EXHIBIT 1

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 3,663,282
Registered Aug. 4, 2009

SERVICE MARK
PRINCIPAL REGISTER

EntrepreNeurology

CASTRO, DANIEL. R. (UNITED STATES INDIVIDUAL)
BUILDING I, SUITE 450
12401 RESEARCH BLVD
AUSTIN, TX 78759

FOR: CONDUCTING WORKSHOPS AND SEMINARS IN INNOVATION AND STRATEGIC PLANNING, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 1-7-2009; IN COMMERCE 1-7-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-651,410, FILED 1-16-2009.

NICHOLAS COLEMAN, EXAMINING ATTORNEY

Dan Castro's

Entrepreneurology™

Are you an entrepreneur?

1. Do you have a hard time working for other people? Yes_____ No_____
2. Were you"not so popular" in high school? Yes_____ No_____
3. Does your mind tend to wander? Yes_____ No_____
4. Did you have average grades in high school or college? Yes _____ No_____
5. Do have difficulty staying on task? Yes _____ No_____
6. Do you have difficulty sitting still? Yes_____ No_____
7. Do you have difficulty finishing a project? Yes_____ No_____
8. Were you diagnosed as Hyper-active, ADD or Dyslexic? Yes_____ No_____
9. Do you enjoy a good healthy debate about the economy, politics or religion? Yes_____ No_____
10. Do you have to be reminded to respect your elders? Yes_____ No_____
11. Do you tend to challenge authority? Yes _____ No____
12. Do you tend to NOT follow the crowd? Yes _____ No_____
13. Are you easily bored? Yes _____ No____
14. Do you believe that if IF SOMETHING AINT BROKE, you should take it apart and rebuild it anyway? Yes _____ No____
15. Do you like to create things that have never existed before? Yes _____ No____
17. When people are talking, are you constantly asking the question "so what" in the back of your mind? Yes _____ No____
18. Do you go out of your way to help people? Yes ____ No_____

Dan Castro's

Entrepre Neurology™

Are you an entrepreneur?

19. When you walk into a store or a restaurant, do you instinctively see things they could be doing better? Yes ____ No ____

20. Do you enjoy getting your hands dirty for a good cause? Yes ____ No ____

21. Are you the kind of person who can't leave well-enough alone? Yes ____ No ____

22. Do your friends OR family consider you a renegade or a trouble maker? Yes ____ No ____

23. Do you find it's sometimes easier to ask for forgiveness than permission? Yes ____ No ____

24. Are you a stickler for detail? Yes ____ No ____

25. Have you ever been fired? Yes ____ No ____

26. When you find something you are extremely passionate about, you get so obsessed with it, you sometimes forget to eat? Yes ____ No ____

27. Do you interpret the word "NO" as "NOT YET" Yes ____ No ____

28. Do you have a hard time working for people who are not as smart as you? Yes ____ No ____

29. When you've finished all your work at the office, do you look around for other things that need to get done? Yes ____ No ____

30. Are you focused more on making a difference than on making a profit? Yes ____ No ____

31. Have you ever been "De-Friended" on Facebook? Yes ____ No ____

TOTALS: 16 ____

EXHIBIT 3

To:	Castro, Daniel. R. (dcastro@teknolaw.com)
Subject:	TRADEMARK APPLICATION NO. 77651410 - ENTREPRENEUROLOGY - Daniel R. Ca
Sent:	4/1/2009 7:22:52 AM
Sent As:	ECOM115@USPTO.GOV
Attachments:	

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/651410

MARK: ENTREPRENEUROLOGY

77651410

CORRESPONDENT ADDRESS:
DANIEL R. CASTRO
CASTRO & BAKER, LLP
12401 RESEARCH BLVD
BUILDING I, SUITE 450
AUSTIN, TX 78759

APPLICANT: Castro, Daniel. R.

GENERAL TRADEMARK INFORMATION:
http://www.uspto.gov/main/trademarks.htm

CORRESPONDENT'S REFERENCE/DOCKET NO: Daniel R. Ca

CORRESPONDENT E-MAIL ADDRESS:
dcastro@teknolaw.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 4/1/2009

OFFICE SEARCH: The examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

AMENDMENT: In accordance with the authorization granted by Daniel Castro on March 31, 2009, the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

Identification of Services

The identification of services is amended to read as follows:

Conducting workshops and seminars in innovation and strategic planning

TMEP §1402.01(e).

Please note that any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

Comments

If applicant has questions about its application, please telephone the assigned trademark examining attorney.

/Nicholas A Coleman/
Examining Attorney
Law Office 115
Office: 571-272-4917
Fax: 571-273-9115

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at http://tarr.uspto.gov. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT 4

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 5

FILED

2008 JUN -2 PM 12:07

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

Jeffrey R. Patterson, Esq. (State Bar No. 126148)
Michael R. Adele, Esq. (State Bar No. 138339)
Michael J. Holmes, Esq. (State Bar No. 199311)
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Attorneys for Plaintiff
ENTREPRENEUR MEDIA, INC.

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ENTREPRENEUR MEDIA, INC., Plaintiffs, v. EYGN LIMITED, ERNST & YOUNG LLP, and ERNST & YOUNG ADVISORY INC., Defendants.	SACV08-0608 DOC MLGx **COMPLAINT FOR: DECLARATORY JUDGMENT** **DEMAND FOR JURY TRIAL**

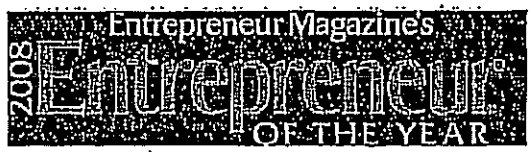
I. INTRODUCTION

1. The present action is a trademark dispute over whether Plaintiff Entrepreneur Media, Inc. ("EMI"), as the owner and publisher of Entrepreneur® magazine, may continue to advertise its contests and awards ceremonies (collectively, "awards programs") for entrepreneur of the year as "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR." Like countless other organizations across the country, EMI is entitled to use the generic phrase "entrepreneur of the year" to describe its entrepreneur of the year contests and awards programs. Indeed, numerous trademark laws and

doctrines protect EMI's right to use the phrase "entrepreneur of the year," exactly as it has done. Nevertheless, Defendant EYGN Limited sent a cease and desist letter to EMI claiming trademark rights to the phrase "ENTREPRENEUR OF THE YEAR," and demanded that EMI choose a different name for its program in order to "mitigate any harm to Ernst & Young and EYGN Limited." This thinly veiled threat of litigation creates a substantial, actual and justiciable controversy regarding EMI's right to hold (and advertise) its entrepreneur of the year contests and awards ceremonies. EMI is entitled to a declaration from the court, inter alia, that: (a) Defendants' registered "ENTREPRENEUR OF THE YEAR" trademark is invalid and unenforceable, including without limitation as against EMI, and should therefore be canceled; and/or (b) EMI's use of Defendants' claimed "ENTREPRENEUR OF THE YEAR" trademark preceded by the words "Entrepreneur® Magazine's" to identify the source thereof is non-infringing under federal and common law.[1]

II. PARTIES

2. Plaintiff EMI, a California corporation, is the largest independent business media company serving the small- and medium-size business community. In addition to publishing numerous books under the imprint "Entrepreneur Press" and owning and operating a number of websites including *www.entrepreneur.com*, EMI publishes a monthly magazine entitled Entrepreneur®, all of which contain editorial content and through which it disseminates information about and of interest to small- and medium-sized businesses, their owners and would-be owners. EMI is the owner of more than 10 registered U.S. federal trademarks that contain the word ENTREPRENEUR, including the trademark ENTREPRENEUR® for use in conjunction with the publication of printed matter, conducting trade shows and seminars, and advertising and business services. The following is EMI's advertising to which Defendants object:



[1] Defendants' registered trademarks are for ENTREPRENEUR OF THE YEAR, Reg. No. 1,587,164 and for WORLD ENTREPRENEUR OF THE YEAR, Reg. No. 2,669,983, both of which disclaim the exclusive right to the use of the word "ENTREPRENEUR."

The advertising shown above was taken from EMI's website at *www.entrepreneur.com*.

3. Plaintiff is informed and believes and based thereon alleges that Defendant EYGN Limited is a Bahamas corporation that is an intellectual property holding company for Ernst & Young. Defendant EYGN Limited, which claims ownership of the "ENTREPRENEUR OF THE YEAR" trademark, has threatened Plaintiff EMI with legal action for trademark infringement and has threatened to instigate legal proceedings if EMI continues to advertise its 2008 entrepreneur of the year contest and awards program as "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR." EYGN Limited has claimed that it and "Ernst & Young" will be harmed if EMI does not change the name of its entrepreneur of the year contest and awards program, and has sent its cease and desist letter to EMI, as stated therein, "without prejudice to the rights and remedies of EYGN Limited and all of the Ernst & Young affiliated firms."

4. Plaintiff is informed and believes and based thereon alleges that Defendant Ernst & Young Advisory Inc. is an affiliate of EYGN Limited, has a California presence, and is registered to do business in California. Plaintiff is informed and believes and based thereon alleges that Defendant Ernst & Young Advisory Inc. otherwise has substantial contacts within this judicial district.

5. Plaintiff is informed and believes and based thereon alleges that Defendant Ernst & Young LLP is an affiliate of EYGN Limited, has a California presence, and is registered to do business in California. Plaintiff is informed and believes and based thereon alleges that Defendant Ernst & Young LLP otherwise has substantial contacts within this judicial district.

III. JURISDICTION

6. Plaintiff brings this action seeking a declaration of rights with respect to federal trademark laws. The court has jurisdiction over this action under 28 U.S.C. § 1331 and 1338 (federal question), 15 U.S.C. § 1121(a) (federal trademarks), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

7. Plaintiff is informed, believes and thereon alleges that Defendants have sufficient contacts with this district generally and, in particular, with the events herein alleged, that each Defendant is subject to the exercise of jurisdiction of this court over its person.

IV. VENUE AND INTRADISTRICT ASSIGNMENT

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (d).

9. Venue properly lies in the Central District of California, pursuant to 28 U.S.C. § 1391 and 1392. The events and circumstances herein alleged occurred in the County of Orange and at least one defendant does business in the County of Orange, therefore venue is properly in the Central District.

V. FACTUAL ALLEGATIONS

Entrepreneur Magazine

10. EMI, with promotional support from Mail Boxes Etc., Inc. as franchisor of The UPS Store® and Mail Boxes Etc.® franchised locations, is currently sponsoring a contest and awards program for "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR" to recognize and reward successful entrepreneurs. An example of EMI's website advertising typically identifies its sponsorship of the "entrepreneur of the year" contest and awards program as follows:

The winners will be profiled and promoted in the December 2008 and December 2009 issues of Entrepreneur® magazine

The Present Dispute

11. On May 2, 2008, EMI received a letter from Susan Upton Douglass, an attorney at Fross Zelnick Lehrman & Zissu, P.C. representing EYGN Limited. In the letter—dated May 1, 2008, and addressed to Entrepreneur Magazine (as opposed to EMI)—Ms. Douglass warned that EYGN Limited would take legal action against Entrepreneur Magazine unless it selected a different name for its awards program in association with The UPS Store within ten days of receiving the letter. Ms. Douglass claimed the awards program "violates our client's incontestable federal registration and trademark rights under Section 32(1) and 43(a) of the Lanham Act, as well

as common law." A copy of that letter is attached as Exhibit A.

12. On May 16, 2008, after responding to the May 1 letter, EMI's attorneys received an e-mail from Ms. Douglass. In the e-mail, Ms. Douglass wrote that "[w]hat your client has done is misappropriate the federally registered and incontestable trademark ENTREPRENEUR OF THE YEAR...we ask that this situation be rectified...let us hear from you not later than June 2, 2008." A copy of that e-mail is attached as Exhibit B.

13. The May 1 letter, along with the May 16 e-mail, individually and collectively created in Plaintiff a real and reasonable apprehension that EMI would be subject to a lawsuit if it continued to advertise and otherwise promote its "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR" contest and awards program for outstanding entrepreneurs.

Defendants' Claimed "Entrepreneur of the Year" Trademark Is Invalid, Unenforceable and Should Be Canceled

14. Regardless of whether or not Defendants' "Entrepreneur of the Year" trademark is federally registered, as a matter of federal law, the trademark is invalid and unenforceable if the phrase is "generic." Using the phrase "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" is a generic use of the phrase "entrepreneur of the year." The use of the phrase, "entrepreneur of the year," to describe an entrepreneur of the year program and/or contest is used by countless organizations across the country. Using the phrase, "entrepreneur of the year," to describe an entrepreneur of the year program and/or contest is a fair use under the Lanham Act. Under the fair use doctrine, EMI is entitled to use the descriptive phrase, "entrepreneur of the year," to describe an entrepreneur of the year program and/or contest, regardless of whether or not Defendants' claimed trademark is registered.

15. Regardless of whether or not Defendants' "Entrepreneur of the Year" trademark is incontestable, as a matter of federal law, the trademark is invalid and unenforceable because the phrase is "generic." According to the Lanham Act, "To the extent that the right to use the registered mark has become incontestable under § 1065 of this title, the registration shall be conclusive evidence of the validity...Such conclusive evidence of the right to use the registered

mark shall be subject to proof of infringement as defined in § 1114 of this title, and shall be subject to the following defenses or defects...That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, ... which is descriptive of and used fairly and in good faith only to describe the goods or services of such party." 15 U.S.C. § 1115(b)(4).

16. This court is empowered to declare invalid and unenforceable and to cancel Defendants' registered "ENTREPRENEUR OF THE YEAR" trademark. Section 37 of the Lanham Act, 15 U.S.C. § 1119, provides as follows: "In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby."

17. Plaintiff is informed and believes and based thereon alleges that the general public does not understand the phrase, "entrepreneur of the year," as identifying only Defendants' entrepreneur of the year awards program. In fact, there are countless "entrepreneur of the year" awards programs – several of which even pre-date Defendants' first use of the phrase (which Defendants' contend was in 1986); for instance, a small sampling of the various "Entrepreneur of the Year" awards programs include:

- The University of Southern California Marshall School of Business, which has held its Entrepreneur of the Year award every year since 1977;
- The TwinWest Chamber of Commerce, which has held its Entrepreneur of the Year award every year since 1984, and which has held its Emerging Entrepreneur of the Year Award every year since 1988;
- Cornell University, which has held its Entrepreneur of the Year award every year since 1984;
- The University of Missouri-Kansas City, which has held its Entrepreneur of the Year award every year since 1985;
- Inc. magazine, which has held its Entrepreneur of the Year award since 1988;

- The New Hampshire High Technology Council, which has held its Entrepreneur of the Year award every year since 1988;
- The Chillicothe Ross Chamber of Commerce, which has held its Entrepreneur of the Year award every year since at least 1988;
- Eastern Washington University, which has held its Entrepreneur of the Year award every year since 1992;
- Brigham Young University, which has held its Entrepreneur of the Year award every year since 1992;
- Hispanic Business Magazine, which has held its Entrepreneur of the Year award program every year since 2002;
- The University of Northern Iowa, which has held its Entrepreneur of the Year award every year since 2002;
- Loyola Marymount University, which has held its Entrepreneur of the Year award every year since 2003;
- The University of Missouri, which has held its Entrepreneur of the Year award every year since 2005;
- Young Entrepreneurs of America, which has held its Entrepreneur of the Year award every year since at least 2007;
- Chemistry World, which has held its Entrepreneur of the Year award every year since at least 2007;
- The National Renewal Energy Laboratory, which has held its Clean Energy Entrepreneur of the Year award every year since at least 2007;
- The San Diego Hispanic Chamber of Commerce, which has given its Entrepreneur of the Year award since at least 2007;
- Independent Cosmetic Manufacturers and Distributors, which has awarded an "Entrepreneur of the Year Award" since at least 2007;
- Wealth Creator magazine, which began giving out its Entrepreneur of the Year awards in 2008;

- Steak-Out Charbroiled Delivery, which awarded an Entrepreneur of the Year award and a Young Entrepreneur of the Year award in 2008; and
- The Columbia Business Times, which awarded an Entrepreneur of the Year award in 2008.

Plaintiff is informed and believes that each of the organizations above have identified, advertised and otherwise promoted their awards programs using the phrase "Entrepreneur of the Year," have done so at least during the time periods alleged above, and that such examples are just a fraction of the countless organizations that have used the phrase "Entrepreneur of the Year" to identify their own awards programs recognizing outstanding entrepreneurs both before, during and after Defendants' claimed exclusive trademark rights in the phrase "Entrepreneur of the Year."

18. With regard to "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR" awards program for outstanding entrepreneurs; by expressly stating that it is Entrepreneur® Magazine's Entrepreneur® OF THE YEAR award, EMI has demonstrated good faith and eliminated any likelihood of confusion that its awards program is affiliated with Defendants. Indeed, EMI's advertising and other promotion of its entrepreneur of the year contest and awards program makes no reference to any sponsorship or affiliation with Defendants, which further diminishes any likelihood of confusion about any sponsorship or affiliation with Defendants.

19. Defendants' conduct, by contrast, constitutes a bad faith effort to use the trademark laws to monopolize the market for entrepreneur of the year awards programs. Defendants' May 1, 2008 letter and May 16, 2008 e-mail evidence an intent to prevent EMI (and anyone else for that matter) from using the phrase "entrepreneur of the year" in connection with an entrepreneur of the year contest or program. See Exhs. A and B. In so doing, Defendants are not only seeking exclusive use of the phrase "entrepreneur of the year," they are in fact seeking the exclusive ability to hold entrepreneur of the year awards programs. Changing the name of the award to something other than "Entrepreneur of the Year" changes the nature of the award into something other than an entrepreneur of the year award. For businesses such as EMI, holding entrepreneur of the year awards programs enhances its ability to promote entrepreneurship by annually recognizing and

celebrating outstanding entrepreneurs. Moreover, the correspondence from counsel for Defendant EYGN Limited evidences that EYGN Limited and its various "Ernst & Young affiliated firms" have entered into license agreements, i.e., contracts, for the use of the claimed "Entrepreneur of the Year" trademark and for using the claimed trademark to obtain a monopoly over the ability to hold entrepreneur of the year awards, contests and ceremonies. Such contracts and agreements between EYGN Limited and its various Ernst & Young affiliates constitute the wrongful use of the claimed "Entrepreneur of the Year" trademark in restraint of trade or commerce. See 15 U.S.C. § 1 ("[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce"). Thus, EYGN's claimed "Entrepreneur of the Year" trademark is invalid and unenforceable against Plaintiff EMI (and against anyone else).

20. Moreover, as a matter of law, Defendants abandoned their mark by failing to protest any use of the mark by others, such that the phrase has become generic. As alleged above, there are at least four entities that have had yearly "Entrepreneur of the Year" awards programs for longer than Defendants, and at least six entities that have been running yearly "Entrepreneur of the Year" awards programs for over 20 years. Defendants cannot selectively enforce their trademark against parties they consider a competitive threat, while ignoring the longstanding use of their trademark by other parties who have been using the "entrepreneur of the year" phrase for decades. For this reason too, EYGN's claimed "Entrepreneur of the Year" trademark is invalid and unenforceable against Plaintiff EMI (and against anyone else).

Plaintiff's Entrepreneur of the Year Contest and Advertising Is Non-Infringing and/or Otherwise Allowed Even If Defendants' Trademark Is Not Wholly Invalid or Unenforceable

21. Even if Defendants' claimed "Entrepreneur of the Year" trademark might, in some instances, be valid and/or enforceable (which Plaintiff EMI denies), at most it is an exceptionally weak mark entitled to the most narrow protection designed to prevent consumer confusion.[2]

[2] Further evidence of the fact that Defendants' claimed "Entrepreneur of the Year" trademark is a weak mark, is Defendants' practice of preceding their own use of the trademark with the company name E&Y or Ernst & Young. As an example thereof see attached Exhibit C.

Where, as here, a party is holding an entrepreneur of the year awards program, at most that party should be required to identify who is holding and/or sponsoring that program – which is precisely what Plaintiff EMI has done by calling its awards program "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR". Thus, at a minimum, EMI's use of the phrase "Entrepreneur of the Year" should be declared non-infringing.

22. Similarly, even if Defendants' claimed mark is enforceable (which EMI denies), EMI is allowed nominative use of it. Here, EMI's use of the term "Entrepreneur of the Year" meets all of the criteria for nominative use: (1) the awards program must be one not readily identifiable without use of the mark; (2) only so much of the mark or marks may be used as is reasonably necessary to identify the awards program; and (3) EMI has done nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by EYGN Limited (or its affiliates). As alleged above, a business cannot effectively sponsor an entrepreneur of the year award without use of the phrase "entrepreneur of the year." Thus, EMI has used only so much as is reasonably necessary to identify the awards program. Moreover, EMI has done nothing that would suggest sponsorship by EYGN Limited (or its affiliates) but, to the contrary, has expressly advertised its awards program as "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR". In short, EMI's nominative use of Defendants' claimed "Entrepreneur of the Year" trademark is allowed and, to the extent Defendants' trademark may be found valid or enforceable, should be declared non-infringing.

23. In addition, Defendants' attempt to prevent all use of the phrase "entrepreneur of the year" in connection with the entrepreneur of the year awards program constitutes a misuse of the trademark laws, rising to the level of unclean hands (which bars enforcement of the trademark), even if Defendants' conduct does not violate the anti-trust laws. Thus, EMI's use of Defendants' claimed "Entrepreneur of the Year" trademark is allowed.

VI. FIRST CAUSE OF ACTION

Declaratory Relief

24. Plaintiff repeats and incorporates herein by reference the allegations in the preceding paragraphs of this complaint.

25. Based on the foregoing allegations, there exists between the parties an actual, justiciable and substantial controversy of sufficient immediacy and reality to warrant declaratory relief, which entitles Plaintiff to declaratory relief pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

26. At issue is the ability of a media company to engage in the use of one of its own trademarks in order to provide an award to entrepreneurs on an annual basis.. Countless companies and magazines hold entrepreneur of the year awards programs and use the phrase, "entrepreneur of the year" in naming and advertising those programs. U.S. federal trademark law principles recognize such descriptive use of words found in the dictionary as fair use. Other trademark laws and doctrines, alleged above, protect EMI's right to hold its own "Entrepreneur of the Year" awards program, and to advertise and otherwise promote such a program as EMI has done.

27. Plaintiff is informed and believes and based upon such information and belief alleges that Defendants' motivation in demanding the cessation of the term "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" is not to protect its trademark. Instead, Defendants' conduct is an attempt to improperly use the trademark laws to restrain trade and to obtain a monopoly over the ability to hold entrepreneur of the year awards programs.

28. Plaintiff is currently advertising and otherwise promoting its "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" awards program nationwide through its own and third-party media, as well as through The UPS Store® and Mail Boxes Etc. franchise network and intends to continue to do so.

29. Based on the averments alleged herein, EMI is entitled to a declaration that Defendants' registered "ENTREPRENEUR OF THE YEAR" trademark is invalid, unenforceable and should be canceled. In addition, EMI is entitled to a declaration that Defendants' (purported) common law trademark rights in the phrase, "ENTREPRENEUR OF THE YEAR," are non-

existent, invalid and unenforceable. Additionally and/or alternatively, EMI is entitled to a declaration that its use of the phrases "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR" is, under federal law and state common law: (a) a fair use; (b) a nominative use; (c) non-infringing; and/or (d) an otherwise allowed use of Defendants' registered (and purported common law) "Entrepreneur of the Year" mark.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Entrepreneur Media, Inc. accordingly prays for judgment as follows:

1. For a declaration that Defendants' claimed "Entrepreneur of the Year" trademark is invalid and unenforceable, including without limitation as against EMI, and canceled;
2. For a declaration that Defendants' (purported) common law trademark rights in the phrase, "ENTREPRENEUR OF THE YEAR," are non-existent, invalid and unenforceable;
3. For a declaration that Plaintiff's use of the terms "Entrepreneur Magazine's 2008 Entrepreneur® OF THE YEAR" and "Entrepreneur Magazine's 2008 Emerging Entrepreneur® OF THE YEAR" in connection with its contest and awards program for successful entrepreneurs is, under federal law and state common law: (a) a fair use; (b) a nominative use; (c) non-infringing; and/or (d) an otherwise allowed use of Defendants' registered (and purported common law) "Entrepreneur of the Year" mark.;
4. For Plaintiff's attorneys' fees;
5. For Plaintiff's costs and disbursements in this action; and
6. For such other and further equitable and legal relief as the court shall find just and proper.

Dated: May 30, 2008

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: _____
MICHAEL R. ADELE
Attorneys for Plaintiff
ENTREPRENEUR MEDIA, INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial for all issues triable by jury including, but not limited to, those issues and claims set forth in any amended complaint or consolidated action.

Dated: May 30, 2008

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: _____

MICHAEL R. ADELE
Attorneys for Plaintiff
ENTREPRENEUR MEDIA, INC.

EXHIBIT 6

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.	
HENRY BISSELL 6820 LA TIJERA BOULEVARD LOS ANGELES, CALIFORNIA 90045	01	
	MAILING DATE 07/09/85	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.

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, the attached 1/31/86 Computer Age Digest copy p 72 col 3 Computer 1/31/86 C Age Digest

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; 1,130,822; 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); Clamorene 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 56, 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

EXHIBIT 7

WILLIAM BLUMENTHAL
General Counsel

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ROSEMARY ROSSO
MAMIE KRESSES
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Fax: (202) 326-3259

KENNETH H. ABBE (Local Counsel)
California Bar # 172416
Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024
Tel: (310) 824-4318
Fax: (310) 824-4380

Attorneys for Plaintiff,
FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

A. GLENN BRASWELL, *et al.*

Defendants.

Hon. Dickran Tevrizian

CV 03-3700-DT (PJWx)

SETTLEMENT AGREEMENT AND [Proposed] FINAL ORDER AS TO CHASE REVEL

761

Plaintiff, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint and Second Corrected First Amended Complaint for permanent injunction and other relief against A. Glenn Braswell, JOL Management Co., G.B. Data Systems, Inc., Gero Vita International, Inc., Theraceuticals, Inc., Halsey Holdings LLC, Health Quest Publications, Inc., G.B. Data Systems, Inc (Canada), Ron Tepper, Ronald M. Lawrence, M.D., Ph.D., Hans Kugler, Ph.D., and Chase Revel a/k/a Marcus Welbourne, John Welburn, James Welburn, Martin Wellner, John Megenhorn, and John Burke, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). Defendant Chase Revel denies the allegations in the Complaint, except jurisdictional facts, and disputes the legal basis for the relief requested, but is willing to agree to the entry of the following Settlement Agreement and Final Order, without adjudication of any issues of fact or law and without Defendant Revel admitting liability for any of the matters alleged in the Complaint.

The Commission and Defendant Revel have stipulated to the entry of the following Settlement Agreement and Final Order in settlement of the Commission's Complaint against Defendant Revel. The Court, being advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over the parties in this case. Venue in the Central District of California is proper.
2. The Complaint states a claim upon which relief can be granted. The Commission has the authority to seek the relief it has requested.
3. The activities of Defendant Revel are or were in or affecting commerce, as defined in 15 U.S.C. § 44.
4. The parties waive all rights to seek judicial review or otherwise challenge or contest the validity of this Settlement Agreement and

Final Order. Defendant Revel also waives any claims that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Settlement Agreement and Final Order.

5. Each party shall bear its own costs and attorneys' fees.

6. Entry of this Settlement Agreement and Final Order is in the public interest.

7. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Settlement Agreement and Final Order are binding upon Defendant Revel, and any agents, servants, employees and all other persons or entities in active concert or participation with him, who receive actual notice of this Settlement Agreement and Final Order by personal service or otherwise.

8. This Settlement Agreement and Final Order resolves all claims that arose prior to the date of entry of this Settlement Agreement and Final Order against Defendant Revel with respect to any allegation that such Defendant violated the Federal Trade Commission Act and the regulations promulgated thereunder with respect to the advertising of dietary supplements marketed by the Defendants in this action. The Settlement Agreement and Final Order does not resolve any claims against any other Defendant in this action.

9. This is a final Settlement Agreement and Final Order with respect to Defendant Revel.

10. Defendant's stipulation is for settlement purposes only; does not constitute an admission of facts (other than jurisdictional facts) or violations of law as alleged in the Second Corrected First Amended Complaint and in fact Defendant Revel denies same; and may not be used against Defendant Revel in any other proceeding, except in such

proceedings as may be necessary to enforce the provisions of this Settlement Agreement and Final Order.

11. This Settlement Agreement and Final Order was drafted jointly by Plaintiff and Defendant Revel and reflects the negotiated agreement among the parties.

12. The paragraphs of this Settlement Agreement and Final Order shall be read as the necessary requirements for compliance and not alternatives for compliance and no paragraph serves to modify another paragraph unless expressly so stated.

DEFINITIONS

For purposes of this Settlement Agreement and Final Order, the following definitions shall apply:

1. Unless otherwise specified, "Defendant" shall mean Chase Revel a/k/a John Leonard Burke. For purposes of this Settlement Agreement and Final Order, "Defendant" shall also mean Marcus Welbourne, John Welburn, James Welburn, Martin Wellner, and John Megenhorn to the extent Chase Revel a/k/a John Leonard Burke used such names as pen names in advertisements he drafted for any former defendant in this action.

Fake Names

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant field to yield accurate and reliable results.

3. "Food," "drug," and "device" shall mean "food," "drug," and "device" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

4. "Covered product or service" shall mean any food, drug, device, or dietary supplement, whether sold individually or as part of a program, or any health-related service.

5. "Commerce" shall mean "commerce" as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. "Endorsement" shall mean "endorsement" as defined in 16 C.F.R. § 255.0(b).

7. "Clear(ly) and prominent(ly)" shall mean as follows:

   a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media including the Internet and online services), the disclosure shall be presented in either the audio or video portions of the advertisement. Audio disclosures shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Video disclosures shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

   b. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background in which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

CONDUCT PROHIBITIONS AND REQUIRED DISCLOSURES

Representations Regarding Respiratory Products

I.

IT IS HEREBY ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, representatives, employees, and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Lung Support Formula, or any other respiratory product, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of trade names or endorsements, that such product:

A. Cures or treats lung diseases or respiratory problems, including allergies, asthma, colds, influenza, bronchitis, sinus problems, chest congestion, emphysema, smoking damage, or shortness of breath;

B. Reverses existing lung damage in persons with emphysema or significantly improves their breathing;

C. Prevents breathing problems for persons who do not have existing respiratory problems; or

D. Is clinically proven to eliminate or cure allergies related to respiratory problems, asthma, colds, influenza, bronchitis, sinus problems, chest congestion, emphysema, smoking damage, or shortness of breath;

unless the representation is true, non-misleading, and, at the time it is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Representations Regarding Diabetes and Blood Sugar Products

II.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, representatives, employees, and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of AntiBetic Pancreas Tonic or any other diabetes or blood sugar product, are hereby permanently restrained and enjoined from making any representation in any manner, expressly or by implication, including through the use of trade names or endorsements, that such product:

A. Can cure Type I or Type II diabetes;

B. Is an effective or superior alternative to insulin or other diabetes medications for the treatment of Type I or Type II diabetes;

C. Lowers blood sugar levels in persons with diabetes or regenerates or repairs the pancreatic beta cells that produce insulin; or

D. Is clinically proven to lower blood sugar levels in persons with diabetes or to regenerate or repair the pancreatic beta cells that produce insulin;

unless the representation is true, non-misleading, and, at the time it is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Representations Regarding Anti-Aging Products

III.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, representatives, employees, and all persons or entities in active concert

or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Gero Vita G.H.3 or any other anti-aging product, are hereby permanently restrained and enjoined from making any representation in any manner, expressly or by implication, including through the use of trade names or endorsements, that such product :

A. Prevents or reverses age-related memory loss, dementia, or Alzheimer's disease;

B. Enables persons to live longer; or

C. Is clinically proven to prevent or reverse age-related memory loss, dementia, or Alzheimer's disease;

unless the representation is true, non-misleading, and, at the time it is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Representations Regarding Covered Products and Services

IV.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, servants, employees, and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service are hereby permanently restrained and enjoined from misrepresenting that any product or treatment has been tested by scientists, researchers, or other medical professionals and found to be effective.

V.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, servants, employees and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service are hereby permanently restrained and enjoined from making any representation in any manner, expressly or by implication, including through the use of trade names or endorsements, about the absolute or comparative health benefits, efficacy, safety, or side effects of such product unless the claim is true, non-misleading, and, at the time it is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Representations Regarding Tests or Studies

VI.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, servants, employees and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Advertising Formats

VII.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, servants, employees and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, that:

A. The product or service has been independently reviewed or evaluated; or

B. Any advertisement for the product or service is not a paid advertisement.

Use of Endorsements

VIII.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, servants, employees and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, are hereby permanently restrained and enjoined from representing, in any manner, expressly or by implication, that, consistent with 16 C.F.R. 255, such product or service has been endorsed by any person, organization or group that is an expert with respect to the endorsement

message unless:

A. The endorser is an existing person, organization, or group whose qualifications give it the expertise that the endorser is represented as having with respect to the endorsement; and

B. The endorsement is substantiated by an objective and valid evaluation or test using procedures generally accepted by experts in the relevant science or profession to yield accurate and reliable results.

IX.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his agents, servants, employees and all persons or entities in active concert or participation with him who receive actual notice of this Settlement Agreement and Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting that any endorser of the product or service is not affiliated with or is independent from the individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing the product or service; and

B. Failing to disclose, clearly and prominently, any material connection, where one exists, between the individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing the product and any endorser of the product or service. For purposes of this Paragraph, a "material connection" shall mean any relationship that may materially affect the weight or credibility of the endorsement, including, but not limited to: where the endorser has any direct or indirect ownership interest in any business

Defendant owns or controls or its subsidiaries or affiliates, or receives a royalty or percentage of sales of the endorsed product; or the endorser is an employee, agent, representative, officer, director, or shareholder of any business Defendant owns or controls or its subsidiaries or affiliates.

BOND REQUIREMENT FOR CHASE REVEL

X.

IT IS FURTHER ORDERED that:

A. Defendant Revel, whether directly, or in concert with others, or through any business, entity, corporation, subsidiary, division or other device, in which he has a direct or indirect ownership interest or controlling interest, or for which he holds a managerial post or serves as an officer, director, consultant, or employee is hereby permanently enjoined and restrained from participating or assisting others in any manner whatsoever, directly or in concert with others, individually or through any business entity or device, in the advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary supplement, device, or any health-related service for human use or consumption ("Bond Covered Activity") unless he first obtains a surety bond in the principal sum of One Million Dollars ($1,000,000).

1. For purposes of this Paragraph, "assisting others" shall mean knowingly providing any of the following services to any person or entity:

   a. performing customer service functions for any person or entity, including, but not limited to, outbound or inbound telemarketing, upselling, cross-selling, handling customer complaints, refund processing, web design and marketing, continuity program development or

implementation. or designing or preparing or assisting in the preparation of product labeling or packaging;

b. formulating or providing, or arranging for the formulation or provision of, any sales script or any other advertising or marketing material for any person or entity;

c. leasing, renting, selling, or servicing customer lists, or

d. performing advertising or marketing services or consulting services of any kind for any person or entity.

B. The terms and conditions of the bond required by Subparagraph A hereof shall be as follows:

1. The bond shall be conditioned upon compliance with the provisions of this Settlement Agreement and Final Order and with Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52;

2. The bond shall be continuous and remain in force and effect as long as Defendant Revel engages in any Bond Covered Activity, and for at least three (3) years after he has ceased to engage in any Bond Covered Activity.

3. The bond shall cite this Settlement Agreement and Final Order as the basis of the bond, and shall provide surety thereunder to consumers against financial loss resulting from any violation of the provisions of this Settlement Agreement and Final Order, or Sections 5(a) or 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52;

4. The bond required by this section shall be issued by a surety company that:

a. Is admitted to do business in each of the states in which Defendant Revel conducts business; and

b. Holds a Federal Certificate of Authority As Acceptable Surety on Federal Bond and Reinsuring;

5. The bond shall be in favor of the Commission for the benefit of any consumer or consumers injured as a result of any violation of the provisions of this Settlement Agreement and Final Order or of Sections 5(a) or 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, related to a Bond Covered Activity;

6. The bond required pursuant to this Paragraph is in addition to and not in lieu of any other bond required by federal, state or local law. The bond requirements of this Settlement Agreement and Final Order shall not be construed to limit or preempt the regulatory powers of any other federal, state or local governmental agency or authority;

7. At least ten (10) days before commencing any Bond Covered Activity, Defendant Revel shall provide a copy of any bond required by this section to the Associate Director for Enforcement at the Federal Trade Commission by overnight courier; and

8. Defendant Revel, directly or through any other persons acting in concert or participation with him or under his authority, supervision or control shall not disclose the existence of any surety bond required by this Settlement Agreement and Final Order to any consumer or prospective customer without simultaneously making the following disclosure: **"THIS BOND IS REQUIRED BY THE FEDERAL TRADE COMMISSION IN SETTLEMENT OF CHARGES THAT CHASE REVEL USED DECEPTIVE CLAIMS TO PROMOTE AND SELL DIETARY SUPPLEMENTS."**

Such disclosure shall be made clearly and prominently, and in close proximity to any statement disclosing the existence of the bond.

C. In lieu of the bond required by Subparagraph A hereof, Defendant Revel may place the sum of the amount of the bond in cash or by an irrevocable letter of credit issued by an accredited United States bank, in an escrow account to be held by a suitable escrow agent to be selected by the Commission, or its representative. Defendant Revel shall pay the costs associated with the creation, funding, operation, and administration of the escrow account. The letter of credit shall be subject to all of the terms and conditions of the bond required by Section B (1)-(3) and (5)-(8) hereof. The escrow agreement shall provide that the escrow agent, within thirty (30) days following receipt of notice that a final judgment or an order of the Commission against Defendant Revel for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered and the time for all appeals is exhausted, or, in the case of an order of the Federal Trade Commission, has become final and the time for all appeals is exhausted, finding that he has violated the terms of this Settlement Agreement and Final Order or the provisions of the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the escrow agent, *provided that*, if Defendant Revel has agreed to the entry of a court order or an order of the Commission, a specific finding that Defendant Revel has violated the terms of this Settlement

Agreement and Final Order or the provisions of the Federal Trade Commission shall not be necessary. A copy of the notice provided for herein shall be mailed via overnight to Defendant Revel at his last known address, with a copy to counsel of record herein.

FDA APPROVED CLAIMS

XI.

IT IS FURTHER ORDERED that:

A. Except as provided in Paragraph X, nothing in this Settlement Agreement and Final Order shall prohibit Defendant Revel from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Except as provided in Paragraph X, nothing in this Settlement Agreement and Final Order shall prohibit Defendant Revel from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated under the laws of the United States of America.

MONETARY RELIEF

XII.

IT IS FURTHER ORDERED that:

A. Defendant Revel shall pay to the Commission the sum of Twenty-Seven Thousand Five Hundred Dollars ($27,500) in the following manner:

1. Defendant has placed the sum of Twenty-Seven Thousand Five Hundred Dollars ($27,500) into a trust account at the law firm of Defendant's Counsel, Kirkpatrick & Lockhart Nicholson Graham LLP, which shall be held by Defendant's counsel in

such trust account and transferred within five (5) business days after entry of this Settlement Agreement and Final Order, by electronic funds transfer into an account to be designated by the Commission in accord with directions provided by the Commission.

2. All funds paid pursuant to this Settlement Agreement and Final Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendant shall have no right to contest the manner of distribution chosen by the Commission.

3. The monetary relief paid herein is deemed to be restitution or disgorgement and no portion of any payments herein shall be deemed a payment of any fine, penalty, or punitive assessment.

4. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless he has done so already, to furnish to the Commission his taxpayer identifying numbers and/or social security numbers, which may be used solely for purposes of

collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

5. Defendant relinquishes all dominion, control, and title to the funds paid into the account established pursuant to this Settlement Agreement and Final Order, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to consumers. Defendant shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of the Defendant, Defendant acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

B. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Settlement Agreement and Final Order.

C. Defendant agrees that, if he fails to timely and completely fulfill the payment obligations set forth in this Final Settlement Agreement and Final Order, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Settlement Agreement and Final Order, including but not limited to, a nondischargeability complaint in any bankruptcy case.

Right to Reopen

XIII.

IT IS FURTHER ORDERED that:

A. The Commission's agreement to this Settlement Agreement and Final

Order is expressly premised upon Defendant's financial condition as represented by Defendant Revel or his counsel in submissions made to the Commission, to wit:

1. the sworn financial disclosures dated January 9, 2006, and the attached asset/liability spreadsheet, bank statements, and boat survey; and
2. the Verification of Financial Information, executed and dated December 12, 2005.

These financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Settlement Agreement and Final Order.

B. If, upon written motion by the Commission, a Court should determine that Defendant Revel made a material misrepresentation or omitted material information concerning his financial condition to the Commission, then the Court shall enter judgment for disgorgement against Defendant Revel in favor of the Commission, in the amount of One Million Dollars ($1,000,000), which amount shall become immediately due and payable by Defendant Revel, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance; *provided, however*, that in all other respects this Settlement Agreement and Final Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to contempt proceedings, or any other proceedings that the Commission or the United States may initiate to

enforce this Settlement Agreement and Final Order. For purposes of this Paragraph, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Defendant Revel agrees: (1) not to contest any of the allegations in the Commission's Complaint and (2) to accept service of any written motion through Plaintiff's mailing such motion to Defendant's counsel of record herein or such substitute counsel as Defendant may advise Plaintiff.

COMPLIANCE REQUIREMENTS

Employees' Compliance with Order

XIV.

IT IS FURTHER ORDERED that Defendant Revel, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, shall:

A. Take reasonable steps sufficient to monitor and ensure that all employees and agents whom he supervises, manages, or controls, and who are engaged in sales, marketing, advertising, promotion, or other customer service or policy functions comply with Parts I through IX of this Settlement Agreement and Final Order. Such steps shall include adequate monitoring of all advertisements, promotions, sales presentations, and other oral and written communication with customers regarding such products or services. Defendant Revel, at a minimum, shall:

1. Conduct periodic monitoring of representations concerning any product or service made by such persons engaged in sales or other customer service functions, including any representations made orally or through electronic communications;

2. Conduct periodic monitoring of representations made by such

persons in advertising for the product or service;

3. Maintain a procedure for receiving, maintaining, and responding to consumer complaints; and

4. Maintain a procedure for taking action against any employee or agent who engages in any conduct prohibited by Paragraphs I through IX of this Settlement Agreement and Final Order, including, but not limited to, warning each such employee or agent upon the first instance of non-compliance and termination, as specified below in Subparagraph B of this Paragraph.

B. Subject to limitations imposed by federal and state employment laws, terminate the employment of any employee or agent who engages in any conduct prohibited by Parts I through IX of this Settlement Agreement and Final Order once Defendant Revel knows or should know that such person is or has been engaged in such conduct after having been warned of a previous instance of non-compliance.

Compliance Reporting

XV.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Settlement Agreement and Final Order may be monitored:

A. For a period of five (5) years from the date of entry of this Settlement Agreement and Final Order, Defendant Revel:

1. Shall notify the Commission of the following:

a. Any changes in residence(s), mailing address(es), and telephone number(s) of the Defendant, within ten (10) days of the date of such change;

b. Any changes in Defendant's employment status (including self-employment), and any change in

Defendant's ownership of any business entity engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of a covered product or service, within ten (10) days of such change. Such notice shall include the name and address of each such business engaged in the manufacturing, labeling, advertising, promotion. offering for sale, sale, or distribution of a covered product or service that the Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in the Defendant's name or Defendant's use of any additional name(s); and

2. Shall notify the Commission of any proposed change in corporate structure of any business entity that Defendant Revel directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Settlement Agreement and Final Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Settlement Agreement and Final Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation

about which Defendant Revel learns less than thirty (30) days prior to the date such action is to take place, Defendant Revel shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. Sixty (60) days after the date of entry of this Settlement Agreement and Final Order, Defendant Revel shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with the terms of this Settlement Agreement and Final Order. This report shall include, but not be limited to:

1. The then-current residence addresses, mailing addresses, and telephone numbers of Defendant Revel;
2. The then-current employment and business addresses and telephone numbers of Defendant Revel, a description of the business activities of each such employer or business, and the title and responsibilities of the Defendant, for each such employer or business;
3. The full name, address, telephone number, and state of incorporation of each corporation for which Defendant Revel is an officer or director or in which he holds more than five (5) percent of the shares of the corporation;
4. A copy of each acknowledgment of receipt of this Settlement Agreement and Final Order obtained by Defendant Revel pursuant to Paragraph XVIII.C; and
5. Any other changes required to be reported under Subparagraph A of this Section.

For purposes of this Paragraph, "employment" includes the

performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant Revel performs services as an employee, consultant, or independent contractor.

C. For purposes of this Settlement Agreement and Final Order, Defendant Revel shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Rm. NJ2122
Washington, D.C. 20580
Re: FTC v. Braswell et al., No. CV 03-3700-DT (PJWx)

D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate in writing directly with Defendant Revel, with a copy to Defendant's counsel of record herein, or such substitute counsel as Defendant may advise Plaintiff. Defendant shall be given the opportunity to have counsel present for any oral communications.

Compliance Monitoring

XVI.

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Settlement Agreement and Final Order,

A. Within ten (10) days, or such longer period as may be reasonable but not to exceed thirty (30) days, of receipt of written notice from a representative of the Commission, Defendant Revel shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or

provide entry during normal business hours to any business location in Defendant Revel's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Settlement Agreement and Final Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers or suppliers to Defendant Revel, employees of Defendant Revel, or any other entity managed or controlled in whole or in part by Defendant Revel without the necessity of identification or prior notice; and

C. Defendant Revel shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative (except Defendant's legal counsel), agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Settlement Agreement and Final Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Settlement Agreement and Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

RECORD KEEPING PROVISIONS

XVII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the

date of entry of this Settlement Agreement and Final Order. Defendant Revel and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Settlement Agreement and Final Order by personal service or otherwise, is hereby restrained and enjoined from failing to continue to create and retain the following records:

A. Accounting records that reflect the cost of any goods or services sold, revenues generated, and disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly, or though any third party) and all records showing any responses to those complaints or requests;

E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other marketing materials utilized in the advertising, marketing, promotion, offering for sale, distribution or sale of any covered product or service;

F. All materials that were relied upon in making any representations contained in the materials identified in Subparagraph E above, including all documents evidencing or referring to the accuracy of any claim therein or to the efficacy of any covered product or service,

including, but not limited to, all tests, reports, studies, demonstrations, as well as all evidence in Defendant Revel's possession that confirms, contradicts, qualifies, or calls into question the accuracy of such claims regarding the efficacy of such covered product or service;

G. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of advertising, marketing, promoting, offering for sale, distributing, or selling any product; and

H. All records and documents necessary to demonstrate full compliance with each provision of this Settlement Agreement and Final Order, including but not limited to, copies of acknowledgments of receipt of this Settlement Agreement and Final Order and all reports submitted to the FTC pursuant to this Settlement Agreement and Final Order.

DISTRIBUTION OF ORDER

XVIII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Settlement Agreement and Final Order, Defendant Revel shall deliver copies of the Settlement Agreement and Final Order as directed below:

A. **Defendant Revel as Control Person:** For any business engaged in the advertising, promotion, marketing, offering for sale, or sale of any food, drug, dietary supplement, device, or any health-related service that Defendant Revel controls, directly or indirectly, or in which such Defendant has a majority ownership interest, Defendant Revel must deliver a copy of this Settlement Agreement and Final Order to all principals, officers, directors, and managers of that business. For current personnel, delivery shall be within five (5) days of service of

this Settlement Agreement and Final Order upon Defendant Revel. For new personnel, delivery shall occur prior to them assuming their position or responsibilities.

B. **Defendant Revel as Employee or Non-Control Person:** For any business engaged in the advertising, promotion, marketing, offering for sale, or sale of any Bond Covered Activity where Defendant Revel is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Settlement Agreement and Final Order either as an employee, consultant, contractor, or agent, Defendant Revel must deliver a copy of this Settlement Agreement and Final Order to the chief executive officer or highest executive manager of the business; to the Chairman of the Board of Directors or head of a comparable executive governing committee; and to such supervisors and managers involved in advertising, promotion, or marketing activities with whom, or for whom, Defendant Revel works, before engaging in such conduct.

C. Defendant Revel must secure a signed and dated statement acknowledging receipt of the Settlement Agreement and Final Order, within thirty (30) days of delivery, from all persons receiving a copy of the Settlement Agreement and Final Order pursuant to this Part.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

XIX.

IT IS FURTHER ORDERED that Defendant Revel, within five (5) business days of receipt of this Settlement Agreement and Final Order as entered by the Court, must execute and submit to the Commission a sworn statement acknowledging receipt of this Settlement Agreement and Final Order.

COURT'S RETENTION OF JURISDICTION

XX.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Settlement Agreement and Final Order.

SO STIPULATED AND AGREED:

Rosemary Rosso

DAVID P. FRANKEL
ROSEMARY ROSSO
MAMIE KRESSES
THEODORE H. HOPPOCK
CHRISTINE J. LEE
DAVID K. KOEHLER
ALYSA BERNSTEIN
JAMES A. TRILLING

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Rm. NJ-3212
Washington, D.C. 20580
(202)326-2812,-2174,-2070
(202)326-3259 (facsimile)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

C. Reed 1/9/06

CHASE REVEL a/k/a Marcus Welbourne, John Welburn, James Welburn, Martin Wellner, John Megenborn, and John Leonard Burke

Admitted

1/9/06

MICHAEL L. MALLOW
Kirkpatrick & Lockhart Nicholson Graham LLP
10100 Santa Monica Blvd, 7th Floor
Los Angeles, CA 90067

(310) 552-5000
(310) 552-5001 (facsimile)

Attorney for DEFENDANT REVEL

SO ORDERED

DATED: 1-19-06

DICKRAN TEVRIZIAN

HON. DICKRAN TEVRIZIAN
UNITED STATES DISTRICT JUDGE

EXHIBIT 8

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

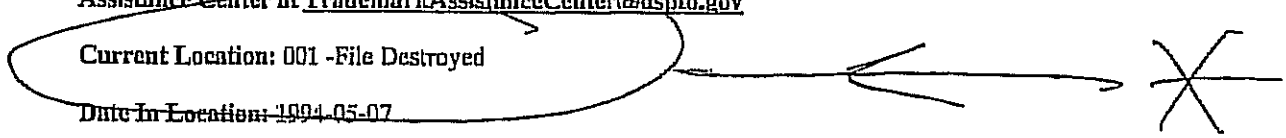
Register: Supplemental

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 Lalijera Blvd.
Los Angeles CA 90045

EXHIBIT 9

HUNTER RICHEY Di BENEDETTO & BREWER, LLP
Sharon K. Sandeen (State Bar # 119361)
Attorneys at Law
801 K Street, 23rd Floor
Sacramento, California 95814
Telephone: (916) 491-3000
Facsimile: (916) 491-3080

Attorneys for Defendant
SCOTT SMITH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ENTREPRENEUR MEDIA, INC., a California corporation,

Plaintiff,

v.

SCOTT SMITH dba ENTREPRENEURPR,

Defendant.
_____/

Case No. 98-3607 LGB (BQRx)

DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT FOR TRADEMARK INFRINGEMENT; UNFAIR COMPETITION AND COUNTERFEIT

COMPLAINT FILED: 5-8-98

Defendant Scott Smith ("Smith") answers the First Amended Complaint ("Complaint") of plaintiff Entrepreneur Media, Inc. ("EMI") herein as follows:

JURISDICTION AND VENUE

1. In response to paragraph 1 of the Complaint, Smith admits the allegations contained therein.

2. In response to paragraph 2 of the Complaint, Smith admits the allegations contained therein.

3. In response to paragraph 3 of the Complaint, Smith denies that venue of this action is proper in the U.S. District Court for the Central District of California because he does not reside in such district and a substantial part of the events or omissions giving rise to EMI's claims did not occur in such district.

THE PARTIES

4. In response to paragraph 4 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein and, on such basis, denies all of the allegations contained therein.

5. In response to paragraph 5 of the Complaint, Smith admits the allegations contained therein.

6. In response to paragraph 6 of the Complaint, Smith admits the allegations contained therein.

7. In response to paragraph 7 of the Complaint, Smith acknowledges that he is referred to in the Complaint as "defendant."

BACKGROUND FACTS

8. In response to paragraph 8 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein and, on such basis, denies all of the allegations contained therein.

9. In response to paragraph 9 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein and, on such basis, denies all of the allegations contained therein.

10. In response to paragraph 10 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein and, on such basis, denies all of the allegations contained therein.

11. In response to paragraph 11 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein and, on such basis, denies all of the allegations contained therein.

12. In response to paragraph 12 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein and, on such basis, denies all of the allegations contained therein.

13. In response to paragraph 13 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein

and, on such basis, denies all of the allegations contained therein.

FIRST CLAIM FOR RELIEF

14. In response to paragraph 14 of the Complaint, Smith re-alleges each and every response to paragraphs 1 through 13 that are set forth above and incorporates them herein by this reference.

15. In response to paragraph 15 of the Complaint, Smith admits that he is doing business under the name "EntrepreneurPR" but denies that such usage infringes any of the trademark rights of EMI.

16. In response to paragraph 16 of the Complaint, Smith admits that under the auspices of his business he operates a website and that the domain name for such website is "entrepreneurpr.com," but denies that such domain name infringes any of the trademark rights of EMI. In this regard, Smith notes that the domain name of EMI is "entrepreneurmag.com" and that the domain name "entrepreneur.com" is owned and used by a third party.

17. In response to paragraph 17 of the Complaint, Smith admits that under the auspices of his business he published and distributed a publication entitled "Entrepreneur Illustrated," but denies that such publication infringes any of the trademark rights of EMI. In this regard, Smith is informed and believes that there are many printed publications, some that are sold right along side EMI's magazine, that include the word "Entrepreneur" in their title, and that to the extent EMI has any trademark rights in the word "Entrepreneur," such rights are very weak.

18. In response to paragraph 18 of the Complaint, Smith admits that the publication "Entrepreneur Illustrated" was mailed to various media outlets throughout the United States, but denies the remaining allegations of paragraph 18.

19. In response to paragraph 19 of the Complaint, Smith denies each and every allegation contained therein.

20. In response to paragraph 20 of the Complaint, Smith denies each and every allegation contained therein.

21. In response to paragraph 21 of the Complaint, Smith denies each and

every allegation contained therein.

22. In response to paragraph 22 of the Complaint, Smith denies each and every allegation contained therein.

23. In response to paragraph 23 of the Complaint, Smith denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEF

24. In response to paragraph 24 of the Complaint, Smith re-alleges each and every response to paragraphs 1 through 13 and 15 through 23 that are set forth above and incorporates them herein by this reference.

25. In response to paragraph 25 of the Complaint, Smith admits that he formerly did business under the name of ICON Publications and that ICON Publications had a domain name of "iconpub.com," that his web site was selected by plaintiff as a reciprocal link to plaintiff's Web site, and that he was given permission by plaintiff to use certain of plaintiff's marks on his Web site, but denies the remaining allegations of paragraph 25.

26. In response to paragraph 26 of the Complaint, Smith denies each and every allegation contained therein.

27. In response to paragraph 27 of the Complaint, Smith admits that plaintiff filed a complaint and accused defendant of infringing its trademark rights, but denies the remaining allegations of paragraph 27. In particular, Smith denies that plaintiff's original complaint had anything to do with "Small Business Square."

28. In response to paragraph 28 of the Complaint, Smith denies each and every allegation contained therein.

29. In response to paragraph 29 of the Complaint, Smith denies each and every allegation contained therein.

30. In response to paragraph 30 of the Complaint, Smith denies each and every allegation contained therein.

THIRD CLAIM FOR RELIEF

31. In response to paragraph 31 of the Complaint, Smith re-alleges each and

every response to paragraphs 1 through 11, 13 through 23, and 25 through 30 that are set forth above and incorporates them herein by this reference.

32. In response to paragraph 32 of the Complaint, Smith does not have sufficient knowledge or belief upon which to admit or deny the allegations contained therein and, on such basis, denies all of the allegations contained therein.

33. In response to paragraph 33 of the Complaint, Smith admits that he received a letter from plaintiff's counsel dated January 15, 1998 and states that such letter speaks for itself. Smith denies the remaining allegations of paragraph 33.

34. In response to paragraph 34 of the Complaint, Smith denies each and every allegation contained therein. In particular, Smith denies that plaintiff's original complaint had anything to do with "Small Business Square."

35. In response to paragraph 35 of the Complaint, Smith denies each and every allegation contained therein.

36. In response to paragraph 36 of the Complaint, Smith denies each and every allegation contained therein.

37. In response to paragraph 37 of the Complaint, Smith denies each and every allegation contained therein.

38. In response to paragraph 38 of the Complaint, Smith denies each and every allegation contained therein.

39. In response to paragraph 39 of the Complaint, Smith denies each and every allegation contained therein.

40. In response to paragraph 40 of the Complaint, Smith denies each and every allegation contained therein.

41. In response to paragraph 40 of the Complaint, Smith denies each and every allegation contained therein.

42. In response to paragraph 42 of the Complaint, Smith denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

43. As his first separate and affirmative defense to EMI's claims, Smith alleges that EMI has failed to state facts sufficient to constitute a claim for relief against Smith.

44. As his second separate and affirmative defense to EMI's claims, Smith alleges that EMI has acquiesced in the use by others of numerous trademarks and service marks that contain the word "Entrepreneur" or some derivation thereof and that, as a result, any rights EMI may have in its trademarks are extremely weak.

45. As his third separate and affirmative defense to EMI's claims, Smith alleges that EMI's trademarks are invalid because they are highly descriptive and there is insufficient evidence of secondary meaning or because they are generic

46. As his fourth separate and affirmative defense to EMI's claims, Smith alleges that the actions of Smith that serve as the basis of EMI's claims were privileged based upon principles of free speech and free competition.

47. As his fifth separate affirmative defense to EMI's claims, Smith alleges that all or some of EMI's claims are barred by the doctrine laches.

PRAYER FOR RELIEF

WHEREFORE, Smith prays for judgment in his favor and against EMI and that:

48. EMI take nothing by reason of its complaint against Smith;

49. Smith be awarded his costs incurred in defending this action to the maximum extent allowed under law;

50. This case be considered an "exceptional case" pursuant to 15 USC §1117 and, based thereon, that Smith be awarded his reasonable attorneys fees as the prevailing party; and

51. Smith be awarded such other and further relief as the court may deem appropriate.

Dated: May 6, 1999

HUNTER RICHEY Di BENEDETTO & BREWER

By: _____
Sharon K. Sandeen
Attorney for Defendant
Scott Smith dba Entrepreneur PR

PROOF OF SERVICE BY U.S. MAIL

I am a citizen of the United States, over eighteen years of age and not a party to the within action. My business address is 801 K Street, 23rd Floor, Sacramento, California, 95814. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and know that each day's correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 6, 1999, I served the following:

DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT FOR TRADEMARK INFRINGEMENT; UNFAIR COMPETITION AND COUNTERFEIT

on the party to said action by placing a copy thereof in a sealed envelope with postage fully prepaid thereon for collection and mailing on that date following ordinary business practices addressed as follows:

Henry M. Bissell
Henry M. Bissell, IV
The Law Firm of Henry Bissell
dba Bissell & Bissell
6820 La Tijera Boulevard, Suite 106
Los Angeles, CA 90045
Fax: (310) 645-5531

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 6, 1999 at Sacramento, California.

Jamie Schwartzenberger

EXHIBIT 10

Court of Appeals Docket No. 00-56559

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ENTREPRENEUR MEDIA, INC.,
a California Corporation,
Plaintiff/Appellee,

versus

SCOTT SMITH dba EntrepreneurPR,
Defendant/Appellant.

Appeal from a judgment of the
United States District Court for the Central District of California
Case No. CV 98-3607 FMC (BQRx)
Honorable Florence-Marie Cooper, United States District Judge

---

APPELLANT'S OPENING BRIEF

Jeffrey S. Kravitz (SBN 186209)
Law Office of Jeffrey S. Kravitz
1007 7th St. Suite 600
Sacramento, CA 95814
Ph: 916-553-4072
Fax: 916-553-4074

Attorney for Appellant
Scott Smith dba EntrepreneurPR

Court of Appeals Docket No. 00-56559

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ENTREPRENEUR MEDIA, INC.,
a California Corporation,
Plaintiff/Appellee,

versus

SCOTT SMITH dba EntrepreneurPR,
Defendant/Appellant.

Appeal from a judgment of the
United States District Court for the Central District of California
Case No. CV 98-3607 FMC (BQRx)
Honorable Florence-Marie Cooper, United States District Judge

---

APPELLANT'S OPENING BRIEF

Jeffrey S. Kravitz (SBN 186209)
Law Office of Jeffrey S. Kravitz
1007 7th St. Suite 600
Sacramento, CA 95814
Ph: 916-553-4072
Fax: 916-553-4074

Attorney for Appellant
Scott Smith dba EntrepreneurPR

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to 28 USC § 1291, as the appeal is brought from the judgment of the United States District Court for the Central District of California entered on September 13, 2000, that disposed of all issues between the parties. (Appellant's Excerpts of Record, 433-435 ("ER")). Appellant, Scott Smith, filed a timely Notice of Appeal on September 11, 2000. (ER 430). The District Court had original jurisdiction of this trademark infringement action arising under 15 USC § 1051 et seq., pursuant to 28 USC §§ 1331, 1338(a), and had jurisdiction over the related claim of unfair competition, brought pursuant to California Business and Professions Code § 17200, pursuant to 28 USC §§ 1338(b), 1367(a).

STATEMENT OF ISSUES

In this trademark infringement case involving the use of the common noun "entrepreneur" did the District Court erroneously grant the plaintiff's motion for summary judgment?

STATEMENT OF THE CASE

On May 8, 1998, Appellee, Entrepreneur Media Inc. ("EMI") filed a complaint in the Federal District Court for the Central District of California in Los Angeles, California against Appellant, Scott Smith dba EntrepreneurPR ("Smith"),

an amended complaint was filed on April 9, 1999. (ER 1). The complaint alleged that Smith had infringed on EMI's trademark "ENTREPRENEUR" by his use of the tradenames "EntrepreneurPR," "entrepreneurpr.com," and "Entrepreneur Illustrated." (Id.). The complaint brought claims of trademark infringement pursuant to 15 USC § 1051 et seq. and for unfair competition pursuant to California Business and Professions Code § 17200 and for Counterfeiting. (Id.). Smith answered the amended complaint on May 11, 1999. (ER 20).

On May 19, 2000, EMI filed a Motion for Summary Judgment. (ER 26). On June 2, 2000 Smith, filed an opposition to EMI's motion and filed his Motion for Summary Judgment. (ER 131).

On June 28, 2000, the District Court issued an order that granted in part EMI's Motion for Summary Judgment on the issues of trademark infringement and unfair competition in part, but denied the motion for the counterfeiting claim and denied Smith's Motion for Summary Judgment.[1] (ER 405). The District Court permitted additional briefing by the parties on the issue of damages. (ER 422). On August 30, 2000, the Court entered an order granting EMI judgment and $337,280.00 in damages and an injunction prohibiting Smith from using the names "EntrepreneurPR," "entrepreneurpr.com," "Entrepreneur Illustrated," or

[1] The Counterfeiting claim was dismissed by stipulation of the parties. (ER 4.23).

"Entrepreneur." (ER 423). Smith filed a notice of Appeal on September 11, 2000. (ER 430). Judgment was entered on September 13, 2000. (ER 433).

STATEMENT OF FACTS

Appellant Scott Smith operates a public relations company for entrepreneurs. (ER 140). Starting in 1995 he used the name ICON Publications for his business in 1995. (Id.). Smith produced a publication called Yearbook of Small Business Icons that featured profiles of his clients. (Id.). He distributed the Yearbook free of charge to highly sophisticated media decision-makers throughout the United States in hopes of increasing media exposure of the featured entrepreneurs. (Id.). ICON's clients paid $1,500 per issue for this service. (Id.). Smith now charges $10,000 for one year of his services and his publication reaches 3,800 editors and journalists. (Id.). In conjunction with the public relations service, ICON developed a web site called iconpub.com. (Id.).

As the company grew in size Smith decided to print his publication on a quarterly basis. (Id.). Smith determined that the name of his company should be changed to more accurately describe its position in the market. (Id.). Accordingly, Smith consulted with Alex von Allmen of Imaginame, a company identity firm, to help him formulate a new name for ICON. (ER 140; 317). Imaginame advised Smith that legal availability, recall, and proper market positioning were the key factors in choosing a company name. (Id.). Imaginame also conducted a

trademark search to determine what names were available. (ER 140-141; 317-321; 371-398).

After determining that the names were available, Smith changed his business name to EntrepreneurPR, Yearbook became Entrepreneur Illustrated, and the web site address was changed to entrepreneurpr.com. (ER 140-141).

The word "entrepreneur" is commonly used in the English language to mean independent small business people. (ER 267-275). There are over 1000 registered domain names using this generic and descriptive term. (ER 185). Numerous companies hold registered trademarks using the term "entrepreneur" in some form. (ER 249-264).

Smith created his new trademark by choosing a highly common word in the public domain, combining it with other suggestive elements, and rendering it in a highly distinctive color and font. (ER 141). Smith's mark Entrepreneur Illustrated always appears in a unique logo based on a sans serif font in the color yellow. (ER 139; 160-161[2]). Following the name change Smith sent out a press release to his clients about his new business name. (ER 203).

Entrepreneur Illustrated is circulated to a controlled mailing list of approximately 3800 media decision-makers, as a source for interviews. (ER 82;

[2] The District Court record includes the actual covers in color of EMI's and Smith's publications. The excerpts of record have black and white photocopies.

140). It is not available for sale or subscription. (ER 141). Entrepreneur Illustrated contains only press releases about Smith clients. (ER 81-95; 140). Smith's publication has never featured advertisements or articles of general interest to entrepreneurs. (ER 81-85; 141).

Smith applied to the United States Patent and Trademark Office for trademark registration for EntrepreneurPR in international class 35, for public relations services, which was granted. (ER 170-173). However, it was subsequently suspended as a result of a misplaced, timely filed opposition of EMI. (ER 175-176; 309).

Smith applied for registration of Entrepreneur Illustrated in international class 16, printed publications. (ER 124-29). The PTO examing attorney determined that Smith's mark was not confusingly similar to EMI's mark, but that it could not be registered on the principal register because it was merely descriptive of its contents. (ER 166-68).

Since 1978, EMI, has published Entrepreneur magazine, a monthly publication that features articles of general interest to entrepreneurs as well as advertising targeted toward entrepreneurs. (ER 51-52; 71-74). Over the years, EMI has expanded its activities to include the publication of several other magazines, various books, software, and other products and services. (ER 51-52).

EMI distributes approximately 540,000 copies of its magazine per month, mostly by paid subscription, but also by newsstand sales. (Id.). EMI also runs a web site at "entrepreneur.com" which features paid advertisement, electronic versions of its magazine articles, chat rooms and links to other sites. (ER 53-54).

EMI's original application with the PTO to register Entrepreneur was denied as being merely descriptive. (ER 178-183). The mark was eventually registered and pursuant to 15 USC § 1065 (Lanham Act § 15) EMI's mark "Entrepreneur" is now incontestable in international class 9, for "Computer Programs and Programs/User Manuals All Sold as a Unit," and 16, for "Paper Goods and Printed Matter; Namely Magazines, Books and Published Reports pertaining to Business Opportunities." (ER 97-98). EMI always uses their mark Entrepreneur in the color red with a distinct serif font and particular logo. (ER 153:22-28; 157-158). EMI sells advertisements within their publication at a rate of approximately $50,000 per page per month. (ER 163).

EMI has registered other trademarks using in part the term "entrepreneur" for other good and services. (ER 99-120). None of these marks is incontestable. (Id.). EMI has never provided public relations services and has no plans to do so. (ER 141).

EMI has admitted that Smith's company does not compete with EMI. (ER 304). In January 1999, during the pendency of this litigation, Smith was positively

featured in an article in the EMI magazine Entreprenuer's Small Business Start Ups. (ER 247). EMI accepts advertising from companies that use the term "entrepreneur" as part of their logo. (ER 230-231). Entrepreneur editor Revia Lesonsky has endorsed a book entitled "The Young Entrepreneur's Edge," which was not published by EMI. (ER 233). Ms. Lesonsky has appeared on the CNN television show "Entrepreneur's Only." (ER 220-226).

Four of Smith's former clients, Pamela Demarest, Phyllis Cesare-Taie, Kathleen Chippi, and William Bresnahan, claimed that at one time or another they were personally confused about a possible relationship between Smith's company and EMI's publication Entrepreneur. (ER 55-56; 65; 331-341). Demarest, Cesare-Taie and Chippi all had payment problems with Smith. (ER 142). Both Demarest and Chippi were clients of Smith when he used the name Icon. (ER 55; 65). Chippi has tried to use the name change as a reason to not pay her bill. (ER 206-07). When Ms. Cesare-Taie accidentally wrote a check to "Entrepreneur" instead of EntrepreneurPR, Smith returned the check and requested that she make the check out properly. (ER 64).

While Mr. Bresnahan claimed he believed there was some kind of connection between EMI's publication and Smith, he also testified that he couldn't remember when he first spoke to Smith because of personal, health and business crises he has suffered in the intervening years. (ER 332-333). Bresnahan testified

that he never made any payments to Smith. (ER 336). However, Bresnahan signed on as a client when the company was called ICON and indeed paid for Smith's services. (ER 210-218).

Two former employees of Smith, Kym Gurley and Patty Kufasimes, claimed in deposition testimony that some people they contacted would ask if there was a connection between EntrepreneurPR and Entrepreneur magazine. (ER 347; 358). They also testified that, per Smith's instructions, they informed everyone who asked that there was no connection between these two businesses. (ER 347; 349-351; 365-367). Indeed, Ms. Kufasimes, stated that any comment from the public of any association between EntrepreneurPR and Entreprenuer Magazine was seen as an "objection" by the staff, i.e., "something that you have to overcome before you can continue talking to that person about what you wanted to talk to them about." (ER 367: 11-17).

STANDARD OF REVIEW

The order granting EMI's motion for summary judgment for trademark infringement and unfair competition is given *de novo* review by the Court of Appeals. Dreamwerks Prod., Inc. v. SKG Studio, 142 F.3d 1127, 1129 (9th Cir. 1998). Summary judgment is appropriate only where there is no issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. FRCP 56(c). The reviewing court must determine whether, viewing the evidence

in the light most favorable to the nonmoving party, there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); Robi v. Reed, 173 F.3d 736, 739 (9th Cir. 1999).

SUMMARY OF ARGUMENT

The District Court erred in granting summary judgment to EMI by improperly applying the eight-part trademark infringement test this Court developed in AMF Inc. v. Sleekcraft Boats, 599 F.2d 341 (9th Cir. 1979).

The District Court did not analyze the key issue of the strength of EMI's mark, erroneously ruling that because EMI had an incontestable trademark, that any analysis of the descriptive or generic nature of the mark was irrelevant. (ER 416). However, an incontestable trademark pertains to the mark as used in commerce and only to the goods services for which it is registered. Park 'N Fly, Inc., v. Dollar Park and Fly, Inc., 469 U.S. 189, 204, 105 S.Ct. 658, 83 L.Ed. 2d 582 (1985). Moreover, this Court has held that an incontestable mark must still be analyzed for strength. Miss World (UK) Ltd. v. Mrs. America Pageants, Inc, 856 F.2d 1445, 1449 (9th Cir. 1988).

The District Court also ignored the evidence of Smith's good faith intent to not infringe on any mark, including EMI's mark, by conducting a trademark search. (ER 140-141; 317-321; 371-398). The Court similarly erred on the issues of

marketing channels by ruling that mere presence of companies on the internet was enough to find overlapping marketing channels. (ER 417). Moreover, the District Court failed to analyze the differences in font, color size and placement of the marks. (ER 410-412). These findings conflict with this Court's precedent of Official Airline Guides, Inc. v. Goss, 6 F.3d 1385 (9th Cir. 1993), which carefully analyzed nuanced differences in marketing channels and logo design.

The District Court granted an accounting of Smith's profits to EMI without ever making a finding that Smith's actions were, "willfully calculated to exploit the advantage of an established mark," as this Court mandated in Lindy Pen Co v. Bic Pen Corp., 982 F. 2d 1400, 1405 (9th Cir. 1993), citing Playboy Enterprises, Inc. v. Baccarat Clothing Co. Inc., 692 F.2d 1272, 1274 (9th Cir. 1982).

Accordingly, in giving *de novo* review to the granting of summary judgment, this Court should find that material issues of fact were in dispute and reverse the District Court's judgment.

ARGUMENT

A. THE DISTRICT COURT ERRONEOUSLY GRANTED SUMMARY JUDGMENT BY IMPROPERLY ANALYZING THE *SLEEKCRAFT* FACTORS OF TRADEMARK INFRINGEMENT

This Court has developed a complex series of factors to analyze a trademark infringement claim to determine the ultimate issue of likelihood of confusion. AMF Inc. v. Sleekcraft Boats, 599 F.2d 341 (9th Cir. 1979). This analysis involves

eight factors: 1) strength of the mark; 2) proximity of the goods; 3) similarity of the marks; 4) evidence of actual confusion; 5) marketing channels used; 6) type of goods and the degree of care likely to be exercised by the purchaser; 7) defendant's intent in selecting the mark; and 8) likelihood of expansion of the product lines. Sleekcraft at 348-349.

This Court has held that the eight-factor test is a "pliant" one in which "[s]ome factors are much more important than others," depending on the facts of the case. Brookfield Comm., Inc. v. West Coast Ent. Corp., 174 F.3d 1036, 1054 (9th Cir. 1999). Here the District Court arranged these factors in an arbitrary manner. (ER 405-418). The factors are organized below following the Sleekcraft order both for ease of reference and because the issue of strength of the mark is paramount.

1. Strength: An incontestable mark is not automatically strong.

The strength of a mark "can be measured in terms of its location along a continuum stretching from arbitrary, inherently strong marks, to suggestive marks, to descriptive marks, to generic, inherently weak marks." Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1218 (9th Cir. 1987), citing Surgicenters of Am. Inc. v. Medical Dental Surgeries, Co., 601 F.2d 1011, 1014-15 (9th Cir. 1979).

Trademarks which have been registered for over five years can receive "incontestable" status. 15 USC § 1065 (Section 15 of the Lanham Act).

Erroneously relying on Park 'N Fly, Inc., v. Dollar Park and Fly, Inc., 469 U.S. 189, 105 S.Ct. 658, 83 L.Ed. 2d 582 (1985), the District Court below held that because the mark "Entrepreneur" was incontestable it could not be challenged as either generic or descriptive, and "is entitled to protection as a strong mark." (ER 416). This conclusion ignored Ninth Circuit precedent that, "an incontestable status does not alone establish a strong mark." Miss World, 856 F.2d at 1449.

Moreover, the Park N' Fly Court rejected any argument that an incontestable mark can be used to enjoin goods or services outside of the original application and explicitly held that, "a mark may not be expanded beyond the good or service for which it was originally designated." Park N' Fly, 469 U.S. at 204.

Pursuant to 15 USC § 1065, EMI has an "incontestable" trademark for the term "Entrepreneur" for use "in commerce for the goods or services or in connection with which such registered mark has been in continuous use," namely in international class 9, for "Computer Programs and Programs/User Manuals All Sold as a Unit," and 16, for "Paper Goods and Printed Matter; Namely Magazines, Books and Published Reports pertaining to Business Opportunities." (ER 97-98).

Accordingly, under the precedent of Park 'N Fly the incontestable status of EMI's mark is in international classes 9 and 16 and cannot have any bearing on the use of the mark by Smith in international class 35 for public relations services. Indeed Smith applied for a trademark not for the word "entrepreneur," but for the

name "EntrepreneurPR" in international class 35 for public relations services. (ER 170-173). Smith's publication Entrepreneur Illustrated is merely an adjunct of his public relations services. (ER 81-95; 140-141). While EMI does have other trademark registrations, those have not reached the incontestability status afforded by 15 USC § 1065. (ER 99-120).

Thus while the Park 'n Fly decision "holds that the *validity* of the incontestably registered trademark cannot be challenged, the majority of courts hold that this does not prevent defendant from questioning the *strength* and hence the scope of protection of the mark as to different goods in determining likely confusion." 5 J. McCarthy on Trademarks and Unfair Competition, § 32:155, pp 32-220-221. (4th ed. 1996) and cases cited therein.

Contrary to the District Court's opinion, this Court has joined with the majority of circuits in holding that an incontestable mark is not automatically strong. Miss World, 856 F.2d at 1449. This Court, ruling on the attempt of the plaintiff, Miss World, the owner of an incontestable trademark, to enjoin the use of "Mrs. of the World" by a competing beauty contest held, "Miss World argues, however, that its mark is strong because it is incontestable. This conclusion does not follow... [a]s already pointed out, an incontestable status does not alone establish a strong mark.." Id.

Accordingly, this Court has held that the strength of a mark is determined by an "imagination test" which focuses on the amount of imagination required in order for a consumer to associate a mark with the goods or services it identifies and a "need test" that focuses on the need of other companies to use a mark to identify their goods and services. Id., citing Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1218 (9th Cir. 1987). Here, the mark "entrepreneur" requires little imagination as it merely describes the target audience of the publication, while Smith needed to use this highly descriptive word to attract his clients, who are entrepreneurs.

Here, the District Court should have examined the evidence of the descriptive nature of the term. The dictionary defines "entrepreneur" as "one who organizes, manages, and assumes the risks of a business or enterprise." Merriam Webster's Collegiate Dictionary p.387 (10th Ed). In addition, the expert witness report of Dr. Patrick Farrell demonstrated the frequent and popular use of the descriptive word "entrepreneur." (ER 267-286). Indeed, EMI itself encourages business people to call themselves "entrepreneurs." (ER 286). More than 1000 registered domain names use the term "entrepreneur." (ER 185-186). Dozens of registered trademarks from various companies use the term "entrepreneur." (ER 25-264). Marks which are frequently used by others cannot be held as distinctive.

Miss World, at 1449, citing 1 J. McCarthy, Trademarks and Unfair Competition, § 11:26, at 511 (2d ed. 1984).

Here, the District Court failed to apply the "imagination/need" test and instead misapplied Brookfield Comm., Inc. v. West Coast Ent. Corp., 174 F.3d 1036 (9th Cir. 1999), citing it for the proposition that EMI's use of "entrepreneur" was not descriptive as it did not describe the product or its purpose.[3] (ER 416). In Brookfield, this Court rejected defendant West Coast's argument that its federally registered incontestable trademark in "The Movie Buff's Movie Store" gave it priority over Brookfield and therefore it could use "moviebuff.com." Brookfield at 1043. This Court ruled against West Coast, holding that the two marks "are very different in that the latter contains three fewer words, drops the possessive, omits a space and adds '.com.'" Id. at 1049. Later on the Court more explicitly pointed out "Even though it [MovieBuff] differs from 'Movie Buff' by only a single space that difference is pivotal. The term 'Movie Buff' is a descriptive term, which is routinely used, in the English language to describe a devotee. 'MovieBuff' is not. The term 'MovieBuff' is not in the dictionary." Id. at 1066.

As this Court has explained, a "trademark is a limited property right" not designed to "deplete the stocks of useful words by asserting exclusive rights in

[3] The District Court seems to be holding that a magazine title could never be descriptive unless its title was, "Magazine."

them." New Kids on the Block v. New America Pub., Inc., 971 F.2d 302, 306 (9th Cir. 1992). Following this Court's holdings in New Kids and Brookfield, other Courts within the Central District have held, "the holder of a trademark may not remove a word from the English language merely by acquiring trademark rights in it." Playboy Enterprises, Inc., v. Netscape Communications Corp., 55 F.Supp.2d 1070, 1074 (C.D.Cal., 1999).

Other Circuits reviewing the issue of incontestability have held that it does not end the inquiry into the issue of the strength of a mark. Gruner + Jahr v. Meredith Corp., 991 F.2d 1072 (2nd Cir, 1993). In Gruner + Jahr, the Second Circuit held that the mark "PARENTS" was strong in that the plaintiff held an incontestable trademark in the capitalized version of the word rendered in distinctive typeface, but it was weak since the common noun word "parents" is merely descriptive of the target audience of both publications, and could not fairly be removed from the English language when "divorced from the stylized typeface and its particular placement on [the plaintiff's] magazine cover." Id. at 1077-78. The Gruner + Jahr Court held, "[f]urther registering the proper noun "Parents" as a trademark can scarcely be held to have removed it from being available for use by others." Id. at 1078.

Here, the District Court ignored all evidence of the descriptive nature of the

mark and its appearance in the dictionary claiming that, "[b]ecause 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." (ER 416).

The District Court's announcement of a hitherto unknown split in the circuits was both incorrect and improper.[4] The Ninth Circuit has, "adopted a cautionary rule, counseling against creating intercircuit conflicts." In Re Taffi, 68 F. 3d 306, 308 (9th Cir 1995), citing United States v. Chavez-Vernaza, 844 F.2d 1368, 1374 (9th Cir. 1987), cert. denied, 510 U.S. 1204, 114 S.Ct 1324, 127 L.Ed.2d 672 (1994).

Therefore, the issue of the strength of the mark was a material issue of fact in dispute. As the District Court ignored the evidence of the descriptive and generic nature of the mark, summary judgment should not have been granted.

2. Proximity: The services of the parties are distinct and non-competing

The District Court concluded that even though Smith provides public relations services and EMI is in the magazine publishing business that the two companies goods were proximate because, "in sum, both parties print publications

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[4] Gruner has been favorably cited within the Ninth Circuit, *See* Metro Publishing LTD., v. San Jose Mercury News Inc., 861 F.Supp. 870, 875 (N.D.Cal. 1994). *See also*, Urantia Foundation v. Maaherra, 895 F.Supp. 1338, 1341 (D. Ariz. 1995) *rev'd on other grounds*, 114 F.3d 955 (1997).

that feature small business. 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." (ER 413).

This minimalist approach to the issue of proximate goods and services contradicts this Court's precedent in, Official Airline Guides, Inc. v. Goss, 6 F.3d 1385 (9th Cir. 1993), ("OAG"), that requires a detailed analysis of the markets served by litigants in a trademark infringement action. Both litigants in OAG printed "travel planners," nonetheless this Court found the publications not to be in close proximity to one another because plaintiff's publication was aimed at American readers and charged considerably more for advertising than defendant's publication targeted at European readers. Id. at 1392. All of those factors apply to the case at bar and necessitate the conclusion that, "the goods are not so closely related that the diminished standard of similarity should apply when comparing the marks." Id.

EMI is primarily a publisher of magazines sold on newsstands and by subscription. (ER 51-52). Smith engages in neither of these activities. (ER 141). Plaintiff earns revenue by selling advertising in its publication at a rate of approximately $50,000 per page. (ER 163-164). EntrepreneurPR is a public relations firm as part of its package of services, Mr. Smith prepares press releases and includes them in EntrepreneurPR's quarterly publication, Entrepreneur

Illustrated, which he then distributes free of charge to a carefully cultivated pool of journalists and editors in the hopes of increasing his clients' media exposure. (ER 91-95; 140-142). Notably, EntrepreneurPR's only clients are the entrepreneurs who are featured in Entrepreneur Illustrated. (ER 142). EntrepreneurPR's clients pay between $1,500 to $10,000 per year for this service. (ER 140). EMI admitted that the products did not compete. (ER 304).

Therefore, the issue of the proximity of the goods was in factual dispute and summary judgment was inappropriate.

3. Similarity: The marks use different fonts, colors and styles.

Evidence in this case showed that the EMI and the Smith's marks always appeared in different colors, fonts, logos, size, and placement. (ER 139; 153:22-28; 157-161). Here the mark "Entrepreneur" as it is applies to the EMI's goods and services always appears in red. (ER 153:22-28). Furthermore, EMI's "Entrepreneur" mark always appears in an old-fashioned serif font, with a white border around the letters and then a black hairline around the outside. (ER 157-158). Defendant's mark, Entrepreneur Illustrated, on the other hand, always appears in modern sans serif font in the color yellow, usually "Pantone 109," and does not feature any border or hairline. (ER 139; 160-161).

In OAG, this Court carefully analyzed the differences in size, color, and font of logos as they appeared in commerce to determine if consumers would visually

mistake one for the other. OAG, 6 F.3d at 1392-1393. Here, the District Court placed no weight at all on the differences between the marks, in font, color, size and placement of the logos, instead focusing exclusively on the use of the descriptive and generic word "entrepreneur" as part of the marks. (ER 412).

The mere fact that both marks make use of the common descriptive word "entrepreneur" is not dispositive on the issue of similarity. In OAG this court upheld the district court's ruling which enjoined the defendant from using the term "The Travel Planner" standing alone, as it might confuse the public with the plaintiff's OAG Travel Planner. However, the defendant could use the marks "The Travel Planner USA" or "USA Travel Planner." OAG at 1392-1393. In the case at bar Smith does not use the term "entrepreneur" standing alone, it is always used in combination with other words or letters.

The District Court improperly "dissected" Smith's mark by only looking at the use of the descriptive term "entrepreneur" within the mark and not the whole mark as used in commerce. This Court has adopted an anti-dissection rule, holding that the validity and distinctiveness of a composite trademark is determined by viewing the trademark as a whole, as it appears in the marketplace. Id. at 1392, citing California Cooler, Inc. v. Loretto Winery Ltd., 774 F.2d 1451, 1455 (9th Cir. 1985). It should be noted that the term "EntrepreneurPR" does not occur in any dictionary.

This Court has held that the relevant inquiry is how the marks actually look "in their entirety and as they appear in the marketplace," not how they may have been registered. GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199, 1206 (9th Cir. 2000). In GoTo.com and all other cases on this issue the factual analysis considered how the "prototypical logo" of the product, including the use of typeface, font, and color, appeared in the marketplace, not how the words look typed next to each other. Id. Thus, the relevant inquiry is how the marks as used by EMI and Smith appear to the public in commerce.

Accordingly, a material issue of fact was in dispute concerning the similarity of the marks.

4. Confusion: merely *de minimis* evidence of actual confusion.

Pamela Demarest, Phyllis Cesare-Taie, Kathleen Chippi and William Bresnahan made statements that they believed there might be some association between Smith and EMI. (ER 54-56; 331-341). The District Court held that these statements of four of Smith's former clients was sufficient to find that actual confusion exists. (ER 413-414).

However, an analysis of the evidence of actual confusion shows that it was of a *de minimis* amount that should not be persuasive on this court. This Court has held that the mere existence of evidence of actual confusion is not always persuasive on the issue. OAG, 6 F.3d at 1393. Indeed, this Court has held that a

jury instruction on the issue of actual confusion may include language that a, "few instances of actual confusion, the amount of actual confusion is not substantial and may be discounted." Kendall-Jackson Winery, Ltd. v. E&J Gallo Winery 150 F.3d 1042,1052, n.12 (9th Circuit 1998).

The facts here show not only a minor amount of confusion, but serious questions concerning the reliability of those who claimed to be confused.

Demarest's declaration should be given almost no weight whatsoever. She began her business relationship with Smith when his company was called ICON Publications, and therefore could not have been confused as to any affiliation between EMI's and Smith's organizations. (ER 55; 191). Moreover, Demarest is currently involved in litigation with Smith concerning non-payment of her bill. (ER 188-190).

The declaration of Chippi should not be considered persuasive. Chippi, the owner of a company called The Boulder Hemp Company, actually complained about the change of the name from ICON to EntrepreneurPR and tried to use the name change as a reason for not paying her bills. (ER 204-208). In addition, Chippi received the same information about the name change that all of Smith's clients received – a fax that clearly laid out the reasons for the name change without mentioning EMI's magazine at all. (ER 23).

Additionally, Ms. Cesare-Taie's testimony is highly unconvincing. The fact that Cesare-Taie wrote the word "entrepreneur" on her check to pay a bill owed to EntrepreneurPR is evidence of nothing but inattention. (ER 64). Furthermore, the fact the check was promptly returned is evidence of Smith's good faith intent to distinguish EntrepreneurPR from EMI's business. (Id.).

William Bresnahan's deposition should be given almost no weight. He admits that due to an illness, marital and business problems that he couldn't remember much about his dealings with Smith. (ER 332-333). However, Bresnahan signed on as a client when the company was called ICON, and he indeed paid ICON for services. (ER 210-218; 334-336). Bresnahan could not remember that he started out as a client of ICON or that he had a contract and paid for services. (Id.). Therefore, Mr. Bresnahan's testimony should not be considered since he was confused about almost everything.

Two former employees of Smith, Kym Gurley and Patty Kufasimes, stated that some people with whom they spoke inquired about a possible connection between Smith's company and EMI's publication Entrepreneur. (ER 345-347). Their testimony regarding the comments of people on the phone is quintessential hearsay. In addition, Andy Garza, who worked in the office with Gurley and Kufasimes, declared that they never mentioned the issue of confusion at all. (ER 139).

Further, mere inquiries as to a connection between two companies should be viewed simply, "not as evidence of actual confusion but rather as showing only queries into the possible relationship between the parties." Gruner + Jahr, 991 F.2d at 1079. "[V]ague evidence of misdirected phone calls and mail is hearsay of a particularly unreliable nature given the lack of an opportunity for cross-examination of the caller or sender regarding the reason for the 'confusion'. . . Second, we find such evidence to be *de minimis* and to show inattentiveness on the part of the caller or sender rather than actual confusion." Duluth News-Tribune v. Mesabi Pub. Co., 84 F.3d 1093, 1098 (8th Cir. 1996), citing J. McCarthy, Trademarks and Unfair Competition, § 23.2, at 52, n. 1 (2d ed. 1984). Moreover, questions about a relationship between companies can show that people are seeking to make a distinction between companies, or indeed may already be aware of a distinction between the two companies. Id.

The context in which this alleged confusion occurs is important. People did not contact EntrepreneurPR looking for EMI's magazine. Rather the deponents, as employees of EntrepreneurPR were making "cold calls" or following up on leads to prospective clients. (ER 363). When Smith's employees were asked about EMI's publication, they explained that EntrpreneurPR is a public relations company not associated with Entrepreneur Magazine. (ER 364-365). Indeed the deposition testimony notes that Mr. Smith explicitly told his employees to make

sure people knew that EntrepreneurPR is not associated with EMI. (ER 348-349). Any comment from the public of any association between EntrepreneurPR and EMI was seen as an "objection" by the staff, i.e. "something that you have to overcome before you can continue talking to that person about what you wanted to talk to them about." (ER 367).

The District Court listed the issue of actual confusion as the third most important element in its decision. (ER 413). Four dubious allegations of confusion do not constitute actual confusion. However, this issue of actual confusion could not be resolved on summary judgment as the evidence showed a material issue of fact in dispute concerning this area.

5. Marketing Channels: The parties marketing channels are separate and distinct.

The District Court found only one area of overlapping marketing channels, the internet. (ER 417). There is no precedent that the mere existence of two businesses on the internet is enough to conclude that they share marketing channels. No evidence was presented on whether the companies even sell their respective products on the internet. The evidence showed that the main distribution channel of EMI's publication was through subscription and newsstand sales. (ER 51-52). Smith distributes his publication, free of charge, to a controlled

mailing list of some 3800 media contacts. (ER 82). Indeed the Court found no overlap in any area except the internet. (ER 417).

The ruling of the District Court on the issue of the internet is unprecedented. The use of the internet effects almost every aspect of commerce today. *See* GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199 (9th Cir. 2000). In OAG this Court noticed marketing channel differences between publications because one solicited subscriptions and the other did not. OAG 6 F.3d at 1393. This is the exact situation here. Moreover, the District Court noted, "[t]here is no evidence as to how defendant markets his services to new clients or how plaintiff markets its products and services to new customers." (ER 417). Despite this complete lack of evidence, the District Court found overlapping markets because of the internet. (Id.). This would be tantamount to ruling that all companies that advertise in the yellow pages use the same marketing channels for the purposes of trademark analysis.

The issue of marketing channels was in dispute and, therefore, summary judgment was inappropriate.

6. Degree of Care: Sophisticated buyers are less likely to be confused.

The District Court correctly found that the small business owners, media professionals, and advertisers who seek the diverse services of the parties would

exercise a moderate degree of care and ruled this factor against the finding of likelihood of confusion. (ER 417-418).

7. Intent: Smith evidenced his good faith by conducting a trademark search prior to choosing his name.

All of the evidence here clearly shows that Smith conducted a trademark search and that the search showed no use of the marks he choose. (ER 140-141; 317-323; 371-398). Smith chose the names believing that the marks were legally available and that they were good names for the promotion of his company that targets entrepreneurs. (ER 140-142; 317-323). While Smith knew of the EMI's mark, he also knew of the other companies using the word entrepreneur as part of their mark. (ER 317-320). Moreover, he knew his company did not compete with EMI's. (ER 141). Smith's good faith is shown not only by his trademark searches, but also because he sought to register his trademarks with the PTO. (ER 124-129; 170-173).

The mere fact that the Smith knew of EMI's Mark is not proof of intent to deceive. *See* Western Publ'g Co. v. Rose Art Indus., Inc 910 F. 2d. 57, 63, (2d Cir 1990). Smith chose the name EntrepreneurPR because it accurately reflects his services, a public relations agency for entrepreneurs, in addition he conducted a trademark search. (ER 140-142). Thus, Smith's prior knowledge of EMI's trade name, "does not give rise to a necessary inference of bad faith, because adoption of

a trademark with actual knowledge of another's prior registration of a very similar mark may be consistent with good faith." Lang v. Retirement Living Publishing Co, Inc., 949 F.2d 576, 583-584 (2nd Cir. 1991) citing Mushroom Makers, Inc. v. R.G. Barry Corp., 580 F.2d 44, 48 (2d Cir. 1978) (per curiam), cert. denied, 439 U.S. 1116, 99 S.Ct. 1022, 59 L.ED.2d 75 (1979); *see also* W.W.W. Pharmaceutical Co. v. Gillette Co., 984 F.2d 567, 575 (2d Cir 1993).

Moreover, EMI promotes the use of the word "entrepreneur" by others, thus they have "unclean hands" regarding an allegation of bad faith by Smith. (ER 286). EMI accepts advertising from companies that use the term "entrepreneur" as part of their business name. (ER 230-231). Revia Lesonsky has appeared on the CNN television show "Entrepreneurs Only" and also endorsed the book the Young Entrepreneurs Edge. (ER 233). In fact, Smith and his company EntrepreneurPR and Entrepreneur Illustrated were favorably mentioned in the EMI publication Entrepreneur's Small Business Start Ups during the course of this litigation. (ER 247).

The issue of Smith's intent in adopting the mark was clearly in dispute.

8. Likelihood of Expansion: The parties did not intend to expand.

As the District Court found, there was not evidence that the parties intended to expand into the field of the other party. (ER 418). Therefore, this factor should

have weighed against the finding of likelihood of confusion, and instead, not as a neutral factor as the Court ruled. (Id.).

Accordingly, the District Court did no properly apply the Sleekcraft trademark infringement test in granting summary judgment to EMI. On every factor of the test Smith presented evidence that showed that either Smith should have prevailed on that factor or that there was a material issue of fact in dispute. The District Court, by failing to follow Ninth Circuit precedent ruled that EMI's mark was strong because it was incontestable. The District Court compounded this error by holding that the use of the merely descriptive word "entrepreneur" by both Smith and EMI made the marks similar. Therefore this Court should reverse the decision of the District Court on the key issue of trademark infringement.

B. WHERE THERE IS NO INFRINGEMENT THERE IS NO UNFAIR COMPETITION

The standard for unfair competition parallels the standard for trademark infringement. Academy of Motion Picture Arts & Sciences v. Creative House Promotions, Inc., 944 F.2d 1446, 1457 (9th Cir. 1991). Thus, for the reasons stated above, the District Court's granting of judgment for unfair competition should also be reversed.

C. DAMAGES SHOULD NOT HAVE BEEN AWARDED

After finding for EMI on the issue of infringement, the Court allowed for the presentation of additional evidence on the issue of damages. (ER 422). The Court then granted an accounting of profits pursuant to 15 U.S.C. § 1117(a) and awarded EMI $337,280.00. (ER 423-429). However, this Court has held that "[A]n accounting of profits is not automatic and must be granted in light of equitable considerations." Lindy Pen Company Inc. v. Bic Pen Corp. 982 F.2d 1400, 1405 (9th Cir. 1993). In Lindy Pen this Court held that the standard for awarding an accounting, "applies, however, only in those cases where the infringement is willfully calculated to exploit the advantage of an established mark." Id. at 1405 citing Playboy Enterprises, Inc. v. Baccarat Clothing Co. Inc., 692 F.2d 1272, 1274 (9th Cir. 1982)

The record in this case does not meet the standard of Lindy Pen. In the case at bar, Smith conducted a trademark search and hired a company identity firm to assist him coming up with a new name. (ER 140-142). Moreover, Smith presented ample evidence of the common use of the word entrepreneur. (ER 267-275).

The standard for issuing an accounting is high. Even if the court finds that Smith's actions were willful that finding alone is not sufficient. "[W]illful infringement may support an award of profits to the plaintiff, but does not require

one." Lindy Pen, 982 F.2d at 1406 n. 4. The Court must rule on the issue of damages "subject to principles of equity." 15 U.S.C. 1117. Here equitable considerations weighed against the issuing of an accounting. The plaintiff, "is not entitled to a windfall." Lindy Pen, 982 F.2d at 1405, citing Bandag, Inc. v. Al Boser's Tire Stores, 750 F.2d 903, 918 (Fed.Cir. 1984). Any sum awarded to the plaintiff "shall constitute compensation and not a penalty." 15 USC § 1117(a).

In its order granting damages the District Court never made the finding that Smith's actions were willfully calculated to exploit an existing mark as is required by Lindy Pen to order an accounting. (ER 423-429). Instead, the District Court concluded that because Smith, "knowingly adopted a mark that was similar to" EMI's mark, that was sufficient for ordering an accounting. (ER 424). However, the District Court also held that, "Smith apparently believed that because the two entities did not compete, there would be no infringement." (ER 427). The District Court's inconsistent rulings demonstrate that an accounting should not have been awarded. The District Court then compounded the error by refusing to review the documents submitted by Smith to show costs and instead relied entirely on the analysis of profits submitted by EMI. (ER 426). Accordingly, if this Court does not reverse the granting of judgment, then this Court should still reverse the awarding of accounting and the amount awarded to preserve the consistency of this Court's precedents.

CONCLUSION

The District Court has granted summary judgment and an injunction prohibiting Smith from using the descriptive word "entrepreneur" as part of his trade name for public relations services geared toward entrepreneurs. Moreover, the District Court awarded an accounting of profits because of Smith's use of this common descriptive word. The District Court's ruling ignores or misapplies the precedents of this Court concerning the evaluation of a trademark infringement claim.

The District Court has essentially given EMI a monopoly to use the word "entrepreneur" for the marketing of goods and services to entrepreneurs. The District Court misconstrued the concept of an "incontestable" trademark and thereby violated the principles of trademark law by "depleting the stocks of useful words."

By misapplying substantive law the District Court granted summary judgment despite clear evidence of material issues of fact in dispute. Therefore the appellant, Scott Smith, respectfully requests that this Court reverse the judgment of the District Court and remand the matter.

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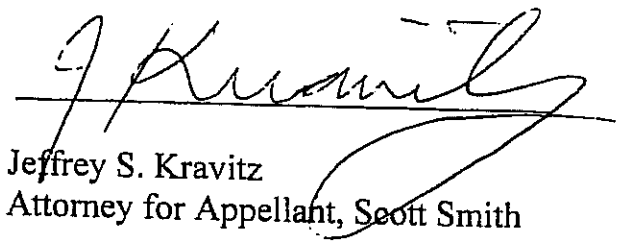
Date: November 15th, 2000

Respectfully submitted by:



Jeffrey S. Kravitz
Attorney for Appellant, Scott Smith

EXHIBIT 11

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File No. 027008-22-US000

September 7, 2010

VIA FACSIMILE: 512-732-0115 AND U.S. MAIL

Daniel R. Castro
Castro & Baker, LLP
10509 Pointeview Dr
Austin, TX 78738-5522

Re: Infringement of the ENTREPRENEUR Trademark

Dear Mr. Castro:

This firm represents Entrepreneur Media, Inc. ("Entrepreneur Media") in connection with its intellectual property enforcement matters. Entrepreneur Media is the owner of numerous trademark registrations for the mark ENTREPRENEUR®, as well as several other marks that include the "ENTREPRENEUR" term. Entrepreneur Media uses its ENTREPRENEUR trademarks in connection with various goods and services including its publication, *Entrepreneur* magazine, and corresponding web site at *entrepreneur.com*. Entrepreneur Media's publications and web site provide start-ups, small businesses, and small business owners with information and various business services regarding starting and operating a successful business. The ENTREPRENEUR® mark has become well-known and distinctive including within the small business industry. Indeed, a Federal Court recently ruled that "the mark ENTREPRENEUR is a strong, distinctive mark, deserving of significant protection," which ruling was upheld by the Ninth Circuit. *See* attached.

To protect these valuable rights, Entrepreneur Media has obtained federal trademark registrations for its ENTREPRENEUR® mark pursuant to Certificate of Registration Numbers 1,453,968, 2,263,883, 2,502,032, and 3,520,633 in International Classes 9, 16, 35, and 41. Entrepreneur Media also has common law rights in its ENTREPRENEUR® mark.

It has come to our attention that you filed a trademark application for the mark "ENTREPRENEUR.OLOGY" in connection with *conducting workshops and seminars in entrepreneurship* in Class 41, which has now published for opposition. We also understand that you own and operate the www.entrepreneurology.com domain name and website, which uses the mark.

EXHIBIT 11

LATHAM&WATKINS LLP

Your application to register a mark that is nearly identical to Entrepreneur Media's ENTREPRENEUR® mark in connection with services that are nearly identical to Entrepreneur Media's services is likely to cause confusion, mistake, and/or deception regarding the source of the services. Accordingly, Entrepreneur Media hereby demands that you immediately withdraw your application to register the mark ENTREPRENEUR.OLOGY.

It also has come to our attention that you have registered the *entrepreneurology.com* domain name. Your unauthorized registration and use of a domain name encompassing Entrepreneur Media's famous trademark and trade name violates the Anticybersquatting Consumer Protection Act, which expressly creates liability for the bad faith registration of a domain name that is similar to another's mark, and constitutes trademark infringement, dilution, unfair competition, deceptive acts and practices, and misappropriation of the valuable goodwill, reputation, and business property of Entrepreneur Media, in violation of federal and state trademark and unfair competition laws. Accordingly, Entrepreneur Media hereby demands that you immediately cease and desist from further use of the entrepreneurology.com domain name, and that you transfer the domain name to Entrepreneur Media in accordance with the policies and procedures of the applicable Registrar. Entrepreneur Media also demands that you agree not to register additional domain names that contain the mark "ENTREPRENEUR."

Please confirm whether you intend to cooperate by ceasing all use of ENTREPRENEUR and of the *entrepreneurology.com* domain name, and by entering a written settlement agreement with Entrepreneur Media to that effect. If you fail to abide by these demands, Entrepreneur Media will have no choice but to take appropriate action to prevent continued use of an infringing mark and domain name. By providing you with this notice, we are hopeful that you can choose a new mark and domain name with as little disruption to your business as possible.

If you would like to discuss this matter, please give me a call. We look forward to receiving a response by **September 21, 2010.**

Very truly yours,

Deborah A. Gubernick
of LATHAM & WATKINS LLP

Enclosure

EXHIBIT 12

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

152 registered versions of "entrep"

TESS was last updated on Thu May 19 04:05:46 EDT 2011

Logout *Please logout when you are done to release system resources allocated for you.*

Start List At: OR Jump to record:

872 Records(s) found (This page: 1 ~ 500)

Refine Search (entrepreneur)[ALL] Submit

Current Search: S4: (entrepreneur)[ALL] docs: 872 occ: 3549

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85319719		WHO WANTS TO BE THE NEXT ENTREPRENEUR STAR?!	TARR	LIVE
2	85006047		EHOF	TARR	LIVE
3	85316481		SOCIAL ENTREPRENEUR	TARR	LIVE
4	85016047		THE SOLOPRENEUR LIFE	TARR	LIVE
5	85228806		MIND MONEY MUSCLE THE ENTREPRENEUR'S RESOURCES	TARR	LIVE
6	85076439		ULTRAPRENEUR	TARR	LIVE
7	85012592		F FACTOR	TARR	DEAD
8	85309335		ENTREPRENEUR FINDER	TARR	LIVE
9	85221673		ENTREPREMUNITY	TARR	LIVE
10	85171079		BANKERS ADVOCATE INVESTMENT BANKERS FOR THE ENTREPRENEUR ...	TARR	LIVE
11	85012683		FRANCHISEATIZE	TARR	LIVE
12	85012664		FRANCHISEITIZE	TARR	LIVE
13	85012657		DON'T PUT ALL YOUR EGGS IN ONE BRAND	TARR	LIVE
14	85012650		FRANCHISITIZE	TARR	LIVE
15	85305504		DENTALPRENEUR	TARR	LIVE
16	85141548		ENTREPRENEUROLOGY	TARR	LIVE
17	85083867		THE ENTREPRENEUR ZONE	TARR	LIVE
18	85070949		ARTPRENEUR	TARR	LIVE
19	85142674		CREATORPRENEUR	TARR	LIVE
20	85299770		'PRENEUR	TARR	LIVE
21	85296136		JONATHAN BUDD'S UNSTOPPABLE ENTREPRENEUR	TARR	LIVE
22	85194554		ROCKERPRENEUR	TARR	LIVE

23	85192984		SMARTFUEL	TARR	LIVE
24	85031882		THE ENTREPRENEUR FUND	TARR	LIVE
25	85292340		JONATHAN BUDD'S UNSTOPPABLE ENTREPRENEUR	TARR	LIVE
26	85211519		80 20 CEO THE CEO ENTREPRENEUR MAGAZINE	TARR	LIVE
27	85291712		ACADEMY FOR ENTREPRENEUR'S	TARR	LIVE
28	85291274		MIRABEAU	TARR	LIVE
29	85288818		TODAY'S ENTREPRENEUR MOM	TARR	LIVE
30	85288625		POWERED BY INTELLIGENCE	TARR	LIVE
31	85147244		E ENTREPRENEUR CAPITAL PARTNERS	TARR	LIVE
32	85072900	3942275	ENTREPRENEUR'S PATH	TARR	LIVE
33	85012574		THE F FACTOR	TARR	LIVE
34	85271658		ENTREPRENETWORK	TARR	LIVE
35	85254917		ENTREPRENEUR HALL OF FAME & MUSEUM	TARR	LIVE
36	85250989		ACCIDENTAL ENTREPRENEUR	TARR	LIVE
37	85249474		USENTREPRENEURTODAY	TARR	LIVE
38	85234666		ECOPRENEUR	TARR	LIVE
39	85231631		SIX FIGURE PROGRAM	TARR	LIVE
40	85223980		PHILANTHROPIC ENTREPRENEUR	TARR	LIVE
41	85203517		CFO4YOU	TARR	LIVE
42	85201876		SALONTREPRENEUR	TARR	LIVE
43	85201206		ENVISION SALES & MARKETING	TARR	LIVE
44	85192790		CFO4KIDS	TARR	LIVE
45	85192628		INTELLIPRENEUR CONSULTING	TARR	LIVE
46	85187861		CFO4U	TARR	LIVE
47	85173947		MICROPRENEUR	TARR	LIVE
48	85172951		MS. ENTREPRENEUR	TARR	LIVE
49	85163210		ATHLETEPRENEUR	TARR	LIVE
50	85156175		ENTREPREWOMAN	TARR	LIVE
51	85155817		ENTREPRENEUR'S ALERT	TARR	LIVE
52	85151504		THE MEDICAL ENTREPRENEUR	TARR	LIVE
53	85144661		EXITPRENEUR	TARR	LIVE
54	85142465		FRESH ENTREPRENEUR	TARR	LIVE
55	85141577		ANATOMY OF THE ENTREPRENEUR'S BRAIN	TARR	LIVE
56	85138301		GOD THE ENTREPRENEUR	TARR	LIVE
57	85129763		THE ANNUAL MOM ENTREPRENEUR CELEBRATION	TARR	LIVE
58	85116662		MBA ENTREPRENEUR	TARR	LIVE
59	85108240		MOMTREPENEUR	TARR	LIVE
60	85102971		GODPRENEUR	TARR	LIVE
61	85102729		MOMTREPRENEUR	TARR	LIVE
62	85100349		ENTREPRE-MOTIVATION	TARR	LIVE
63	85099427		NORPRENEUR PARTY & EVENT PLANNING INC. NORPRENEUR	TARR	LIVE
64	85095656		TECHNOLOGY + INNOVATION + ENTREPRENEURSHIP = TECHNOVATION ENTREPRENEUR	TARR	LIVE
65	85090352		TECHNOVATION ENTREPRENEUR	TARR	LIVE

66	85085556		EE	TARR	LIVE
67	85085516		ENTREPRENEUR EXCHANGE CORPORATION	TARR	LIVE
68	85083260	3914499	CHEMPRENEUR	TARR	LIVE
69	85079881	3922945	HELPING BUILD BUSINESS ONE ENTREPRENEUR AT A TIME	TARR	LIVE
70	85079659		NETREPRENEUR	TARR	LIVE
71	85070514		DESIGN ENTREPRENEUR	TARR	LIVE
72	85054566		ENTREPRENEUR	TARR	LIVE
73	85049921		ENTREPRETOUR	TARR	LIVE
74	85038661		[STARTUPDIGEST]	TARR	LIVE
75	85034660	3925044	ENTREPRENEURSHARES. INVEST IN VISIONARY LEADERSHIP.	TARR	LIVE
76	85025820	3890118	NO ENTREPRENEUR LEFT BEHIND	TARR	LIVE
77	85025571		SECONDACT	TARR	LIVE
78	85023293		ENTREPRENEURLAWYER LAWYERS OF TOMORROW, TODAY. ELAWYER	TARR	LIVE
79	85023258		ENTREPRENEUR LAWYER	TARR	LIVE
80	85018925	3886142	A CUP OF CAPPUCCINO FOR THE ENTREPRENEUR'S SPIRIT	TARR	LIVE
81	85001043		NATIONAL ENTREPRENEUR HALL OF FAME & MUSEUM	TARR	LIVE
82	85000617		INTERNATIONAL ENTREPRENEUR HALL OF FAME & MUSEUM	TARR	LIVE
83	79093488		VINTREPRENEUR	TARR	LIVE
84	79086148		BELLMAR	TARR	DEAD
85	79090836		MULTIPRENEUR	TARR	LIVE
86	79076477		YOODOO	TARR	DEAD
87	79059358		TRAUMBIZ	TARR	DEAD
88	79056884		ENTRIPNEUR	TARR	DEAD
89	79017280		NARIK KAZUMOFF	TARR	DEAD
90	78531520		HISPANIC BUSINESS ENTREPRENEUR	TARR	DEAD
91	78967717		THE ENTREPRENEUR CHANNEL	TARR	LIVE
92	78955745		THE ENTREPRENEUR'S PLAYBOOK	TARR	DEAD
93	78952078	3275172	THE ENTREPRENEUR CAFE, LLC	TARR	LIVE
94	78936534		BUSINISTRY	TARR	DEAD
95	78928932		LATINAPRENEUR	TARR	DEAD
96	78920574		A CEO - A CHILD ENTREPRENEUR ON THE RISE! SUPPORTING A COLLEGE EDUCATION ON THE WAY.	TARR	DEAD
97	78920081	3241968	HYGIENE FOR INNOVATION	TARR	LIVE
98	78916687	3226235	THE ENTREPRENEUR'S GUIDE TO CORPORATE CREDIT	TARR	LIVE
99	78910633		HIP-HOPPRENEUR	TARR	DEAD
100	78895764		ONE MINUTE ENTREPRENEUR	TARR	DEAD
101	78895754	3514271	ONE MINUTE ENTREPRENEUR	TARR	LIVE
102	78895732		ONE MINUTE ENTREPRENEUR	TARR	DEAD
103	78886648		AUTHORPRENEUR	TARR	DEAD
104	78878165		ENTREPROHOOD	TARR	DEAD
105	78873866		ENTREQUEST	TARR	DEAD
106	78873803		ENTRENAUTICALS	TARR	DEAD
107	78873797		ENTRENAUTICAL	TARR	DEAD

108	78873786		ENTRENAUTS	TARR	DEAD
109	78873776		ENTRENAUT	TARR	DEAD
110	78865315	3208855	THE FEARLESS ENTREPRENEUR	TARR	LIVE
111	78849468	3741233	YOUTHPRENEUR	TARR	LIVE
112	78849451		YOUTHPRENEUR	TARR	DEAD
113	78846741		SCIENTREPRENEUR	TARR	DEAD
114	78843445		ENTREPRENEUR'S LIFEPORTFOLIO	TARR	DEAD
115	78835097		GOSPEL ENTREPRENEUR	TARR	DEAD
116	78829189	3285846	THE ENTREPRENEUR'S SUCCESS CODE	TARR	LIVE
117	78828784	3341709	CLUB ENTREPRENEUR	TARR	LIVE
118	78806490		THE LITTLE ENTREPRENEUR	TARR	DEAD
119	78806333		THE LITTLE ENTREPRENEUR	TARR	DEAD
120	78773953		ENTREPRENEUR'S ADVOCATE	TARR	DEAD
121	78762890		ENTREPRENEUR'S GUIDE TO THE GALAXY	TARR	DEAD
122	78760219		MIDNIGHT ENTREPRENEUR	TARR	DEAD
123	78743837		ENTREPRENEURS' SALES & MARKETING	TARR	DEAD
124	78743801	3145505	BUILD YOUR DREAM	TARR	LIVE
125	78725178		E ENTREPRENEUR TV	TARR	DEAD
126	78720884		GODPRENEUR	TARR	DEAD
127	78720408		EMERGING ENTREPRENEUR	TARR	DEAD
128	78715273		DON'T HATE BECAUSE I'M AN ENTREPRENEUR	TARR	DEAD
129	78709197	3624709	NUCLEUS	TARR	LIVE
130	78709193		NUCLEUS LOUISVILLE'S HEALTH SCIENCE BUSINESS CENTER	TARR	DEAD
131	78706663	3303894	ENTREPRENEUR BUBBLE TEA	TARR	LIVE
132	78698956		REAL ESTATE ENTREPRENEUR	TARR	DEAD
133	78698817		DIARY OF A USA ENTREPRENEUR - TRAINING SERIES	TARR	DEAD
134	78685681		QUANTREPRENEUR	TARR	DEAD
135	78685136	3520633	ENTREPRENEUR	TARR	LIVE
136	78678485		THE BULLET-PROOF ENTREPRENEUR	TARR	DEAD
137	78676938	3365643	ENTREPRENEGRO	TARR	LIVE
138	78675278	3184909	BIZBAR	TARR	LIVE
139	78675270		THEBIZBAR	TARR	DEAD
140	78662740		HIP HOPOLY GETTIN' DOWN TO BUSINESS	TARR	DEAD
141	78660960		THE ACCIDENTAL ENTREPRENEUR	TARR	DEAD
142	78660301	3100765	SALON ENTREPRENEUR OF THE YEAR	TARR	LIVE
143	78651690	3331137	THE ENTREPRENEUR'S GODFATHER	TARR	LIVE
144	78650520		KINGDOMPRENEUR	TARR	DEAD
145	78642192	3109146	THE ENTREPRENEUR'S SOURCE	TARR	LIVE
146	78639029	3156991	THE MOTIVATED ENTREPRENEUR	TARR	LIVE
147	78625530		ENTREPRENEUR KIDS KIDS MAKING A POSITIVE DIFFERENCE	TARR	DEAD
148	78603449		SITEGLIMPSE	TARR	DEAD
149	78603447		BIZBIDPLACE.COM	TARR	DEAD
150	78603442		THEBIZBLOG	TARR	DEAD

151	78603440		THEBIZBIDPLACE.COM	TARR	DEAD
152	78598345		THE ENTREPRENEUR	TARR	DEAD
153	78598158	3259259	THEBIZPLACE.COM	TARR	LIVE
154	78595155		ENTREPRENEUROHIO	TARR	DEAD
155	78593231		THE AMERICAN ENTREPRENEUR'S HALL OF FAME	TARR	DEAD
156	78581521	3060406	ENTRECOACH	TARR	LIVE
157	78578804		THE ENTREPRENEUR AND SMALL BUSINESS NETWORK	TARR	DEAD
158	78576550		INTERNATIONAL ENTREPRENEUR HALL OF FAME	TARR	DEAD
159	78550034		YOUR SUCCESS IS OUR ONLY BUSINESS	TARR	DEAD
160	78547649		FOOD ENTREPRENEUR	TARR	DEAD
161	78543641		NURSE ENTREPRENEUR HALL OF FAME	TARR	DEAD
162	78539406	3152027	ENTREPRENEUR EXPANSION	TARR	DEAD
163	78532542		BUYAWARE	TARR	DEAD
164	78531937		TAPPING YOUR INNER ENTREPRENEUR	TARR	DEAD
165	78529875		THE ENTREPRENEUR	TARR	DEAD
166	78527647		LEADERS & SUCCESS: THE ENTREPRENEUR SHOW	TARR	DEAD
167	78520631		KAIZENTREPRENEUR	TARR	DEAD
168	78513358		ENTREPRENEUR OF THE FUTURE	TARR	DEAD
169	78497518	3534118	ENTREPRENEUR NEW YORK U.S.A.	TARR	LIVE
170	78493094		ESPY THE ENTREPRENEUR'S BIBLE	TARR	DEAD
171	78484102	3144260	INTERNATIONAL VIRTUAL ASSISTANTS ASSOCIATION	TARR	LIVE
172	78473718		INVESTOR-READY ENTREPRENEUR	TARR	DEAD
173	78459976		CHEF ENTREPRENEUR ACCCOUNTANT INFORMATION TECHNOLOGIST MARKETING & MEDIA SPECIALIST RETAIL MANAGER ARTIST	TARR	DEAD
174	78443127		WHEELS OF DREAMS YOUTH FOUNDATION, CREATING FUTURE BUSINESS LEADERS	TARR	DEAD
175	78439492	3200360	BANK OF LINCOLNWOOD THE ENTREPRENEUR'S BANK	TARR	LIVE
176	78436715		YOUNG ENTREPRENEUR PROGRAM	TARR	DEAD
177	78436508		NANOPRENEUR	TARR	DEAD
178	78424083		SECRETS OF A SERIAL ENTREPRENEUR	TARR	DEAD
179	78421182		THE ENTREPRENEUR NETWORK	TARR	DEAD
180	78421146		THE ENTREPRENEUR NETWORK	TARR	DEAD
181	78420914		THE ENTREPRENEUR CHANNEL	TARR	DEAD
182	78414313		THE EVERYDAY ENTREPRENEUR	TARR	DEAD
183	78412280	3151692	THE ENTREPRENEUR'S CHOICE	TARR	LIVE
184	78407775		THE ENTREPRENEUR	TARR	DEAD
185	78407280		THE ENTREPRENEUR	TARR	DEAD
186	78407273		THE ENTREPRENEUR	TARR	DEAD
187	78402046		ENTREPRENEUR	TARR	DEAD
188	78402038		ENTREPRENEUR GENERATION	TARR	DEAD
189	78398591		UNDERWEAR ENTREPRENEUR	TARR	DEAD
190	78394594		ENTREPRENEURSONTRACK	TARR	DEAD
191	78342232		THE NEW SUCCESS	TARR	DEAD
			MEGA INC. MEGA SWEET GREENS CONCENTRATE NO		

192	78327128		FILLERS LET THEY FOOD BE THY MEDICINE AND THY MEDICINE BE THY FOOD HIPPOCRATES, THE FATHER OF MODERN MEDECINE 60 GRAMS PER BOTTLE	TARR	DEAD
193	78308345		UTHCREED YOUTH CREATING RICHES THRU ECONOMIC AND ENTREPRENEUR DEVELOPMENT	TARR	DEAD
194	78300252		VIRTUAL ENTREPRENEUR	TARR	DEAD
195	78290856		FRANCHIPRENEUR 100	TARR	DEAD
196	78290855	2884335	THE ENTREPRENEUR AUTHORITY	TARR	LIVE
197	78290854	2886570	EAUTH.COM	TARR	LIVE
198	78273535		THE ENTREPRENEUR CHANNEL	TARR	DEAD
199	78273201	2895564	ENTREPRENEUR'S HOMEBASE	TARR	LIVE
200	78269930	2851019	LIMOPRENEUR	TARR	LIVE
201	78266904		HOW'D YOU GET SO RICH?	TARR	DEAD
202	78255268		SUCCESS	TARR	DEAD
203	78255257		SUCCESS FOR SALE	TARR	DEAD
204	78210411	2981757	PASTORPRENEUR	TARR	LIVE
205	78196052	3319340	MOBILE GOLD STAR, INC. 24KT GOLD PLATING & CUSTOM ENGRAVING SIGNATURE OF QUALITY	TARR	LIVE
206	78154856		THE BEERMAT ENTREPRENEUR	TARR	DEAD
207	78111148	2681284	STAKE & EGGS ENTREPRENEUR SERIES	TARR	DEAD
208	78093082	2690982	FYOS	TARR	DEAD
209	78083002		ENTREPRENEUR BOOKS	TARR	DEAD
210	78068837		RNTREPRENEUR	TARR	DEAD
211	78052040		INVENTREPRENEUR	TARR	DEAD
212	78037008		THE STREETWISE ENTREPRENEUR	TARR	DEAD
213	78031525		THE PROFESSIONAL ENTREPRENEUR	TARR	DEAD
214	78016060	2598078	THE ENVIRONMENTAL ENTREPRENEUR	TARR	LIVE
215	78015579		ULTRAPRENEUR	TARR	DEAD
216	78014696		ENTREPRENEUR U.	TARR	DEAD
217	78006649		YOUR ENTREPRENEUR	TARR	DEAD
218	77897489		MODO MODO THE ENTREPRENEUR'S AGENCY	TARR	LIVE
219	77965999		THEFRANFACTOR.COM	TARR	LIVE
220	77634991		FRANSEARCH	TARR	DEAD
221	77634239		FRANMATCH.COM	TARR	DEAD
222	77891478		THE SACRED ENTREPRENEUR	TARR	LIVE
223	77941727		ULTIMATE ENTREPRENEUR	TARR	DEAD
224	77931543	3941885	ENTREPRENEUR BOOT CAMP	TARR	LIVE
225	77757987		EMPLOYMENT TO EMPOWERMENT	TARR	LIVE
226	77970114		ENTREPRENEUR MATH	TARR	DEAD
227	77967147		UF TECHLAUNCH	TARR	LIVE
228	77965960		THE FRAN FACTOR	TARR	LIVE
229	77965453	3885390	CREDO PRESS	TARR	LIVE
230	77964153		ENTREPRENEUR.OLOGY	TARR	LIVE
231	77959715		THE INTERNATIONAL INSTITUTE FOR ENTREPRENEURS	TARR	DEAD
232	77955020		ENTREPRENEUR	TARR	DEAD

233	77949197		ECOPRENEUR	TARR	DEAD
234	77945706		CEO NEXT DOOR	TARR	LIVE
235	77941901		ENTREPRENEURSHOP A FRANCHISE CONSULTING FIRM	TARR	DEAD
236	77940922		ENTREPRENEURSHOP	TARR	DEAD
237	77939354	3899084	THE NEXXT ENTREPRENEUR	TARR	LIVE
238	77934670		LEAD ME OUT OF THE ENTREMANURE	TARR	LIVE
239	77930072		THE LITTLE ENTREPRENEUR THAT COULD	TARR	DEAD
240	77915367	3891340	ENTREPRENEUR PRO	TARR	LIVE
241	77903998	3921303	FINANCIAL SERVICES ENTREPRENEUR	TARR	LIVE
242	77903221		THE ENTREPRENEUR GUIDE (U.S.)	TARR	DEAD
243	77891498	3915754	THE SACRED ENTREPRENEUR	TARR	LIVE
244	77890353		SHAUN STECKLER'S CONCRETE FOUNDATION FOR REAL ESTATE ENTREPRENEURS	TARR	DEAD
245	77881409	3844254	COFFEE SHOP MILLIONAIRE	TARR	LIVE
246	77880513		AUTHORPRENEUR	TARR	DEAD
247	77877222	3806975	ENTREWORKS CONSULTING	TARR	LIVE
248	77877216	3912856	SOUL-FILLED LIFE FIND YOUR PATH TO SOUL-SATISFYING SUCCESS WITH HEATHER GRAY	TARR	LIVE
249	77874652	3801403	CERTIFIED ENTREPRENEUR	TARR	LIVE
250	77874483		THE ACTUAL ENTREPRENEUR	TARR	LIVE
251	77870661		ENTREPRONEGRO.	TARR	DEAD
252	77866675		THE ENTREPRENEUR IN ME	TARR	LIVE
253	77853376	3795303	THE WORLD'S YOUNGEST ENTREPRENEUR	TARR	LIVE
254	77847573	3813477	THE ENTREPRENEUR'S SOURCE	TARR	LIVE
255	77847085	3799053	MOGUL MEDIA TV WORLD OF THE ENTREPRENEUR WWW.MOGULMEDIATV.COM	TARR	LIVE
256	77826718	3905318	ENTREPRENOMICS	TARR	LIVE
257	77814946		ENTREPRENEUR HALL OF FAME & MUSEUM	TARR	DEAD
258	77812840		NJENTREPRENEUR	TARR	DEAD
259	77807602	3780559	AMERICAN ENTREPRENEUR	TARR	LIVE
260	77805883		SALESPRENEUR , LLC. SELL MORE. MAKE MORE.	TARR	DEAD
261	77804930	3815719	ORTHOPRENEUR	TARR	LIVE
262	77804916	3815718	ORTHOPRENEUR	TARR	LIVE
263	77800705		ENTREPRENEUR UMBRELLA	TARR	DEAD
264	77798102	3888591	WOMAN2WOMAN BUSINESS THE BUSINESSWOMAN & ENTREPRENEUR GUIDE	TARR	LIVE
265	77792462		COZY CUDDLER	TARR	DEAD
266	77765958	3735486	ENTREPRENEUR DEVELOPMENT COMPANY	TARR	LIVE
267	77757119		BREAK SPACE WORK. RECHARGE. SUCCEED.	TARR	LIVE
268	77755265		HISPANIC ENTREPRENEUR	TARR	DEAD
269	77753809	3734139	FREEDOMPRENEUR	TARR	LIVE
270	77752135		LEADER-PRENEUR	TARR	DEAD
271	77749229		ENTREPRENEUR SOS	TARR	DEAD
272	77749200	3797344	ENTREPRENEUR	TARR	LIVE
273	77748483	3776507	THE UNEMPLOYED ENTREPRENEUR	TARR	LIVE

274	77744924		ENTREPRENEUR DNA	TARR	DEAD
275	77741895		I WAS BORN TO BE AN ENTREPRENEUR	TARR	DEAD
276	77735869		ENGINEER TO ENTREPRENEUR	TARR	LIVE
277	77734358		SIMPLEPRENEUR	TARR	DEAD
278	77726491		NETREPRENEUR	TARR	DEAD
279	77720002	3823732	THE ENTREPRENEUR'S ADVISOR	TARR	LIVE
280	77716346		NEWPRENEUR	TARR	LIVE
281	77705868	3701305	THE MOM ENTREPRENEUR	TARR	LIVE
282	77695601		THE SCIENTIST-ENTREPRENEUR	TARR	DEAD
283	77691912		HABITUAL ENTREPRENEUR	TARR	DEAD
284	77689629	3887096	EXECUPRENEUR	TARR	LIVE
285	77683663		REALLY GOOD ACCOUNTANTS. TRUSTWORTHY GUIDANCE. MAXIMIZED PROFIT.	TARR	DEAD
286	77679996		ENTREPRENEUR HELPERS	TARR	DEAD
287	77678940	3748610	YOUTHPRENEUR	TARR	LIVE
288	77672239	3732977	NATIONAL ASSOCIATION OF ENTREPRENEUR MOMS	TARR	LIVE
289	77666362	3682585	CONSCIOUS ENTREPRENEUR	TARR	LIVE
290	77664275		ENTREPRENEUR ACCREDITATION AND RESOURCE NETWORK	TARR	DEAD
291	77656784	3748492	YOUTHPRENEUR	TARR	LIVE
292	77656034		THE DAVID NEAGLE HONORARY FEMALE ENTREPRENEUR AWARD	TARR	DEAD
293	77656032	3710433	THE DAVID NEAGLE MILLION DOLLAR ENTREPRENEUR ACHIEVEMENT AWARD	TARR	LIVE
294	77653816	3850884	HATCH NETWORK	TARR	LIVE
295	77646046	3679044	ENTREEPRENEUR	TARR	LIVE
296	77642658		ENTREPRENEUR RECORDS	TARR	DEAD
297	77634964		FRANSEARCH.COM	TARR	LIVE
298	77634899		FRANCHISEHARMONY.COM	TARR	DEAD
299	77634864		FRANCHISE HARMONY	TARR	DEAD
300	77633471		FRANCHISEMATCH.COM	TARR	LIVE
301	77620391		SPIRITUALPRENEUR	TARR	DEAD
302	77611896	3898418	THE TOILET PAPER ENTREPRENEUR	TARR	LIVE
303	77611475		NEVER UNDERESTIMATE THE POWER OF A FEMALE ENTREPRENEUR.	TARR	DEAD
304	77605731		ENTREPRENEUR SOCIAL NETWORK	TARR	DEAD
305	77602439	3668733	FAMILY FIRST ENTREPRENEUR	TARR	LIVE
306	77601019		A CUP OF CAPPUCCINO FOR THE ENTREPRENEUR'S SPIRIT "FIND YOUR PASSION AND LIVE THE DREAM"	TARR	DEAD
307	77596590	3714179	DIAMOND MANAGEMENT	TARR	LIVE
308	77595620		THE ENTREPRENEUR GUIDE	TARR	DEAD
309	77594960		THE EVERYDAY ENTREPRENEUR	TARR	LIVE
310	77590922	3755689	EXCEPTIONAL ENTREPRENEUR	TARR	LIVE
311	77579272		ENTREPRENETWORK	TARR	DEAD
312	77569510	3883396	BIG MONEY ENTREPRENEUR	TARR	LIVE
313	77566484		ENTREPRENEURSHOP	TARR	DEAD

314	77559939	3634320	E4D	TARR	LIVE
315	77559908	3653703	E4D ENTREPRENEUR FOR A DAY	TARR	LIVE
316	77555649	3649990	LEVERAGE THE POWER OF 4	TARR	LIVE
317	77548037		THE PRODUCTIVE ENTREPRENEUR	TARR	DEAD
318	77544203		ENTREPRENEUR HALL OF FAME	TARR	LIVE
319	77541195	3649938	LIVE THE POWER OF 4	TARR	LIVE
320	77541183	3646178	Q QUATTRO UNIVERSITY	TARR	LIVE
321	77533514	3559312	SFENTREPRENEUR	TARR	LIVE
322	77530345		ENVIROPRENEUR	TARR	DEAD
323	77514981		MAKINGS OF A MAMAPRENEUR	TARR	DEAD
324	77514965		MAMAPRENEUR	TARR	DEAD
325	77509811		RESTAURENTREPRENEUR	TARR	DEAD
326	77506852	3684152	ENTRELINQ	TARR	LIVE
327	77503958		WANTREPRENEUR	TARR	DEAD
328	77501423	3818989	NORTHLAND FLAVOR	TARR	LIVE
329	77027191	3951054	INNOPRENEUR	TARR	LIVE
330	77261193		EDN ENTREPRENEUR DEVELOPMENT NETWORK LEARN. LAUNCH. RUN. GROW.	TARR	DEAD
331	77058008		STEP INTO THE SPOTLIGHT!	TARR	LIVE
332	77496152		E ENTREPRENEUR CHALLENGE BUSINESS PLAN COMPETITION FLORIDA INTERNATIONAL UNIVERSITY EUGENIO PINO AND FAMILY GLOBAL ENTREPRENEURSHIP CENTER	TARR	DEAD
333	77491289	3649720	YOGURTLICIOUS	TARR	LIVE
334	77467674		STRATEGY TRAK	TARR	DEAD
335	77467132		AIG WORKS ENTREPRENEUR	TARR	DEAD
336	77466311	3637763	DIVAPRENEUR	TARR	LIVE
337	77455440	3569356	TAB EMERGING ENTREPRENEUR BOARD	TARR	LIVE
338	77452352		THE ENTREPRENEUR'S WIDOW TO BE	TARR	DEAD
339	77439785		IENTREPRENEUR	TARR	DEAD
340	77439529	3530592	REAL LIFE E	TARR	LIVE
341	77433474		THE F-MYTH	TARR	DEAD
342	77431697		DETERMINED ENTREPRENEUR	TARR	DEAD
343	77423072			TARR	DEAD
344	77416439		FRANCHISESOURCE.COM	TARR	DEAD
345	77414808		ECOPRENEUR	TARR	DEAD
346	77412594		ENTREPRENERD	TARR	DEAD
347	77411964	3704075	FRANCHISESEARCH.COM	TARR	LIVE
348	77409308		BUSINESS GUIDANCE SYSTEM	TARR	DEAD
349	77409306		ACCELERATED ENTREPRENEUR GROUP	TARR	DEAD
350	77406855		LEADERSHIP POSITIONING SYSTEM	TARR	DEAD
351	77406461		AEG LEADERSHIP POSITIONING SYSTEM	TARR	DEAD
352	77387401		THE ENTREPRENEUR'S EDGE	TARR	DEAD
353	77383535		YOUNG ENTREPRENEUR SOCIETY	TARR	DEAD
354	77380244	3761584	THE LITTLE ENTREPRENEUR	TARR	LIVE

355	77368440	3562770	SIX SIGMA ENTREPRENEUR	TARR	LIVE
356	77367857		AIG SMALL BUSINESS ENTREPRENEUR	TARR	DEAD
357	77361743		KINGDOMPRENEUR	TARR	DEAD
358	77357003	3571433	PKF TEXAS - THE ENTREPRENEUR'S PLAYBOOK	TARR	LIVE
359	77354145	3471955	WE BELIEVE IN THE POWER OF THE ENTREPRENEUR	TARR	LIVE
360	77352311		CULTURAL ENTREPRENEUR	TARR	DEAD
361	77352284		CULTURAL ENTREPRENEUR	TARR	DEAD
362	77343255		GALPRENEUR	TARR	DEAD
363	77340301	3667964	FINANCIAL ENTREPRENEUR	TARR	LIVE
364	77338299		AMERICAN ENTREPRENEUR	TARR	DEAD
365	77334535		ENTREPRENEUR	TARR	DEAD
366	77330210	3636988	BIZ. RESOURCES FOR ENTREPRENEURS	TARR	LIVE
367	77329044	3471126	EMPLOYEE TO ENTREPRENEUR	TARR	LIVE
368	77325603	3466599	PARENTPRENEUR	TARR	LIVE
369	77320147		FLAUNTREPRENEUR(S) - THE WORD	TARR	DEAD
370	77314385		ENTREPRONEGRO	TARR	DEAD
371	77303175		THE LITTLE ENTREPRENEUR THAT COULD	TARR	DEAD
372	77292082		SPIRITRENEUR	TARR	DEAD
373	77292077		SPIRITRENEUR	TARR	DEAD
374	77291117	3481956	GREENSTONE GROUP	TARR	LIVE
375	77283481	3581304	CADREPRENEUR	TARR	LIVE
376	77277539	3636023	MASTER ENTREPRENEUR	TARR	LIVE
377	77276321	3510987	SUREFIRE WEALTH KNOWLEDGE IS POWER	TARR	LIVE
378	77266698		LUMOS DESIGN	TARR	DEAD
379	77264952		ENTREPRENEUR CASH	TARR	LIVE
380	77262076		PRIESTESS	TARR	DEAD
381	77261551		ACCIDENTAL ENTREPRENEUR	TARR	DEAD
382	77247856		ENTREPRENEUR IN THE CITY, THE ON GOING STORY ABOUT A WOMAN ENTREPRENEURS LIFE AND TRIALS AND HOW SHE ALSO HELPS OTHERS TO GO ALONG THE JOURNEY OF INVENTING AND DESIGNING NEW PRODUCTS...	TARR	DEAD
383	77246598	3448218	WEBEPRENEUR	TARR	LIVE
384	77242763	3487416	ACTIVENTREPRENEUR	TARR	LIVE
385	77236694	3629328		TARR	LIVE
386	77229323		XTREPRENEUR	TARR	DEAD
387	77226387	3519022	ENTREPRENEUR.COM	TARR	LIVE
388	77217227		E2E	TARR	DEAD
389	77217196		ENTREPRENEUR TO ENTREPRENEUR	TARR	DEAD
390	77214567	3521777	SERVENTREPRENEUR	TARR	LIVE
391	77212373		THE ENTREPRENEUR'S BIBLE, THE BUSINESSMAN'S BIBLE FOR ENTREPRENEURS, THE BUSINESSPERSON'S BIBLE FOR ENTREPRENEURS, THE BIBLE FOR BUSINESS AND ENTREPRENEURSHIP, REVISED KING JAMES VERSION	TARR	DEAD
392	77211514		HERPRENEUR	TARR	DEAD
393	77208981		ENTREPRE-LAWYER	TARR	DEAD
394	77206116		GRANDPRENEUR	TARR	DEAD

395	77199839	3506113	SKILLPRENEUR	TARR	LIVE
396	77199201	3403829	SOULPRENEUR	TARR	LIVE
397	77178398	3503652	FOODPRENEUR	TARR	LIVE
398	77177350	3434419	OWN YOUR POWER	TARR	LIVE
399	77144083	3389640	I'M THERE FOR YOU BABY... THE ENTREPRENEUR'S GUIDE TO THE GALAXY	TARR	LIVE
400	77143664	3334322	C	TARR	LIVE
401	77124243		INVENTREPRENEUR INVENTORS AND ENTREPRENEURS	TARR	DEAD
402	77120033		TERRA HABANERO	TARR	DEAD
403	77119988		ANGEL INVESTING AT THE HOTTEST LEVEL	TARR	DEAD
404	77115301	3393640	THE INTERNET ENTREPRENEUR	TARR	LIVE
405	77101614		DIVA PRENEURSHIP	TARR	DEAD
406	77101090		ENTRÉE-PRENEUR	TARR	DEAD
407	77095900		HIGH NET WORTH ENTREPRENEUR	TARR	DEAD
408	77095240		HNWE	TARR	DEAD
409	77075184	3342781	SALESPRENEUREDGE	TARR	LIVE
410	77063829		ENTREPRENEUR IN ACTION	TARR	DEAD
411	77060405		ENTREPRAYNEUR	TARR	DEAD
412	77058935	3433884	ENTREPRENERD	TARR	LIVE
413	77051808	3287640	THE MARKETPRENEUR	TARR	LIVE
414	77050452		MINIPRENEUR	TARR	DEAD
415	77049363		E REVOLUTION	TARR	DEAD
416	77045572	3274030	HIPHOPPRENEUR	TARR	LIVE
417	77034543	3382498	COLLEGEPRENEUR	TARR	LIVE
418	77027301		LIFESTYLE ENTREPRENEUR	TARR	DEAD
419	77027269		LIFESTYLE ENTREPRENEUR	TARR	DEAD
420	77027215		LIFESTYLE ENTREPRENEUR	TARR	DEAD
421	77027165		LIFESTYLE ENTREPRENEUR	TARR	DEAD
422	77022373		CIE	TARR	DEAD
423	77012110	3867769	ENTREPRENEUR	TARR	LIVE
424	77012103	3427392	REALPRENEUR	TARR	LIVE
425	76705112		ABJ ENTREPRENEUR	TARR	LIVE
426	76530938	2890534	SMALLBIZBOOKS.COM	TARR	DEAD
427	76706695		TREP	TARR	LIVE
428	76702485	3924387	BUSINESS SUCCESS SECRETS	TARR	LIVE
429	76701913		REFER AN ENTREPRENEUR	TARR	LIVE
430	76701629		AUTHOR-PRENEUR	TARR	LIVE
431	76697723		ATM MERCHANT SYSTEMS	TARR	DEAD
432	76697253		NYC ENT	TARR	DEAD
433	76697252		NEW YORK CITY ENTREPRENEUR WEEK	TARR	DEAD
434	76696650		BUSINESS OPPORTUNITY 500	TARR	DEAD
435	76695962		TELL AN ENTREPRENEUR	TARR	DEAD
436	76691766	3652950	ENTREPRENEUR CONNECT	TARR	LIVE
437	76691530	3924374	ENTREPRENEUR ASSIST	TARR	LIVE

438	76685057	3535792	VISION OF DÉCOR	TARR	LIVE
439	76685056		MS. BRICKHOUSE	TARR	LIVE
440	76683815	3506898	NFIB YOUNG ENTREPRENEUR FOUNDATION	TARR	LIVE
441	76680448	3565015	THE CONNECTED ENTREPRENEUR	TARR	LIVE
442	76680371		TECHNOPRENUER	TARR	DEAD
443	76679564	3470064	ENTREPRENEUR PRESS	TARR	LIVE
444	76679563	3470063	EP ENTREPRENEUR PRESS	TARR	LIVE
445	76678925	3374476	WOMENENTREPRENEUR.COM	TARR	LIVE
446	76676981	3420812	THE ENTREPRENEUR'S PHONE SYSTEM	TARR	LIVE
447	76673977	3481136	GO-ANYWHERE ENTREPRENEUR	TARR	LIVE
448	76673551		THE VIRTUAL PHONE SYSTEM DESIGNED FOR TODAY'S ENTREPRENEUR	TARR	DEAD
449	76670060	3266532	ENTREPRENEURENESPANOL.COM	TARR	LIVE
450	76664695		ENTREPRENEUR EXPO	TARR	DEAD
451	76662071		PLATINUM ENTREPRENEUR	TARR	DEAD
452	76661051	3411275	ENTREPRENETTE	TARR	LIVE
453	76657293	3204899	ENTREPRENEUR'S STARTUPS	TARR	LIVE
454	76657024	3315154	ENTREPRENEURIAL WOMAN	TARR	LIVE
455	76656865	3204897	MYVOICIE	TARR	LIVE
456	76653858	3214566	HUSTLEPRENEUR	TARR	LIVE
457	76644866		SEQUOIA CAPITAL ENTREPRENEUR ECOSYSTEM	TARR	DEAD
458	76640758		AGROCOM.	TARR	DEAD
459	76635463		RADICALS AND VISIONARIES	TARR	DEAD
460	76626431	3128434	ENTREPRENEUR'S ADVOCATE	TARR	LIVE
461	76604660		SWEET THINGS	TARR	DEAD
462	76601207		ENTREPRENEUR SUITES	TARR	DEAD
463	76594018	2984742	ACTORPRENEUR ATTITUDE	TARR	LIVE
464	76588980		THE ENTREPRENEUR'S NETWORK	TARR	DEAD
465	76582504	3090734	EXCHANGE THE MAGAZINE FOR ENTREPRENEURIAL WOMEN	TARR	LIVE
466	76579418		GENIUS ENTREPRENEUR	TARR	DEAD
467	76572346		LAWNTREPRENEUR	TARR	DEAD
468	76565130		ENTREPRENEUR EXPO	TARR	DEAD
469	76551778	2986596	VETREPRENEUR	TARR	LIVE
470	76549047		ENTREPRENEUR NETWORK	TARR	DEAD
471	76531473		BIZSTARTUPS	TARR	DEAD
472	76530940	3061531	SMALLBIZBOOKS.COM	TARR	LIVE
473	76528861		THE ENTREPRENEUR	TARR	DEAD
474	76526705		THE AMERICAN ENTREPRENEUR	TARR	DEAD
475	76516583	3166835	GLOBAL STUDENT ENTREPRENEUR	TARR	LIVE
476	76496965		LATINAPRENEUR	TARR	DEAD
477	76484080		BEAUTY ENTREPRENEUR OF THE YEAR	TARR	DEAD
478	76432939		SMARTUPS	TARR	DEAD
479	76432938		SMARTUPS	TARR	DEAD
480	76428604	2804194	BETTER BUSINESS. RICHER LIFE.	TARR	LIVE

481	76399579	2914829	SEA MILES	TARR	LIVE
482	76379491	2725755	SISTERPRENEUR	TARR	LIVE
483	76379302		LATINO ENTREPRENEUR	TARR	DEAD
484	76372365		NORTHWEST ENTREPRENEUR NETWORK	TARR	DEAD
485	76356950	2659076	THE COMPANY WHERE THE ENTREPRENEUR IS KING	TARR	DEAD
486	76356699	2642726	WHERE THE ENTREPRENEUR IS KING	TARR	LIVE
487	76354365	2677261	PE PROFESSIONAL ENTREPRENEUR	TARR	LIVE
488	76352515		HOMEOFFICEMAG	TARR	DEAD
489	76343497		SMALLBIZBOOKS	TARR	DEAD
490	76337473	2751128	THE 21ST CENTURY ENTREPRENEUR	TARR	LIVE
491	76316327	2688132	ENTREPRENEUR'S PARTNER	TARR	LIVE
492	76305093	2667411	SEA MILES	TARR	DEAD
493	76304609	2948611	ROARING LION	TARR	LIVE
494	76301401	2685626	INTELLGENT SYSTEMS	TARR	DEAD
495	76299130	2582039	ERG	TARR	DEAD
496	76273774		AMERICA'S MASTER ENTREPRENEUR	TARR	DEAD
497	76262994	2569917	CAMP ENTREPRENEUR	TARR	DEAD
498	76258547		FINANCIAL ENTREPRENEUR	TARR	DEAD
499	76247149	2542943	SUCCESS THROUGH EDUCATION AND MOTIVATION	TARR	DEAD
500	76247148	2544839	STEAM	TARR	DEAD

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EXHIBIT 13

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77651410
Filing Date: 01/16/2009

To the Commissioner for Trademarks:

MARK: EntrepreNeurology (Standard Characters, see mark)
The literal element of the mark consists of EntrepreNeurology.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Daniel. R. Castro, a citizen of United States, having an address of
Building I, Suite 450,
12401 Research Blvd
Austin, Texas 78759
United States
requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 041: Conducting workshops and seminars in innovation strategic planning

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 041, the mark was first used at least as early as 01/07/2009, and first used in commerce at least as early as 01/07/2009, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) screen print of promo page from web site.

Original PDF file:
spec-6668101146-165535852 . Seminar Promo From Web Page.pdf
Converted PDF file(s) (2 pages)
Specimen File1
Specimen File2

The applicant hereby appoints Daniel R. Castro of Castro & Baker, LLP
Building I, Suite 450
12401 Research Blvd

Austin, Texas 78759
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is Daniel R. Castro.

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A fee payment in the amount of $275 has been submitted with the application, representing payment for 1 class(es).

Declaration

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. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /daniel r. castro/ Date Signed: 01/16/2009
Signatory's Name: Daniel R. Castro
Signatory's Position: owner

RAM Sale Number: 2740
RAM Accounting Date: 01/21/2009

Serial Number: 77651410
Internet Transmission Date: Fri Jan 16 17:04:59 EST 2009
TEAS Stamp: USPTO/FTK-66.68.101.146-20090116170459945
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