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

Proceeding	91197739
Party	Plaintiff Entrepreneur Media, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the Application of Daniel R. Castro
Serial No. 77/964,153
Filed: March 20, 2010
Trademark: **ENTREPRENEUR.OLOGY**
Published: August 10, 2010

Entrepreneur Media, Inc., a California corporation,	)	OPPOSITION NO. 91197739
Opposer,	)	
v.	)	
Daniel R. Castro, An individual,	)	
Applicant.	)	

NOTICE TO THE BOARD OF PENDING CIVIL ACTION

Opposer hereby notifies the Board that on or about September 28, 2010, Applicant filed Civil Action No. 10CA695 with the United States District Court for the Western District of Texas, Austin Division, a copy of which is attached. Said civil action relates to Application Serial No. 77/964,153, which is the subject of the present opposition.

Dated: December 10, 2010

Respectfully submitted,

LATHAM & WATKINS LLP

By: _____

Jennifer L. Barry
LATHAM & WATKINS LLP
600 West Broadway, Suite 1800
San Diego, CA 92101-3375
Attorneys for Entrepreneur Media, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE TO THE BOARD OF PENDING CIVIL ACTION** has been served on Daniel R. Castro by mailing said copy on December 10, 2010 via First Class Mail, postage prepaid to:

Dani8el R. Castro
Castro & Baker, LLP
10509 Pointeview Dr
Austin, TX 78738-5522

Adam Kummins

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Daniel R. Castro	§	
Plaintiff	§	
	§	
	§	
v.	§	**CIVIL ACTION NO: 10CA695**
	§	
	§	
	§	
ENTREPRENEUR MEDIA, INC.	§	
Defendant	§	

FIRST AMENDED ORIGINAL COMPLAINT

Pursuant to FRCP 15, Daniel R. Castro, comes forth and files this First Amended Original Complaint against entrepreneur Media, Inc., and for cause of action, would show unto the Court as follows:

I. THIS AMENDMENT CAN BE MADE FREE AT ANY TIME BEFORE A RESPONSIVE PLEADING IS FILED.

1.1 Rule 15 allows Castro to file this First Amended Original Complaint without leave of Court because it is being filed before any responsive pleading is filed, and within twenty days after it was served. Defendant was served on September 16, 2010.

1.2 Accordingly, Castro hereby files this First Amended Complaint.

II. SUBJECT MATTER JURISDICTION AND VENUE

2.1 Plaintiff is seeking a declaration of rights with respect to federal trademark laws, the First Amendment of the United States Constitution and the Anticybersquatting Consumer Protection Act.

2.2 This Court's jurisdiction over this matter is proper pursuant to 28 USC §§ 1331, 1332 and 1338(a)(b), and pursuant to 15 U.S.C. § 1121(a)(Trademarks), 28 U.S.C. 2201 (Declaratory Judgment Act), 15 U.S.C. §2 (Sherman Antitrust Act).

2.3 Venue is proper in this judicial district pursuant to 28 USC §1391 (b)(c), and 28 U.S.C. § 1392, in that Defendant is a corporation that is subject to personal jurisdiction in this district, and because a substantial part of the events or omissions giving rise to the claims occurred in this district, and the property that is the subject of this action is located in this district.

III. PERSONAL JURISDICTION

3.1 This Court has personal jurisdiction over the defendant because: (a) the defendant's contacts with the State of Texas are continuous and systematic; and (b) the defendant purposefully directs its activities to the residents of the State of Texas and plaintiff's cause of action arises out of, or is related to the defendant's contacts with the State of Texas.

3.2 Defendant markets and sells magazines in bookstores and news stands throughout Texas, including this District.

3.3 Defendant does business over the internet by entering into contracts with Texas residents, which contracts involve the knowing and repeated transmission of computer files over the internet.

3.4 Moreover, defendant's website is sufficiently interactive and commercial in nature to justify personal jurisdiction in that it processes credit cards, sells monthly subscriptions to its Texas users, allows subscribers to download articles, and provides e-mail addresses and links for customer service problems.

IV. THE PARTIES

4.1 Plaintiff is Daniel R. Castro, is an award-winning author, and professional keynote speaker/trainer residing in Travis County, Texas.

4.2 Defendant is Entrepreneur Media, Inc. a California corporation, doing business all over the world via the internet, and selling magazines throughout the United States, including Texas, and may be served with process by serving its registered agent, Ronald L. Young at his office address at: 2445 McCabe Way Suite 400, Irvine, California 92614.

V. FACTS

5.1 Daniel R. Castro is an award-winning author, a professional keynote speaker/trainer and seminar leader, as well as a small business owner in Austin, Texas. He is currently working on his second book[1], which has a working title of "Anatomy of the Entrepreneur's Brain." Castro has conducted approximately five years of research into the lives of legendary entrepreneurs throughout history, and is currently interviewing modern day, currently living entrepreneurs in support of his book.

5.2 Castro also writes articles on the subject of entrepreneurs and entrepreneurship for free distribution in print magazines, business journals and online distribution through Ezines.[2]

5.3 Castro often gives keynote presentations and conducts seminars and workshops for Fortune 500 companies on the topic of entrepreneurs, innovation and entrepreneurship. Some of Castro's clients include IBM, Dell, Inc., Northwestern Mutual Insurance, the American Red Cross, The City of Austin, The State of Texas Comptroller, the U.T. School of Law, and the U.S. Military ("Wounded Warriors Transition Unit").

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[1] Castro's first book, CRITICAL CHOICES THAT CHANGE LIVES, won a few awards and is now selling all over the world.

[2] An "Ezine" is an online magazine usually distributed via email or via websites.

5.4 Castro is about to launch a Boot Camp For Entrepreneurs in which he will teach corporate executives how to think and act more like entrepreneurs and how to be more innovative. Certain modules of the Boot Camp will also teach people how to launch their own business.

5.5 In early January 2009, Castro coined the word "EntrepreNeurology" and began using it in commerce.

5.6 On January 16, 2009, Castro applied for the registration of the mark "EntrepreNeurology." No one opposed the mark.

5.7 On August 4, 2009, the trademark registration was granted. That mark now has the Registration No: 3,663,282. A true and correct copy of the Registration Certificate is attached as Exhibit 1.

5.8 In early September 2009, Castro coined the words EntrepreneurOlogy, and the virtually identical Entrepreneur.Ology. In early February 2010, Castro purchased the domain name www.EntrepreneurOlogy.com, and began using both of these marks in commerce. Castro gave these almost identical words the following meaning:

> "The study of HOW entrepreneurs think; WHY they can make money in any economy; HOW they assess risk; HOW they survive and prosper with very little resources; WHY they can see opportunities that are invisible to others; HOW they bounce back from financial crisis; HOW they make millions during severe recession and depression; HOW they foster innovation and creativity in themselves and their teams."

5.9 On October 12, 2009, Castro registered an Assumed Name Certificate with the Travis County Clerk, showing that the mark "entrepreneurology" was the name under which he was doing business. See Exhibit 2.

5.10 A word that has never existed in the English language before is considered "fanciful" and, "inherently distinct", and therefore, entitled to trademark protection.

Classic examples of "fanciful" marks entitled to trademark protection are the words "KODAK" and "EXXON."

5.11 In February, 2010, Castro created a website under the domain name www.EntrepreneurOlogy.com to market his services as a keynote speaker, trainer and workshop leader, as well as to market his Boot Camp For Entrepreneurs. Castro has marketed his services under three virtually identical marks: (1) EntrepreneurOlogy; (2) Entrepreneur.Ology; and (3) EntrepreNeurology. The only difference in these marks is the "dot" between the word "entrepreneur" and "ology," and the capitalization of the "N" in one word and the "O" in the other.

5.12 On March 20, 2010, Castro submitted his application for trademark registration of the mark "Entrepreneur.Ology" to the U.S. Patent and Trademark Office.

5.13 The Defendant, EMI, does not claim ownership of the marks EntrepreneurOlogy, Entrepreneur.Ology, or EntrepreNeurology. Indeed, it never has.

5.14 The Defendant, EMI, does not claim ownership of the domain name: www.EntrepreneurOlogy.com

5.15 Instead, EMI claims ownership of the mark 'ENTREPENEUR" and operates a magazine under that mark. The word "entrepreneur" is a word of French origin which has existed in the public domain for hundreds of years. The Oxford English Dictionary defines "entrepreneur" as "one who undertakes an enterprise; one who owns and managers a business; a person who takes the risk of profit or loss." The Compact Oxford English Dictionary 522 (2d ed. 1991).

5.16 EMI does not claim that the word "entrepreneur" is a "made-up" word or "fanciful" or "inherently distinct" under the Lanham Act.

5.17 Nor can EMI show conclusive evidence that the mark "ENTREPENEUR" distinguishes its products and services from anyone else's products and services related to entrepreneurship.

5.18 Nor can EMI show that consumers associate the word "ENTREPRENEUR" *exclusively* with its magazine.

5.19 Castro has never made any reference to Defendant's magazine, and has never done anything to imply that his products or services have any affiliation with ENTREPRENEUR magazine, or are sponsored by ENTREPRENEUR magazine.

5.20 Moreover, Castro does not market or sell a print or online magazine of any kind. He simply writes books and articles on the subject of entrepreneurs and entrepreneurship for free distribution in print magazines, business journals, websites and online Ezines, and provides keynote presentations, seminars, workshops and Boot Camps for entrepreneurs.

5.21 Castro does not make a dime (nor does he attempt to) from the publication of these articles.

5.22 Castro's trademark application for the mark "Entrepreneur.Ology" went unchallenged until two days before the deadline for opposition expired. Two days before the deadline, EMI file a motion to extend the deadline to oppose the mark. See Exhibit 3.

5.23 EMI has not yet filed its opposition to Castro's trademark.

5.24 On September 7, 2010, counsel for EMI faxed Castro a "cease and desist" letter claiming that it owns a trademark on the mark "ENTREPRENEUR." See Exhibit 4.

5.25 In the same letter, EMI threatened to sue Castro if he did not give up rights to the mark "Entrepreneur.Ology" and the domain name: www.EntrepreneurOlogy.com. EMI

gave Castro a deadline of September 21, 2010 to give up these valuable legal rights. See Exhibit 4.

5.26 EMI has a pattern and practice of threatening, intimidating and actually suing anyone who uses the word "entrepreneur" or any derivation of that word in its marketing materials. As such, EMI specifically intends to attempt to monopolize the market that provides magazines, books, articles, websites, blogs, trade shows, workshops, seminars, boot camps, and keynote presentations on the topic of entrepreneurs and entrepreneurship.

5.27 EMI has sufficient market power in this market that there is a "dangerous probability" that it will succeed in monopolizing this market.

5.28 EMI's conduct is harming competition in this market, not merely a specific competitor.

5.29 EMI claims that its trademark on the word "entrepreneur" is incontestable under 15 U.S.C. § 1065, a claim which Castro challenges in this action.

5.30 It is because of this impending lawsuit and because an actual controversy exists between Castro and EMI over the right to use mark Entrepreneur.Ology, and the domain name www.EntreprneurOlogy.com, as well as his right to use the word "entrepreneur" and its derivatives in his books, articles, seminars, workshops and his Boot Camp, that Castro chose to file this action at this time.

VI. STANDING

6.1 Castro has standing to bring this action because an actual, justiciable, and substantial controversy of sufficient immediacy and reality exists between the parties over the right to the ownership of the mark Entrepreneur.Ology, and the domain name www.EntrepreneurOlogy.com, and because EMI has threatened legal action against

Castro if he does not cease and desist from using this domain name and the mark Entrepreneur.Ology.

6.2 Also at issue is Castro's First Amendment right to use the generic word "entrepreneur" and any derivatives of that word, in his upcoming book "Anatomy of the Entrepreneur's Brain," and in the substance of his articles dealing with entrepreneurs and entrepreneurship, as well as in the substance of his keynotes, seminars, workshops and his Boot Camp For Entrepreneurs, as well as in the marketing of the same.

VII. CAUSES OF ACTION

A. DECLARATION THAT 15 U.S.C. §1065, and 15 U.S.C. 1115(b) ARE UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED

7.1 Plaintiff incorporates all preceding and proceeding paragraphs herein by reference.

7.2 Castro seeks a judicial declaration that EMI's attempt to shield itself behind the Lanham Act's "incontestable" status is an attempt to kidnap the word "entrepreneur" from the lexicon of the English language, and is, therefore, a violation of the First Amendment.

7.3 Plaintiff seeks a judicial declaration that 15 U.S.C. §1065 is unconstitutional on its face and as applied because it violates Plaintiff's First Amendment rights to freedom of speech and freedom of expression in the use of the word "entrepreneur" and derivations thereof.

7.4 Plaintiff seeks a judicial declaration that 15 U.S.C. 1115(b)(the language declaring an incontestable mark as "conclusive evidence of the validity of the registered mark") is unconstitutional on its face and as applied because it violates Plaintiff's First

Amendment rights to freedom of speech and freedom of expression in the use of the word "entrepreneur" and derivations thereof.

7.5 The common word "entrepreneur" is a generic noun that is in the public domain and which has been around for hundreds of years. The fact that a term resides in the public domain lessens the possibility that a purchaser would be confused and think that the mark came from a particular source.

7.6 No one should be allowed to use the Lanham Act's "incontestable" status to kidnap a commonly used word from the English lexicon.

7.7 While the trademark owner has an interest in preventing consumer confusion, there is a broad constitutional interest in preserving common, useful words for the public domain.

7.8 Castro, and authors worldwide, have been using the word "entrepreneur" in their books and articles for hundreds of years, and should be allowed the freedom to continue doing so for eternity. Every day, the Wall Street Journal, the New York Times, Forbes Magazine and Fortune Magazine use some derivation of the word "entrepreneur" in their publications. If EMI is allowed an "incontestable" trademark in that word, then each of these publications violate EMI's trademark every single day – multiple times a day.

7.9 Therefore, Castro requests a judicial declaration that 15 U.S.C. §1065, and 15 U.S.C. §1115(b) under which EMI claims its mark is "incontestable" should be declared unconstitutional as a violation of the First Amendment on its face and as applied.

B. DECLARATION THAT EMI'S MARK IS NOT "INCONTESTABLE"

7.10 Even if this court upholds the constitutionality of 15 U.S.C. §1065, and 15 U.S.C. §1115(b), Castro seeks a judicial declaration that EMI's mark "ENTREPRENEUR" does not qualify for "incontestable" status under 15 U.S.C. §1065.

7.11 Plaintiff seeks a judicial declaration that EMI's trademark is not "incontestable" for the following reasons:

7.12 It is well established law that even if a "junior user's" mark has attained "incontestable" status, such status does not cut off the rights of the "senior user."

7.13 It is undisputed that Castro is the "senior user" of the following three marks: (1) EntrepreNeurology; (2) EntrepreneurOlogy; and (3) Entrepreneur.Ology.

7.14 Castro started using the marks "EntrepreNeurology," "EntrepreneurOlogy" and Entrepreneur.Ology BEFORE Defendant even knew they existed. Castro obtained a federally registered trademark in the mark "EntrepreNeurology" before EMI knew it existed. In fact, EMI has never claimed any ownership interest in any of these three marks.

7.15 Castro's use of these three marks has been continuous from the beginning.

7.16 Therefore, Castro is the senior user of these three marks, and EMI's claim that the mark "ENTREPRENEUR" is "incontestable" does not make it "incontestable" as to Castro's three marks.

7.17 In addition, EMI's trademark is not "incontestable" because the term "entrepreneur" is merely generic. No "incontestable" right can be obtained in a mark which is a generic name for goods or services. 15 U.S.C. §1065

7.18 EMI's trademark is not "incontestable" because EMI has abused its trademark by using it in restraint of trade in violation of the U.S. Antitrust Laws. Specifically, EMI is abusing trademark law by using its trademark in an attempt to monopolize trade and/or commerce among the several states in violation of Section 2 of the Sherman Antitrust Act. 15 U.S.C. §2; See 15 U.S.C. §1065.

7.19 EMI has demonstrated the requisite "specific intent" to monopolize by engaging in a pattern of anticompetitive conduct designed to create barriers to entry into, and exclude competition from, the market that provides magazines, books, articles, websites, blogs, trade shows, workshops, seminars, boot camps, and keynote presentations on the topic of entrepreneurs and entrepreneurship. This unilateral conduct comes "dangerously close" to achieving monopoly power and is having an anticompetitive effect on a substantial amount of interstate commerce. EMI has sufficient market power in the above described market to be held liable for "attempted monopolization" under Section 2 of the Sherman Antitrust Act. Therefore, there is a "dangerous probability" that EMI's attempt to monopolize will succeed.

7.20 EMI's pattern of attempting to steal other people's domain names (which were properly owned and registered) and threatening expensive litigation – simply because they have used a derivation of the word "entrepreneur" is exclusionary and anticompetitive because it is not necessary for competition on the merits, and is not reasonably necessary to compete on the merits. It is therefore, not supported by a valid business reason. EMI's behavior is designed to destroy competition, not simply to destroy a competitor.

7.21 As such, Castro seeks a judicial declaration that EMI's trademark in the mark "ENTREPRENEUR" is invalid and should be cancelled.

C. DECLARATION OF INVALIDITY AND REQUEST FOR CANCELLATION

7.22 Even if this court rules that EMI's mark is "incontestable," Castro requests a judicial declaration that the mark is invalid and requests that it be canceled. An

"incontestable" mark that becomes generic may be cancelled at any time pursuant to 15 U.S.C. §1064(3).

7.23 Under 15 U.S.C. §§ 1052 and 1065(4), Castro seeks a judicial declaration that EMI's trademark in the word "entrepreneur" is invalid, unenforceable, and should be cancelled for the following reasons:

7.24 EMI's mark does not serve to identify and distinguish EMI's goods and services from those of others and do not otherwise function as trademarks as defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127.

7.25 The public has NOT come to associate the word "entrepreneur" *exclusively* with EMI's products or services.

7.26 Plaintiff also requests a cancellation of EMI's trademark because EMI has used it in restraint of trade in violation of Section 2 of the Sherman Antitrust Act (for all the factual reasons previously described, which are incorporated herein by reference) 15 U.S.C. §2.

7.27 Pursuant to Section 37 of the Lanham Act, 15 U.S.C. 1119, this Court should order the Director of the United States Patent and Trademark Office to cancel each of the following of EMI's registrations:

Registration No. 1,453,968 in International Classes 9, 16, 35 and 41.

Registration No. 2,502,032 in International Classes 9, 16, 35, and 41.

Registration No. 3,520,633 in International Classes 9, 16, 35, and 41.

Registration No. 2,263,883 in International Classes 9, 16, 35, and 41.

Registration No. 2,033,423 in International Classes 9, 16, 35, and 41.

Registration No. 2,287,413 in International Classes 9, 16, 35, and 41.

Registration No. 2,174,757 in International Classes 9, 16, 35, and 41.

Registration No. 1,854,603 in International Classes 9, 16, 35, and 41.

Registration No. 2,215,674 in International Classes 9, 16, 35, and 41.

Registration No. 2,502,032 in International Classes 9, 16, 35, and 41.

Registration No. 3,204,899 in International Classes 9, 16, 35, and 41.

Registration No. 3,266,532 in International Classes 9, 16, 35, and 41.

Registration No. 3,374,476 in International Classes 9, 16, 35, and 41.

Registration No. 2,653,302 in International Classes 9, 16, 35, and 41.

Registration No. 3,470,064 in International Classes 9, 16, 35, and 41.

Registration No. 3,315,154 in International Classes 9, 16, 35, and 41.

Registration No. 2,391,145 in International Classes 9, 16, 35, and 41.

7.28 This court is empowered to declare invalid and unenforceable and to cancel Defendant's registered "entrepreneur" 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 registrations of any part 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." 15 U.S.C. §1119.

D. DECLARATION OF NON-INFRINGEMENT AND/OR ALLOWABLE USE

7.29 Even if this Court rules that EMI's mark is valid, Castro seeks a judicial declaration that his use of the word "entrepreneur" and any derivative thereof, in his books, articles, keynotes, seminars, workshops, websites, and marketing materials

promoting the same, is entitled to First Amendment protection, and is, therefore, non-infringing.

7.30 Castro also seeks a judicial declaration that his marks: (1) EntrepreNeurology; (2) Entrepreneur.Ology; and (3) the domain name www.EntrepreneurOlogy.com do not infringe on EMI's mark, or are otherwise allowed, for the following reasons:

7.31 It is well established that this word "incontestable" is very misleading because there are at least nine statutory defenses to an "incontestable" trademark. 15 U.S.C. 1115(b)(1) – (9).

7.32 Even if EMI's mark is "incontestable," it is very weak because the word has been in the public domain for hundreds of years, and is commonly used in the marketplace.

7.33 Widespread use of the word "entrepreneur" throughout the world serves as confirmation of the need for the public to use that word. There are few, if any synonyms for the word "entrepreneur."

7.34 The evidence will show that many worldwide publications, including the Wall Street Journal, the New York Times, Forbes Magazine and Fortune Magazine use the word "entrepreneur" thousands of times each month, both online and in their hard print versions.

7.35 The Ninth Circuit has already ruled that "EMI cannot have the exclusive right to use the word "entrepreneur" in any mark identifying a printed publication addressing subjects related to entrepreneurship." *See EMI, Inc. v. Smith*, 279 F.3d 1135 (9th Cir. 2002).

7.36 Castro also seeks a declaration that his use of the mark EntrepreneurOlogy and the domain name www.Entrepreneur.Ology.com are protected as: (a) fair use (under 15 U.S.C. 1115(b)(4) of the Lanham Act; (b) nominative fair use (under federal common

law); (c) because Castro used and registered the marks first. See 15 U.S.C. 1115(b)(6) of the Lanham Act; and (d) because EMI has abused its trademark by using it in restraint of trade in violation of Section 2 of the Sherman Antitrust Act (for all the factual reasons previously described, which are incorporated herein by reference), 15 U.S.C.§ 1115(b)(7); and (e) Free Speech under the First Amendment.

7.37 Castro's use of the word "Enterpreneur.Ology and the domain, www.EntrepreneurOlogy.com meet all the criteria for nominative use: (1) Castro's keynotes, workshops, seminars, books, articles and website are NOT readily identifiable without the use of the mark; (2) only so much of the mark is being used as is reasonably necessary to identify Castro's keynotes, seminars, workshops, books, articles, and website; and (3) Castro has done nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by EMI.

7.38 There is no other single word that describes people who start and run businesses as succinctly or precisely as the word "entrepreneur." Therefore, Castro cannot effectively market keynotes, seminars, workshops, books, articles, and a website dedicated to the study of entrepreneurs and entrepreneurship without use of some derivative of the word "entrepreneur." Castro has used only so much of the mark as is reasonably necessary to identify his keynotes, seminars, workshops, books, articles, and website.

7.39 Under the "fair use doctrine," Castro is entitled to use the word "entrepreneur" and any derivative thereof, to describe his keynotes, seminars, workshops, books, articles, and websites (as well in the content of the same) regardless of whether Defendant's claimed trademark is registered. See Section 33(b)(4) of the Lanham Act.

7.40 Castro has used the mark Entrepreneur.Ology and the domain name www.EntrepreneurOlogy in good faith with no attempt to imply sponsorship by or affiliation with ENTREPRENEURSHIP magazine. There is no evidence to the contrary.

7.41 In short, Castro's fair use of the word "entrepreneur" is allowed, and to the extent EMI's trademark may be found valid or enforceable, should be declared non-infringing, or otherwise allowed.

E. ESTOPPEL AND ACQUIESCENCE

7.42 EMI is barred from claiming infringement under the doctrines of estoppel and acquiescence because it failed to oppose Castro's trademark registration of the mark "EntrepreNeurology" and has never challenged Castro's use of this mark in commerce.

7.43 Castro applied for registration of the mark "EntrepreNeurology" on January 16, 2009, and received an unopposed registration of his mark "EntrepreNeurology" on August 4, 2009. That mark now has the Registration No: 3,663,282. See Exhibit 1.

7.44 Therefore, EMI is barred from now claiming infringement based on Castro's use of the virtually identical mark Entrepreneur.Ology or the domain name www.EntrepreneurOlogy.com.

F. DECLARATION THAT CASTRO'S MARKS DO NOT CONSTITUTE UNFAIR COMPETITION UNDER 15 U.S.C. 1125.

7.45 Plaintiff incorporates all preceding and proceeding paragraphs herein by reference.

7.46 For all of the reasons already stated in this Complaint, Castro seeks a judicial declaration that his use of the marks: (1) Entrepreneur.Ology; (2) www.EntrepreneurOlogy.com; and (3) EntrepreNeurology do not constitute "unfair competition" in violation of 15 U.S.C. 1125.

G. VIOLATION OF ANTITRUST LAWS

7.47 EMI is guilty of violating Section 2 of the Sherman Antitrust Act in an attempt to monopolize trade and/or commerce among the several states in violation of Section 2 of the Sherman Antitrust Act. 15 U.S.C. §2.

7.48 EMI has demonstrated the requisite "specific intent" to monopolize by engaging in a pattern of anticompetitive conduct designed to create barriers to entry into, and exclude competition from, the market that provides magazines, books, articles, websites, blogs, trade shows, workshops, seminars, boot camps, and keynote presentations on the topic of entrepreneurs and entrepreneurship.

7.49 This unilateral conduct comes "dangerously close" to achieving monopoly power and is having an anticompetitive effect on a substantial amount of interstate commerce. EMI has sufficient market power in the relevant market (described above) to be held liable for "attempted monopolization" under Section 2 of the Sherman Antitrust Act. Therefore, there is a "dangerous probability" that EMI's attempt to monopolize will succeed.

7.50 EMI's pattern of attempting to steal other people's domain names (which were properly owned and registered) and by threatening expensive litigation – simply because they have used a derivation of the word "entrepreneur" is exclusionary and anticompetitive because it is not necessary for competition on the merits, and is not reasonably necessary to compete on the merits. It is therefore, not supported by a valid business reason.

7.51 EMI's pattern of threats and lawsuits against anyone who uses any variation of the common noun "entrepreneur" is an attempt to create a monopoly and a barrier to into the market that provides magazines, books, articles, websites, blogs, trade shows,

workshops, seminars, boot camps, and keynote presentations on the topic of entrepreneurs and entrepreneurship. EMI's behavior is designed to destroy competition, not simply to destroy a competitor.

7.52 Defendant's threatening letter to Castro (and to other small businesses) demonstrates bad faith and exhibits a "specific intent" to use the trademark laws to minimize competition in the relevant market described above. Defendant's September 7, 2010 letter (as well as its similar letters to other entrepreneurs across America) is evidence of a "specific intent" to exclude competition and prevent anyone from using any derivation of the word "entrepreneur" in connection with magazines, seminars, workshops, keynotes, books, articles, websites and blogs related to the topic of entrepreneurs and entrepreneurship. In so doing, Defendants are not only seeking exclusive use of the word "entrepreneur," but also the exclusive right to conduct seminars, workshops, keynotes, boot camps, and to publish magazines, books and articles related to entrepreneurship, and create websites and blogs dedicated to the study of entrepreneurs and entrepreneurship.

7.53 Castro does not seek actual damages, but rather a temporary and permanent injunction to prevent EMI from continuing to violate Section 2 of the Sherman Antitrust Act.

H. MISUSE OF TRADEMARK AND UNCLEAN HANDS

7.54 Defendant's attempt to prevent Castro and all others from using the word "entrepreneur" constitutes a misuse of the trademark laws, rising to the level of unclean hands, and as such, the trademark is unenforceable, even if there is no technical violation of the Antitrust laws. Thus, Castro's use the mark Entrepreneur.Ology and the domain name, www.EntrepreneuerOlogy.com are allowed. Castro's use of the word

"entrepreneur" in the substance of his books, articles, seminars, workshops, websites, and Boot Camp is also allowed.

VIII. SUSPENSION OF TTAB PROCEEDING PENDING OUTCOME OF THIS CASE

8.1 Plaintiff incorporates all preceding and proceeding paragraphs herein by reference.

8.2 The Trademark Trial and Appeal Board ("TTAB") is an administrative body. The remedy for a negative ruling by the TTAB is an appeal directly to a federal district court. See 15 U.S.C. 1071. The district court's review is a *de novo* review. 15 U.S.C. 1071. Therefore, a ruling by the TTAB is not binding on the district court and has no *res judicata* effect on the courts.

8.3 Castro's registration of the mark "Entrepreneur.Ology" is currently pending before the TTAB under Serial Number 77964153. EMI has filed a motion to extend the deadline to oppose the registration, and the motion was automatically granted. See Exhibits 3 and 5 respectively.

8.4 In order to avoid duplicate litigation, and because this court's decision will have a binding effect on the TTAB, Plaintiff hereby requests that this Court issue an order suspending the proceedings before the TTAB.

IX. DECLARATION OF RIGHTS UNDER THE ANTICYBERSQUATTING ACT

9.1 Plaintiff incorporates all preceding and proceeding paragraphs herein by reference.

9.2 EMI has threatened to sue Castro under the Anticybersquatting Consumer Protection Act if he does not turn over to them his right, title and interest in the domain

name: www.EntrepreneurOlogy.com. See Exhibit 4 (Cease & Desist letter demanding that Castro turn over ownership of this domain name).

9.3 Castro seeks a judicial declaration that his registration of the domain www.EntrepreneuerOlogy.com is not a violation of the Anticybersquatting Consumer Protection Act. 15 U.S.C. §1125(d) for the following reasons:

9.4 Castro is the owner of the federally registered mark, "EntrepreNeurology," Trademark Registration No: 3,663,282, and is therefore, entitled to register a domain name using that exact spelling. This spelling of the trademark above is exactly the same as in the domain www.EntrepreneurOlogy.com. The only difference is the capitalization of the "N" in one word, and the capitalization of the "O" in the other word. However, in a digital world, neither the internet, nor the consumers, know the difference.

9.5 EMI has never claimed ownership of the mark "EntrepreNeurology" or the mark "EntrepreneurOlogy" and has no ownership interest whatsoever in those marks. Therefore, it is not entitled to protection under the Anticybersquatting Consumer Protection Act. 15 U.S.C. 1125(d).

9.6 Moreover, Castro was using the mark EntrepreneurOlogy and EntrepreNeurology in commerce before EMI, and registered the domain name www.EntrepreneurOlogy.com before EMI. In fact, EMI has never used the word EntrepreNeurology or EntrepreneurOlogy in commerce to market its goods or services.

9.7 It is undisputed that Castro is the owner of the mark "EntrepreneurOlogy" under common law, and is the federally registered owner of the trademark "EntrepreNeurology" under Trademark Registration No: 3,663,282.

9.8 When EMI sent Castro a threatening letter demanding that he turn over his valuable property rights to them, it knew that Castro was the owner of a registered

trademark in the mark "EntrepreNeurology" and therefore, was entitled to register the domain www.EntrepeneurOlogy.com because the spelling is identical. Therefore, EMI's threatening letter is an abuse of the Anticybersquatting Consumer Protection Act and attempt to monopolize in violation of Section 2 of the Sherman Act (for all of the factual reasons previously described, which are incorporated herein by reference).

9.9 Castro registered that domain name in good faith, and has never tried to sell it to EMI or anyone else for profit.

9.10 Because the word "entrepreneur" is a generic word that has been in the public domain for hundreds of years, EMI does not have a mark that is "famous" or "distinct" or has any chance of being confused with the domain: www.EntrepreneurOlogy.com.

9.11 Castro is making a bona fide use of the domain www.EntrepreneurOlogy.com to market his goods and services.

9.12 Castro has not made any attempt to divert consumers away from EMI's website or to harm EMI's goodwill in any way.

9.13 Castro has never implied that the domain www.EntrepreneurOlogy.com has any affiliation with or sponsorship or endorsement by EMI.

9.14 The contact information associated with the registration of the domain is Castro's own office address, and the phone number given was his office number. Therefore, there is no evidence that Castro provided any false or misleading contact information in the registration of the domain.

9.15 Castro has never engaged in a pattern of registering multiple domain names which are identical or confusingly similar to marks that belong to others.

9.16 Castro believed in good faith that his registration of the domain name was fair use and/or otherwise lawful because he is the owner of Trademark No. 3,663,282 for the

mark "EntrepreNeurology," which has the identical spelling as the domain name in question.

9.17 Therefore, Castro is entitled to a judicial declaration that his ownership and use of the domain www.EntrepreneurOlogy.com is legal and not in violation of the Anticybersquatting Consumer Protection Act.

X. REVERSE DOMAIN NAME HIJACKING

10.1 Plaintiff incorporates all preceding and proceeding paragraphs herein by reference.

10.2 EMI knew Castro was the lawful owner of the federally registered trademark "EntrepreNeurology." Therefore, EMI knew that Castro was entitled to lawfully register the domain www.EntrepreurOlogy.com because the spelling is identical. Despite this knowledge, EMI sent Castro a letter demanding that he turn over this valuable property right to them. See Exhibit 4 (Cease & Desist letter). This constitutes attempted theft and an attempt to monopolize in violation of Section 2 of the Sherman Antitrust Act.

10.3 EMI also knew that Castro was the first to use the marks EntrepreNeurology and EntrepreneurOlogy in commerce and was the first to register the domain name: www.EntrepreneurOlogy.com.

10.4 EMI knew it had no legitimate claim of ownership of that mark or that domain name.

10.5 EMI knew that Castro was not using that domain to divert consumers away from its website.

10.6 EMI knew that Castro was not using that domain to imply any affiliation with or sponsorship or endorsement by EMI.

10.7 EMI knew that Castro was not in the magazine publishing business.

10.8 EMI knew that Castro had never attempted to sell the domain to EMI or anyone else for profit.

10.9 EMI knew that Castro was only using that domain in a bona fide good faith attempt to market his own goods and services, which are not at all similar to or confusing with EMI's goods and services.

10.10 EMI is abusing the Anticybersquatting Consumer Protection Act in order to restrain trade in violation of Section 2 of the Sherman Antitrust Act (for all the factual reasons previously described, which are incorporated herein by reference), 15 U.S.C. §2. EMI is using the Anticybersquatting Consumer Protection Act in an attempt to steal the lawfully owned and registered domain names from many small business owners, and thereby, bar new entrants into the market that provides magazines, books, articles, websites, blogs, trade shows, workshops, seminars, boot camps, and keynote presentations on the topic of entrepreneurs and entrepreneurship.

10.11 EMI's pattern of threats and lawsuits against anyone who uses any variation of the common noun "entrepreneur" is an attempt to create a monopoly and a barrier to entry for competitors who wish to provide magazines, books, articles, websites, blogs, trade shows, workshops, seminars, boot camps, and keynote presentations on the topic of entrepreneurs and entrepreneurship.

10.12 EMI has demonstrated the requisite "specific intent" to monopolize by engaging in a pattern of anticompetitive conduct designed to create barriers to entry into, and exclude competition from, the market that provides magazines, books, articles, websites, blogs, trade shows, workshops, seminars, boot camps, and keynote presentations on the topic of entrepreneurs and entrepreneurship.

10.13 Specifically, EMI has engaged in a pattern and practice of sending "cease and desist" letters to many competitors demanding that they turn over to EMI their valuable property rights in domain names that use any derivation of the word "entrepreneur." This constitutes attempted theft and an attempt to monopolize in violation of Section 2 of the Sherman Antitrust Act.

10.14 This unilateral conduct comes "dangerously close" to achieving monopoly power and is having an anticompetitive effect on a substantial amount of interstate commerce.

10.15 EMI has sufficient market power in the above described market to be held liable for "attempted monopolization" under Section 2 of the Sherman Antitrust Act. Therefore, there is a "dangerous probability" that EMI's attempt to monopolize will succeed.

10.16 EMI's pattern of attempting to steal other people's domain names (which were properly owned and registered) and threatening expensive litigation – simply because they have used a derivation of the word "entrepreneur" is exclusionary and anticompetitive because it is not necessary for competition on the merits, and is not reasonably necessary to compete on the merits. It is therefore, not supported by a valid business reason. EMI's behavior is designed to destroy competition, not simply to destroy a competitor.

10.17 Defendant's trademark is an essential element, and a basic and fundamental vehicle used in an illegal attempt to monopolize in violation of Section 2 of the Sherman Antitrust Act.

10.18 Castro does not seek actual damages, but rather a temporary and permanent injunction to prevent EMI from continuing to violate Section 2 of the Sherman Antitrust Act.

XI. REMEDIES SOUGHT

11.1 Judicial Declaration that:

(a) 15 U.S.C. 1065, and 15 U.S.C. 1115(b) are unconstitutional on their face and as applied;

(b) EMI's mark "ENTREPRENEUR" does not qualify as "incontestable" under the Lanham Act;

(c) EMI's mark "ENTREPRENEUR," and all of its marks using the word "entrepreneur" as listed in the Registration Numbers in this Complaint are invalid and should be cancelled;

(d) Castro's marks: (1) EntrepreNeurology; (2) Entrepreneur.Ology; and (3) www.EntrepreneurOlogy.com are non-infringing or otherwise allowed;

(e) EMI is barred from enforcing its trademark under the doctrines of estoppel and acquiescence;

(f) Castro's use of the above referenced three marks do not constitute "unfair competition" under 15 U.S.C. §1125;

(g) EMI is using its trademark to restrain trade in violation of Section 2 of the Sherman Antitrust Act;

(h) EMI has abused the Lanham Act and has "unclean hands;"

(i) Castro has not violated the Anticybersquatting Consumer Protection Act;

11.2 For a temporary injunction preventing EMI from continuing to violate Section 2 of the Sherman Antitrust Act.

11.3 For a jury trial on the merits of Castro's Sherman Antitrust claims, and a judgment issuing a permanent injunction preventing EMI from continuing to violate Section 2 of the Sherman Antitrust Act;

11.4 Reasonable and necessary attorney's fees pursuant the Declaratory Judgments Act, the Lanham Act, and the Sherman Antitrust Act;

11.5 Statutory damages as allowed by law;

11.6 An order suspending the proceeding before the TTAB.

XII. REQUEST FOR JURY TRIAL

12.1 Plaintiff hereby requests a trial by jury.

XIII. PRAYER

13.1 Wherefore, Plaintiff requests that the Defendant be cited to appear and answer herein and for Court Orders and Judgment as follows:

13.2 Judicial Declaration that:

(a) 15 U.S.C. 1065, and 15 U.S.C. 1115(b) are unconstitutional on their face and as applied;

(b) EMI's mark "ENTREPRENEUR" does not qualify as "incontestable" under the Lanham Act;

(c) EMI's mark "ENTREPRENEUR," and all of its marks using the word "entrepreneur" as listed in the Registration Numbers in this Complaint are invalid and should be cancelled;

(d) Castro's marks: (1) EntrepreNeurology; (2) Entrepreneur.Ology; and (3) www.EntrepreneurOlogy.com are non-infringing or otherwise allowed;

(e) EMI is barred from enforcing its trademark under the doctrines of estoppel and acquiescence

(f) Castro's use of the above referenced three marks do not constitute "unfair competition" under 15 U.S.C. §1125;

(g) EMI is using its trademark to restrain trade in violation Section 2 of the Sherman Antitrust Act;

(h) EMI has abused the Lanham Act and has "unclean hands;"

(i) Castro has not violated the Anticybersquatting Consumer Protection Act;

13.3 For a temporary injunction preventing EMI from continuing to violate Section 2 of the Sherman Antitrust Act.

13.4 For a jury trial on the merits of Castro's Sherman Antitrust claims, and a permanent injunction preventing EMI from continuing to violate Section 2 of the Sherman Antitrust Act;

13.5 Reasonable and necessary attorney's fees pursuant the Declaratory Judgments Act, the Lanham Act, and the Sherman Antitrust Act;

13.6 Statutory damages as allowed by law;

13.7 An order suspending the proceeding before the TTAB;

13.8 Costs of Court, and expenses incurred in the litigation;

13.9 Pre and post-judgment interest; and

13.10 Such other and further relief at equity and at law to which Plaintiffs may be justly entitled.

Respectfully submitted,
CASTRO & BAKER, LIP

By: Daniel R Castro

Daniel R. Castro
State Bar No. 03997390
7800 Shoal Creek Blvd.
Suite 100N
Austin, Texas 78757
phone: (512) 732-0111
fax: (512) 732-0115

CERTIFICATE OF SERVICE

I hereby certify that on this same date, I have mailed a copy of this pleading to counsel for EMI, Inc. by certified mail at the following address:

Ronald L. Young
2445 McCabe Way
Suite 400
Irvine, California 92614

Daniel R. Castro

Daniel R. Castro

9-28-10

Date

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

EXHIBIT 1

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2009 Oct 12 03:48 PM 2009171356

HAYWOODK $16.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

EXHIBIT 2

AN 2009171356

2 PGS

DANA DeBEAUVOIR
Travis County Clerk
(512) 854-9188
P. O. Box 149325, Austin, Texas 78714-9325
5501 Airport Blvd, Austin, Texas 78751
www.co.travis.tx.us

Assumed Name Records Certificate of Ownership For Unincorporated Business or Profession

Notice: "Certificates of Ownership" are valid only for a period not to exceed 10 years from the date filed in the County Clerk's Office (Chapter 36, Section 1, Title 4 of the Business and Commerce Code). This Certificate properly executed is to be filed immediately with the County Clerk.

Business Name: Entrepreneurology

Business Address: 12401 Research Bldg I, Suite 450

City: Austin State: TX ZIP Code: 78759

This Assumed Name will be used for 10 years unless indicated here: _____

Business is to be conducted as (check one):

- [x] Proprietorship
- [ ] Joint Venture
- [ ] Real Estate Investment Trust
- [ ] Joint Stock Company
- [ ] Limited Partnership
- [ ] Sole Practitioner
- [ ] General Partnership
- [ ] Other (name type) _____

I/WE, the undersigned, are the owner(s) of the above business and my/our name(s) and address(es) given is/are true and correct and There is/are no ownership(s) in said business other than those listed herein below. Names of owners:

Name Daniel R Castro Signature Daniel R Castro

Residence Address 12401 Research Blvd City _____ State ____ ZIP _____

Building I, Suite 450, Austin, TX 78759

Name _____ Signature _____

Residence Address _____ City _____ State ____ ZIP _____

Name _____ Signature _____

Residence Address _____ City _____ State ____ ZIP _____

FOR USE BY NOTARY AND CLERK OF THE COURT, DEPUTY. The State of Texas and County of Travis:

Before me, the undersigned authority, on this day personally appeared: Daniel R. Castro *known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument and acknowledged to me that he/she/they signed the same purpose and consideration therein expressed. Given under my hand and seal of office, on* 10/12, *20* 09.

Signature of Notary Public in and for the State of Texas or Clerk of the Court, Deputy

K. HAYWOOD *Seal of the Notary Public or Clerk of the Court, Deputy*

SEAL OF COUNTY COURT, DANIEL, TEXAS

INFORMATION WHERE DOCUMENT SHOULD BE RETURNED (to be completed by applicant):

In the spaces below, clearly print the name, address, city, state, and ZIP code where this document should be returned:

Daniel R Castro
12401 Research Blvd
Bldg I, Suite 450
Austin, TX. 78759

Form of identification presented: TXDL

EXHIBIT 2

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA367112**

Filing date: **09/07/2010**

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

Applicant:	**Daniel R. Castro**
Application Serial Number:	**77964153**
Application Filing Date:	**03/20/2010**
Mark:	**ENTREPRENEUR.OLOGY**
Date of Publication	**08/10/2010**

First 90 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Entrepreneur Media, Inc., 2445 McCabe Way, Irvine, CA 92614, UNITED STATES, a corporation organized under the laws of California , respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown .

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 09/09/2010. Entrepreneur Media, Inc. respectfully requests that the time period within which to file an opposition be extended until 12/08/2010.

Respectfully submitted,
/dag/
09/07/2010

Deborah A. Gubernick
Latham & Watkins LLP
650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626
UNITED STATES
ipdocket@lw.com
7145401235

EXHIBIT 3

Deborah A. Gubernick
Direct Dial: (714) 755-8282
deborah.gubernick@lw.com

LATHAM&WATKINS LLP

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

FIRM / AFFILIATE OFFICES
Abu Dhabi, Barcelona, Beijing, Brussels, Chicago, Doha, Dubai, Frankfurt, Hamburg, Hong Kong, Houston, London, Los Angeles, Madrid, Milan, Moscow, Munich, New Jersey, New York, Orange County, Paris, Riyadh, Rome, San Diego, San Francisco, Shanghai, Silicon Valley, Singapore, Tokyo, Washington, D.C.

File No. 027788-22-US060

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 4

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

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Deborah A. Gubernick
Latham & Watkins LLP
650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626

Mailed: September 7, 2010

Serial No.: 77964153
ESTTA TRACKING NO: ESTTA367112

The request to extend time to oppose is granted until 12/8/2010 on behalf of potential opposer Entrepreneur Media, Inc.

Please do not hesitate to contact the Trademark Trial and Appeal Board at (571)272-8500 if you have any questions relating to this extension.

Note from the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, petition for cancellation, notice of ex parte appeal, and inter partes filings are now available at http://estta.uspto.gov. Images of TTAB proceeding files can be viewed using TTABVue at http://ttabvue.uspto.gov.

EXHIBIT 5