

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KURT M. MARKVA,
Petitioner,
v.

ENTREPRENEUR MEDIA, INC.
Registrant.

) Cancellation No. _____
)
) Registration No. 2,263,883
) (International Class 35)
)
)
)

PETITION TO CANCEL

Petitioner, Kurt M. Markva, an entrepreneur, does business at 6420 Old Bust Head Road, Broad Run, Virginia 20137. To the best of Petitioner's knowledge, Registrant, Entrepreneur Media, Inc., is a California corporation located and doing business at 2445 McCabe Way, Irvine, California 92614-6234.

Registration No. 2,263,883 was filed on November 13, 1995 and issued on July 27, 1999 for ENTREPRENEUR as applied to advertising and business services, namely, arranging for the promotion of the goods and services of others by means of a global computer network and other computer online services providers; providing business information for the use of customers in the field of starting and operating small businesses and permitting customers to obtain information via a global computer network and other computer online service providers and; web advertising services, namely, providing active links to the web sites of others, and claims a date of first use in commerce of July 31, 1992. Registrant's website address is www.entrepreneur.com.

Petitioner believes that he is or will be damaged by Registration No. 2,263,883 and hereby petitions to cancel same.

The grounds for cancellation are as follows:

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1. Petitioner is an entrepreneur specializing in congressional outreach, federal marketing, public relations, and community outreach. He provides general strategic advice for entrepreneurial clients needing to go through the legislative and regulatory process in Washington, D.C. He secures federal appropriations for entrepreneurs in various issue areas including law enforcement, economic development, environment, and education. He lobbies key members of Congress, committees in both the House and the Senate, and many Executive Branch departments and agencies. He works on behalf of entrepreneurial clients whose ideas, products, and concepts – intellectual property – is much needed. Most are entrepreneurs who are very small – one- or two-person businesses – who need help in navigating government at all levels in the U.S. and abroad. He has several clients on whose behalf he deals with the government entities on security and law enforcement issues. The entrepreneur's intellectual property allows his small business to prosper.
2. Petitioner recently began a consulting and lobbying business that requires certain business and advertising services to be conducted over the world-wide Web. Petitioner's mark ENTREPRENEURGR-IP informs his target group of entrepreneurs of his government resource and intellectual property information services. Therefore, Petitioner is one who has a sufficient interest in using the descriptive term "entrepreneur" in its business. Registrant's U.S. Registration No. 2,263,883 for its mark ENTREPRENEUR is for advertising and business services conducted on the Internet. Petitioner believes that Registrant's registration of the mark ENTREPRENEUR is inconsistent with Petitioner's equal right to use the descriptive and generic term on similar goods and/or services.

3. Based on Registrant's past history, Registrant may oppose the registration of his mark should it be allowed to be published after months of pending in the U.S. Patent and Trademark Office. Consequently, although he will have expended much time, expense, and goodwill symbolized by his mark, Petitioner will be unable to use and register his mark that identifies the source of his services. Petitioner believes that Registrant's mark ENTREPRENEUR should be cancelled because it is descriptive and generic when applied to its advertising and business services over the Internet to the same target group of entrepreneurs. For the foregoing reasons, Petitioner has standing to file this cancellation petition.
4. Petitioner filed an intent-to-use application on July 23, 2004 to register his mark ENTREPRENEURGR-IP as applied to business and advertising services, namely, consulting with entrepreneurs for providing general strategic advice concerning federal government financing and marketing of their goods and services, and advising them concerning intellectual property; arranging for the promotion of the goods and services of entrepreneurs by means of the world-wide Web; providing business information including intellectual property information for the use of entrepreneurs in the field of starting and operating small businesses, and permitting entrepreneurs to obtain information via the world-wide Web; and web advertising services including an electronic newsletter for entrepreneurs to inform them how Capitol Hill operates to provide information and resources in developing their entrepreneurial ideas, products, and services; and active links to the web sites of others who have information for entrepreneurial activities, in International Class 35. Petitioner desires to adopt and use the mark ENTREPRENEURGR-IP as a source identifier for his business and

- advertising services to inform the target group of entrepreneurs of his government resource and intellectual property business expertise. For the foregoing reasons, Petitioner has standing to file this cancellation petition, and the equal right to use the descriptive term.
5. Although Petitioner's ENTREPRENEURGR-IP mark contains the descriptive and generic word "entrepreneur," Registrant's ENTREPRENEUR mark has a different appearance, sound, and meaning from Petitioner's mark, and is thus not likely to be confused with Petitioner's mark under the Trademark Act § 2(d). Therefore, because they are not similar in sound, appearance, connotation, and overall commercial impression, Registrant would not be damaged by the grant of a registration to Petitioner for his mark.
 6. *The American Heritage® Dictionary of the English Language, Fourth Edition* defines "entrepreneur" as a "person who organizes, operates, and assumes the risk for a business venture." The "Merriam-Webster Online Dictionary" defines "entrepreneur" as "one who organizes, manages, and assumes the risks of a business or enterprise." The word is from the Old French word "entreprendre," which translated means *to undertake*. No equivalent word exists for "entrepreneur." Anyone working in the field of entrepreneurial activity must use the word to identify the nature of the work being done. Petitioner is an entrepreneur, he offers business and advertising services to a target group of entrepreneurs, the same group of entrepreneurs for which Registrant offers its business and advertising services for sale. As such, "entrepreneur" and "entrepreneurs" are descriptive and generic terms, and thus are unregistrable under the Trademark Act § 2(e)(1). Therefore, Registration No. 2,263,883 for Registrant's mark ENTREPRENEUR as applied to its advertising and business services should be cancelled under the Trademark Act § 2(e)(1) as offered for sale to entrepreneurs.

Registrant did not prove acquired distinctiveness for its descriptive mark during prosecution of its application for registration. Registrant's mark did not achieve secondary meaning pursuant Trademark Act § 2(f), and did not overcome its descriptiveness under Trademark Act § 2(e)(1). Moreover, because its mark is generic, Registrant cannot submit proof of substantially exclusive and continuous use thereof as a mark in commerce for the five years before the date on which a claim of distinctiveness is made.

7. Registrant uses the descriptive and generic word "entrepreneur" to refer to an "entrepreneur" or to "entrepreneurs" as a class of purchasers and users of its publications. An "Editorial Overview" of the *Entrepreneur Media Inc.* web site "entrepreneur.com/mediakit" generically uses the term when it states: "Written for busy entrepreneurs who want practical – not theoretical – information, *Entrepreneur* offers real-life solutions for entrepreneurs with growing companies. And the "Editor's Note" of the August 1999 issue of *Entrepreneur Magazine* titled "Who Are You?" begins with the question and answer: "Are you an entrepreneur? Of course you are; right now you're reading *Entrepreneur* magazine." The editor gives a definition of "entrepreneur," namely, "a person who grows his or her own business, assuming the risk for the sake of a profit." She says, "[e]ntrepreneurs are the folks who (no matter the size of their businesses today) have a plan to be bigger tomorrow – and the day after that . . . and the day after that. Entrepreneurs do not grow businesses to replace employment income." And, "[e]ntrepreneurs don't grow businesses to give themselves more time. Do you know any entrepreneurs who work fewer hours building their own businesses than they did when they had regular jobs? I sure don't." And, "[e]ntrepreneurs don't start businesses to slow down; you amp up." And, finally, "[m]y grandfathers, my dad and my

uncles were all small-business owners. But they weren't entrepreneurs" (Petitioner Exhibit A). These highlighted articles show Registrant's generic use of "entrepreneur" or "entrepreneurs" as the common descriptive name of its class of purchasers for which there is no other word to use by those in the field. For it is a common word that is available to all except for Registrant's registration. Petitioner has an equal right to use such a common generic word in his own service mark.

8. Forbes.com shows descriptive and generic uses of "entrepreneur," "entrepreneurs," and "entrepreneurship" by others in the field of business and advertising services as highlighted. And a search of the web site found 1497 documents that matched a query for the descriptive and generic use of the word "entrepreneur" on the web site (Petitioner Exhibit B).
9. A Trademark.com Report found more than 150 registered composite ENTREPRENEUR marks not owned by Registrant including: a) 99 Federal records showing registered and renewed composite ENTREPRENEUR marks for goods and services in classes 16, 35, 36, 41, and 42; b) 36 records showing composite ENTREPRENEUR marks where the words "entrepreneur," "entrepreneurs," or "entrepreneur's" was disclaimed as descriptive; and c) 24 of the registered and renewed composite ENTREPRENEUR marks are registered on the Supplemental Register that does not entitle the mark to any statutory presumption that the term is a trademark and not a generic name, or that the mark has acquired distinctiveness to be placed on the Principal Register under Trademark Act § 2(f) (Petitioner Exhibit C).
10. A Trademark.com Report found 48 Federal records not owned by Registrant showing pending or published or allowed composite ENTREPRENEUR marks for goods and services in all classes. Ten (10) of the records show composite ENTREPRENEUR marks where the

words “entrepreneur,” “entrepreneurs,” or “entrepreneur’s” were disclaimed as descriptive.

Record 42 shows that Registrant opposed the registration of VIRTUAL ENTREPRENEUR applied to general education books for suggestions and ideas on how to make money and self improvement despite the disclaimer of “entrepreneur” as descriptive (Petitioner Exhibit D).

11. A Trademark.com Report found 291 Common Law records showing business names that include ENTREPRENEUR and show its widespread, common descriptive and generic use by many other third parties for various goods and services which relate to the target group of purchasers of Registrant’s’s services (Petitioner Exhibit E).
12. A Trademark.com Report found 106 State trademark records for marks not owned by Registrant with a) 74 records showing currently registered and renewed composite ENTREPRENEUR marks for goods and services in all classes; and b) 32 records showing that registered composite ENTREPRENEUR marks have expired or have not been renewed. These records show widespread, common descriptive and generic use by many third parties of the word “entrepreneur” for various goods and services which relate to the target group of purchasers of Registrant’s’s services (Petitioner Exhibit F).
13. A Trademark.com Report found 142 International trademark records of composite ENTREPRENEUR marks not owned by Registrant with a) 97 Canadian records showing the registration of composite ENTREPRENEUR marks for goods and services in all classes; b) 11 German records showing the registration of composite ENTREPRENEUR marks for goods and services in all classes; c) 26 United Kingdom records showing the registration of composite ENTREPRENEUR marks for goods and services in all classes; d) 4 European Community records showing the registration of composite ENTREPRENEUR marks for

goods and services in all classes; and e) 4 World Organization records showing the registration of composite ENTREPRENEUR marks for goods and services in all classes.

Many are not currently registered but they show widespread, common descriptive and generic use by many third parties of the word “entrepreneur” for various goods and services which relate to the target group of purchasers of Registrant’s services (Petitioner Exhibit G).

14. A Trademark.com Report found 278 records of domain names showing widespread, common descriptive and generic use by third parties of the word “entrepreneur” that relate to the target group of purchasers of Registrant’s services (Petitioner Exhibit H); and a keyword search of the web site www.whois.net matching a) 936 domain names having “entrepreneur” as a prefix to the names; b) 700 domain names having “entrepreneur” as a suffix to the names; and c) more than 2000 domain names including “entrepreneur” therein (Petitioner Exhibit I).
15. A search of the U.S. Patent and Trademark Office trademark database found a) 28 live records of trademark and service mark owners other than Registrant having the word “entrepreneur” in their corporate trade names (Petitioner Exhibit J); b) 23 live records of composite ENTREPRENEUR marks with the word “entrepreneur” disclaimed as descriptive (Petitioner Exhibit K); and c) 11 live records with composite ENTREPRENEUR marks on the Supplemental Register (Petitioner Exhibit L).
16. A search of the U.S. Patent and Trademark Office patent database for patents including the word “entrepreneur” in their specifications found 85 patents. Selected U.S. Patents 4,026,244 for a bird feeder; 5,550,816 for a method and apparatus for virtual switching; 5,554,398 titled “process for manufacturing reduced-fat cheddar cheese; 5,584,592 for a combination of ballpoint pen and mechanical pencil; and 6,729,539 for an Internet-based

check/card for entrepreneurs for use on the Web each show the generic and descriptive use of “entrepreneur” over the period of time from 1977 to the present (Petitioner Exhibit M).

17. A search on the web site www.oregonlive.com found eight (8) articles that contained the descriptive and generic use of the word “entrepreneur.” The highlighted articles reveal the use of “Oregon Association of Minority Entrepreneurs;” a three (3) time use in the phrases “baking entrepreneur tests public palate,” “when baking-mix entrepreneur Lynn McPherson,” and “while some entrepreneurs go to costly lengths to test;” the phrase “those two former directors, Portland entrepreneurs...;” the sentence “so he made the transition from full-time musician to full-time entrepreneur;” the phrase “the entrepreneurs are not looking to make a mint selling baubles off of blankets;” the headline “Iraqi entrepreneur serves U.S. troops;” the phrase “for entrepreneurs who are will to take a financial risk...;” and the headline subtitle “entrepreneur Tom Voeller cast aside all his cares...” (Petitioner Exhibit N).
18. A Google.com search of the Web on the Internet found about three (3) hits when searching – Oregon Association of Minority Entrepreneurs – that show the descriptive and generic use of “entrepreneur” and “entrepreneur” in links titled and clicked on including a) “Secrets of Entrepreneurs” that found patented software (U.S. Patent 5,153,830) as a computerized aid to creativity and problem solving to help speed up the creative process of entrepreneurs; b) “Entrepreneur Association” that linked the site “<http://ezinfofind.com> ” with reference to a “venture capital database 2004” for use by entrepreneurs; and “Ideas for Entrepreneurs” that linked www.unusualbusinessideas.com advertising how an entrepreneur can obtain a “rare manuscript of unusual business ideas.” The results of this search shows the popular common descriptive and generic use of “entrepreneur” and “entrepreneurs” by many businesses thus

making the word unregistrable under Trademark Act § 2(e)(1). (Petitioner Exhibit O).

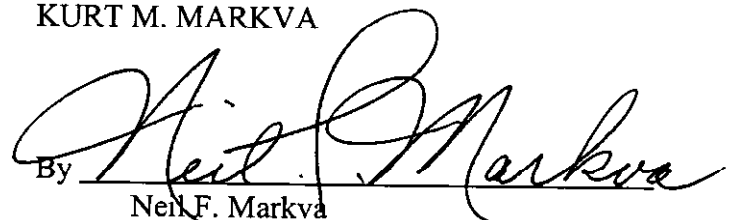
19. A Google.com search of the Web on the Internet found about 4,600,000 hits when searching – entrepreneur – that show the descriptive and generic use of “entrepreneur,” “entrepreneurs,” and “entrepreneur’s” that includes their descriptive and generic use in trade names and in the names of products destined for purchase by the target group of entrepreneurs as related to Registrant’s products and services (Petitioner Exhibit P).
20. For the reasons set forth in the foregoing paragraphs 1-19, inclusive, the term “entrepreneur” is descriptive and precludes registration as a trademark and service mark under Trademark Act § 2(e)(1) without a showing of secondary meaning under Trademark Act § 2(f). During pendency of Registrant’s application for registration its mark ENTREPRENEUR as applied to its business and advertising services over the Internet, Registrant did not provide evidence that its use of “entrepreneur” had acquired distinctiveness as applied to such services before Registration No. 2,263,883 issued on the Principal Register. Therefore, Registrant’s registration should be cancelled under Trademark Act § 14 (15 U.S.C. 1064).
21. For the reasons set forth in the foregoing paragraphs 1-19, inclusive, the term “entrepreneur” is a generic term, and thus it is precluded from registration as a trademark and service mark under Trademark Act § 2(e)(1). The generic term “entrepreneur,” which Petitioner has the equal right to use in his proposed mark for business and advertising services over the Internet, is not registrable under the Trademark Act. For it is the common descriptive name of those business and advertising services offered for sale to entrepreneurs. Therefore, Registration No. 2,263,883 issued to Registrant on the Principal Register for the mark ENTREPRENEUR as applied to its business and advertising services offered for sale to

entrepreneurs over the Internet, should be cancelled under Trademark Act § 14 (15 U.S.C. 1064).

22. For the reasons set forth in the foregoing paragraphs 1-19, inclusive, Petitioner will be irreparably damaged in his business, and in the good will thereof to be symbolized by his proposed mark. Petitioner's good will is thus likely to be placed in jeopardy, and will negatively reflect upon and seriously injure Petitioner's reputation, which he presently enjoys among entrepreneurs unless Registration No. 2,263,883 issued to Registrant on the Principal Register is cancelled under Trademark Act § 14 (15 U.S.C. 1064).
23. For the reasons set forth in the foregoing paragraphs 1-19, inclusive, Petitioner believes and asserts that his goodwill will be damaged if Registration 2,263,883 is not cancelled, and respectfully prays that this Petition to Cancel be sustained and said registration be cancelled. The requisite fee of \$300.00 is filed herewith.

Respectfully submitted,

KURT M. MARKVA

By 
Neil F. Markva
Attorney for Petitioner