200. *See Summit Technology, Inc. v. High-Line Medical Instruments Co.*, 933 F. Supp 918 (C.D. Cal. 1996) (holding that facts supporting a party's claim for violation of § 1125(a) also support claims for unfair competition). Because the ultimate test under both is "whether the public is likely to be deceived or confused," the Court's conclusion that defendant's mark is confusingly similar to plaintiff's mark controls the resolution of the unfair competition claim. *See Cleary v. News Corporation*, 30 F. 3d 1255, 1262-63 (9th Cir. 1994) ("actions pursuant to California Business and Professions Code § 17200 are 'substantially congruent' to claims made under the Lanham Act"). Plaintiff is entitled to summary adjudication of its claim for unfair competition under California law.

VI. Counterfeiting

Plaintiff alleges that defendant's unauthorized use of its SMALL BUSINESS SQUARE mark on defendant's website constitutes counterfeiting. In July 1997, plaintiff selected defendant's business to be featured on its SMALL BUSINESS SQUARE website and permitted defendant to place the SMALL BUSINESS SQUARE mark on his website. UF. 7. However, in January 1998, plaintiff notified defendant that he no longer had permission to use the mark on his website. Sometime during the pendency of this litigation, defendant removed the mark from his site.

Counterfeiting is a form of trademark infringement and requires plaintiff to demonstrate that: (1) defendant is using a counterfeit, copy or imitation of plaintiff's mark; (2) without plaintiff's consent; (3) in commerce; (4) in connection with the sale, offering for sale, distribution or advertising of any goods; (5) where such use is likely to cause confusion, or to cause mistake or to deceive. *See* 15 U.S.C. § 1114(1)(a). The test for infringement of § 1114 is the same as that for § 1125(a): likelihood of confusion. *See Avery Dennison Corp. v. Sumpton*, 189 F.3d 868, 873 (9th Cir. 1999).

Defendant contends that at the time he "was granted permission to use the logo, he was not made aware that Plaintiff had any policy regarding the use of this logo." Opp. at 23.[1] This statement may be true, but the evidence before the Court demonstrates that defendant was clearly informed that use after January 1998 was unauthorized. *See* Finkelstein Dec. Ex. I. There is sufficient evidence to demonstrate that defendant used plaintiff's mark without authorization.

However, plaintiff has not demonstrated that a likelihood of confusion exists. Plaintiff's cursory statement that by the time defendant removed the mark from his website "the damages has been done, as Smith had created the mistaken belief among consumers that his web site and services were associated with, or endorsed by, Entrepreneur" is insufficient to prevail on summary adjudication. *See* Points and Authorities at 21. Without citation to

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[1] Defendant's single sentence statement that "under the holding of *Welles*, such use is clearly fair use" is insufficient to assert and demonstrate this affirmative defense. Opp at 23.

evidence or authority by plaintiff, the Court cannot conclude that the placement of plaintiff's mark on defendant's website constitutes counterfeiting in violation of § 1114.

Because plaintiff has not met its "initial burden of demonstrating the absence of a genuine issue of material fact" it is not entitled to summary adjudication of its claim for counterfeiting. *See Anderson*, 477 U.S. at 256.

VII. Damages and Attorney Fees

Plaintiff's requests for an award of damages and attorney fees are denied. A determination of the amount of either damages or attorney fees is premature until each of plaintiff's claims for relief has been resolved by the Court.

VIII. Conclusion

Plaintiff's motion for summary judgment, filed May 19, 2000, is granted in part and denied in part. Plaintiff is entitled to summary adjudication of its claims for trademark infringement and unfair competition. Plaintiff's motion is denied in all other respects. Defendant's motion for summary judgment, filed June 2, 2000, is denied.

IT IS SO ORDERED.

June 28, 2000

FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT